

## Announcements



Welcome **Matt Warren** to Western Centers' housing team! Prior to Western Center, he served as a Senior Attorney at the Law Foundation of Silicon Valley in their housing division. His work included litigating fair housing matters in state and federal courts, direct service of indigent clients facing eviction, and advocating for the production and preservation of affordable housing locally. Matt believes that safe, stable housing is a fundamental human right, and through his practice, he strives to expand housing opportunity for marginalized communities and people of color.

Matt graduated from Santa Clara University School of Law, where he was a Dean's Fellow. He received a Master of Arts in Social Justice and Human Rights from Arizona State University, and he received his undergraduate degree from Gonzaga University.

Matt lives in Oakland with his partner, Kristin, and their all-black cat, Sasha. Previously a certified personal trainer, he still dreams of playing in the NHL but has settled for training for his first marathon.



Congratulations to our own senior attorney **Navneet Grewal**, who was awarded the South Asian Bar Association of Southern California's 2019 Public Advocate Award. Congratulations Navneet!

## Landlord Tenant

### **Reversing Appellate Division, Court of Appeal finds rooming house is not exempt from LARSO**

*Chun v. Del Sid*, ---Cal.App.5th--- 2019 WL 1872913 (April 26, 2019)

Los Angeles' rent control ordinance exempts single-family dwellings. The landlord subdivided the home, so that 7 families could separately rent bedrooms with some common area access, and asserted that the rent ordinance did not apply because the home was originally built as a single-family. The landlord lost in the trial court, prevailed in the appellate division, and happily lost in the Court of Appeal, which held that the original design of the structure did not control. Kudos to Sean Chandra and the EDC on this win.

### **Tenant prevails on False Claims Act, granted leave to amend and overcome litigation privilege for claims based on County anti-retaliation ordinance**

*Kelly v. Denault*, No. 18-CV-03175-SVK, 2018 WL 8017881 (N.D. Cal., Dec. 20, 2018)

District Court denied motion to dismiss False Claims Act claims based on landlord increasing voucher tenants' rent without housing authority permission and demanding increased utility payments. The court further found tenants' allegations sufficient to support a punitive damages claim. The decision contains a helpful discussion of litigation privilege; tenants' allegations that the landlord's filing of a UD violated a county anti-retaliation ordinance was dismissed, but the court granted leave for the tenant to allege non-litigation conduct that violated the ordinance. Congratulations to Jason Hain on this win.

### **One-cent underpayment does not justify eviction, but landlord can reject uncertified check, Appellate Division holds**

*Bawa v. Terhune*, 33 Cal.App.5th Supp. 1 (2019)

Tenant wrote a rent check that was *one cent* short of the amount due, and the

landlord returned it and issued a 3-day notice. Tenant then sent a check for the correct amount. Landlord refused payment and filed a UD. At trial, the jury decided in favor of tenant, determining that the tenant did not fail to make at least one payment. The Appellate Division agreed that a tenant has a defense to unlawful detainer where the landlord's rejection based on de minimus underpayment suggests bad faith. However, the Appellate Division disagreed with the result because the tenant had a duty to re-tender payment—offering an uncertified check was not enough. The decision contains helpful language about landlord's bad faith despite the frustrating result.

**Jameson has teeth; indigent tenant denied a record of trial court proceedings gets new trial**

*Dogan v. Comanche Hills Apartments, Inc.*, 31 Cal.App.5th 566 (2019)

This is the first published decision since the California Supreme Court decided *Jameson v. Desta*, 25 Cal.5th 594 (2018) and holds that a tenant with a fee waiver who was denied access to a record of trial court proceedings is entitled to reversal and remand. If your court is not providing court reporters or other means of recording proceedings, please contact Madeline at [mhoward@wclp.org](mailto:mhoward@wclp.org).

**Three bankruptcy cases: abusive, bankrupt landlords must pay tenants, but lying tenants also have to pay back rent**

*In re Tejada*, No. 2:17-AP-01308, 2019 WL 1212354 (B.A.P. 9th Cir., Mar. 12, 2019)

The Bankruptcy Appellate Panel of the Ninth Circuit affirmed the lower court's decision in favor of the tenant, finding that the landlord's conduct, which included cutting off all utilities and then calling social services in an effort to get the tenant's children removed, was willful and malicious. Landlord's debt to the tenant was therefore non-dischargeable. Congratulations to LAFLA for excellent advocacy in this case. See our prior summary of this case [here](#).

*In re Bishop*, No. 2:16-AP-01388-RK, 2019 WL 1767144 (Bankr. C.D. Cal., Mar. 1, 2019)

Landlord attempted to force elderly tenant on fixed income from her rent controlled Los Angeles apartment, ultimately turning off the utilities. Tenant prevailed in wrongful eviction suit including on her Civil Code §789.3(a) claim, and landlord filed for bankruptcy. Held: landlord's debt to tenant non-dischargeable under 11 U.S.C. §§ 523(a)(6). The decision contains a detailed discussion of how a landlord's conduct in wrongfully evicting a tenant meets the standard for willfulness and maliciousness under the bankruptcy code.

*In re James*, No. 1:16-AP-01097-VK, 2019 WL 406637 (B.A.P. 9th Cir., Jan. 31, 2019)

Tenants lied about previous eviction records when renting a single family home, changed the locks, and then stopped paying rent and filed for bankruptcy. The Bankruptcy Appellate Panel of the Ninth Circuit upheld the lower court's decision, holding that the tenants' misrepresentations on their rental application was intentional fraud on the landlord and was the cause of landlord's damage; debt non-dischargeable.

**Insurance company may not sue commercial tenants of insured landlord in subrogation, even if their negligence caused fire, Court of Appeal holds**

*Western Heritage Insurance Company v. Frances Todd, Inc.*, 245 Cal.Rptr.3d 552 (Cal. Ct. App. 2019)

Commercial tenants rented a condominium that was destroyed by a fire. Condominium association's fire insurance policy, which named condominium owners as insured, paid for damages to the complex. The policy prohibited the insurer from suing insured parties in subrogation. The Court of Appeal affirmed the trial court's entry of judgment in favor of tenants, finding that they tenants were implied insureds under the policy regardless of their negligence.

**Giant damages award to mobilehome owners reversed, Court of Appeal says abusive park owners' predatory practices do not create liability**

*Bevis v. Terrace View Partners, LP*, 33 Cal.App.5th 230 (2019), as modified on denial of reh'g (Mar. 21, 2019)

Mobilehome tenants won big at trial, including \$57 million in punitive damages against mobilehome park that failed to maintain the park and increased tenants' rent. The Court of Appeal reversed, finding that none of the theories alleged could support the damages award. An unfortunate result, given some compelling facts; the leases were predatory and resulted in tenants paying up to \$1800 in space rent (contrast to average rents at surrounding mobilehome parks of \$850) and management appears to be intentionally emptying the park. A depublication request is in the works. For those interested in learning more, please also join WCLP's mobilehome working group calls -- contact Navneet at [Ngrewal@wclp.org](mailto:Ngrewal@wclp.org) to join.

**Tenants' constitutional claims against NY City attorneys not barred by Rooker-Feldman doctrine, Second Circuit holds**

*Sung Cho v. City of New York*, 910 F.3d 639 (2018)

Commercial and residential tenants brought suit against the City of New York for coercing them into settlement agreements that included waivers of constitutional rights. The settlement agreements, which were signed "so ordered" by state court judges, arose out of the City's enforcement of its nuisance abatement law. City attorneys pressured tenants who had not engaged in any criminal activity to waive their due process rights to avoid eviction from alleged "nuisance" properties. NYC asserted that the *Rooker-Feldman* doctrine required dismissal, because plaintiffs were really trying to appeal from state court stipulated judgments. Held: tenants' claims could proceed; the state court merely ratified the agreements with the City.

## Land Use

### **Govt Code 65009(c)(1)'s 90 day statute of limitations governs procedural challenge to development approval, Court of Appeal holds**

*1305 Ingraham v. City of LA*, 32 Cal.App.5th 1253 (2019)

The City of LA approved proposal for a development incorporating commercial space and affordable housing. 1305 Ingraham LLC filed an appeal with the city challenging the approval and asked for a hearing, but the city did not hold a hearing. 1305 filed a writ. The trial court held, and the Court of Appeal affirmed, that the 90 day statute of limitations in Govt Code §65009(c)(1) barred the challenge.

### **Younger abstention proper in motel closure case, Ninth Circuit holds**

*Herrera v. City of Palmdale* (9th Cir. 2019) 918 F.3d 1037

The City and County of Los Angeles evicted motel tenants and closed motel after issuing notice of 400+ code violations. Motel owners sued for damages and injunctive relief in federal court. City filed nuisance action in state court shortly thereafter, and requested that the federal court abstain to allow the state case to proceed. Held: district court's order was immediately appealable, abstention was proper, and dismissal of claims for injunctive relief with stay of damages claims was appropriate.

### **Other relevant cases**

### **Conspiring marijuana sellers draw First District COA's Anti-SLAPP ire**

*Richmond Compassionate Care Collective v. 7 Stars Holistic Foundation, Inc.* (Cal. Ct. App., Jan. 29, 2019, No. A153305) 2019 WL 350414

"Another appeal in an anti-SLAPP case. Another appeal by a defendant whose anti-SLAPP motion failed below. Another appeal that, assuming it has no merit, will result in an inordinate delay of the plaintiff's case and cause him to incur more unnecessary attorney fees... And no merit it has. Here is yet another such appeal. And we again affirm." (internal citations omitted). Enough said, read if you are dealing with Anti-SLAPP.

### **State must give back \$331 million in Mortgage Settlement money wrongfully diverted to general fund, Court of Appeal holds**

*National Asian American Coalition v. Newsom*, --- Cal.Rptr.3d ---- (2019)

Various organizations challenged the state of California's diversion of National Mortgage Settlement money to the state's general fund. Held: organizations had public interest standing to bring writ of mandate, and state Director of Finance's diversion of funds was unlawful. The court further held that the proper remedy was immediate transfer of \$331 million in wrongfully diverted funds.

## Fair Housing

### **Fifth Circuit adopts impossible causation standard for disparate impact; no liability unless landlord caused overrepresentation of protected class in general population**

*Inclusive Communities Project, Incorporated v. Lincoln Property Company*, --- F.3d--- (5th Cir., Apr. 9, 2019) 2019 WL 1529692

This case stems from Inclusive Communities Project's program to help voucher tenants access housing in high opportunity neighborhoods. ICP offers landlords incentive payments and guarantees rent payments, addressing all of landlords' proffered "business" reasons for refusing to accept vouchers. Despite these incentives, Lincoln Properties refused to rent to ICP's voucher tenants, except in its buildings in predominately minority neighborhoods. ICP sued, alleging intentional discrimination under the FHA, and disparate impact based on the fact that 94% of voucher holders in the Dallas area are people of color, 87% of them black. Last week the Fifth Circuit affirmed the district court's decision dismissing ICP's claims. The Court first held that the 2015 SCOTUS decision *Texas Dep't of Housing & Comm. Affairs v. ICP* imposes a stricter standard than HUD's disparate impact rule because of the "robust causality" requirement. Most troubling for those litigating disparate impact claims, the Court adopted the theory that robust causality can only be shown where the landlord caused the underlying disparity in the overall population; a showing that as a practical matter seems impossible to make. Of course, the individual landlord did not cause "black persons to be the dominant group of voucher holders in the Dallas metro area." (Slip at 11) If this is the standard, no one can meet it.

The Court also accepted the landlord's "business reasons" without question, despite the fact that ICP took all of the risk out of the voucher tenancy, and found that the policy of refusing vouchers only in white neighborhoods was not "artificial, arbitrary and unnecessary" and therefore not actionable under disparate impact. The Court further affirmed the district court's dismissal of the disparate treatment claim, finding

that disparate impact liability required the landlord to state an explicit racial preference. Judge Davis wrote a strong dissent.

### **Wetzel cert petition dismissed, but SCOTUS to address sexual orientation discrimination in employment cases**

*Wetzel v. Glen St. Andrew Living Community, LLC* (7th Cir. 2018) 901 F.3d 856, cert. dismissed sub nom. *Glen St. Andrew Living Com. v. Wetzel* (2019) 139 S.Ct. 1249 Please see prior discussion of the Seventh Circuit's excellent *Wetzel* decision case [here](#). The court found that the housing provider could be held liable for failing to protect a lesbian tenant from harassment by other residents based on the tenant's sexual orientation. The parties settled, so the issue will not be taken up by the high court. However, our friends at Impact Fund shared the bad news that SCOTUS granted three cert petitions in *Altitude Express, Inc. v. Zarda* (17-1623), *Bostock v. Clayton County* (17-1618), and *R.G. & G.R. Harris Funeral Homes, Inc. v. E.E.O.C.* (18-107). These cases address whether Title VII's prohibition against discrimination "because of sex" includes discrimination on the basis of sexual orientation AND gender identity. Courts have historically looked to Title VII cases in interpreting the FHA, so these decisions will impact our housing work.

### **Judgment as a matter of law for landlord who "didn't care" about tenant's disability**

*Elliott v. Versa CIC, L.P.*, No. 16-CV-0288-BAS-AGS, 2019 WL 414499 (S.D. Cal., Feb. 1, 2019)

Landlord told tenant's daughter not to park in unmarked fire lane in front of tenant's apartment, and told daughter she "didn't care" about tenant's disability or recent hospital stay. Jury deadlocked, and mistrial declared. The court granted judgment as a matter of law, finding that facts did not support fair housing act liability on any alleged theory.

## Update From Our Policy Team

### **Legislative Session Underway**

2019 has been an extremely busy year so far in terms of housing legislation in the Capitol. Legislators introduced upwards of 250 bills related to housing in some way, a record number. There continues to be tremendous focus in the Capitol on addressing California's worsening housing crisis, including from the new Governor who has made clear that housing is one of his top priorities. Our struggle, as always, is to ensure that the attention of the Legislature and Governor is directed at helping those hit hardest by the crisis and its effects. Western Center and CRLAF are sponsoring or co-sponsoring eight bills this 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 clients.

With Legislators back from Spring Recess and the budget process in full swing, 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.

### **Key Western Center Bills and CRLAF Sponsored Bills**

#### **Keep Families Home package – AB 36 (Bloom), AB 1481 (Bonta), AB 1482 (Chiu)**

The Keep Families Home package is a package of three Assembly bills designed to address rising rents and price-gouging affecting California's low-income renters. The bills are co-sponsored by WCLP, CRLAF, ACCE, PICO California, Public Advocates, PolicyLink, and Tech Equity Collaborative.

**AB 36 (Bloom)** would reform the Costa Hawkins Rental Housing Act to allow local jurisdictions to cover additional housing units under local rent stabilization laws. Specifically, the bill would reform Costa Hawkins to allow rent stabilization of buildings more than 20 years old, as well as single family homes owned by large landlords. AB 36 is currently in the Assembly Rules Committee to allow time for further negotiation with opponents.

**AB 1481 (Bonta)** would impose just cause eviction requirements statewide. The bill distinguishes between "at-fault" and "no-fault" evictions, and requires the payment of relocation assistance to tenants evicted for no-fault reasons. This bill is a critical piece of the package to ensure that landlords aren't able to circumvent limitations on rent increases by evicting tenants without cause and then re-setting the rents for their units. The bill passed the Assembly Judiciary Committee on April 30 and now heads to the Assembly floor.

**AB 1482 (Chiu)** sets a limit on rent increases applicable to any rental unit not covered by local rent stabilization policies or with a deed restriction limiting the rent to an affordable rate. The bill would prohibit rent increases beyond the regional Consumer Price Index (CPI) plus 5%. The bill passed the Assembly Housing and Community Development Committee on April 23<sup>rd</sup> and will next be heard in the

Assembly Appropriations Committee.

**AB 1279 (Bloom)** would facilitate mixed-income and affordable housing development in high-resource communities through local zoning overrides and other land use incentives. The bill is aimed at addressing the housing shortage in a way that also addresses exclusionary zoning practices that exacerbate racial and economic segregation and that provide few opportunities for lower-wage workers to live close to where they work in many areas of the state. The bill passed both the Assembly Housing Committee and the Assembly Local Government Committee and is now in the Assembly Appropriations Committee.

**SB 329 (Mitchell)**, the Housing Opportunities Act, would add housing assistance as a protected source of income under the Fair Employment and Housing Act. This means that landlords would no longer be permitted to discriminate against tenants who receive housing assistance. Landlords would be required to allow these families to apply for available housing and screen them using the same criteria used to evaluate other applicants. The bill passed in the Senate Judiciary Committee on April 30 and now heads to the Senate Appropriations Committee. The bill is co-sponsored by WCLP, CRLAF, Housing California, the National Housing Law Project, the Los Angeles County Board of Supervisors, and the California Association of Housing Authorities.

**SCA 1 (Allen)** would place the repeal of Article 34 of the California Constitution on the November 2020 ballot. Article 34, which has been in the Constitution since the early 1950s, requires local voter approval before certain affordable housing projects can be built. The bill has not yet had a hearing, but only because constitutional amendments are not subject to the same deadlines as other bills. The bill is sponsored by WCLP, CRLAF, Los Angeles Mayor Eric Garcetti, and a diverse coalition of other organizations.

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

## Upcoming Trainings

- June 11<sup>th</sup>-Los Angeles Summer Training Day at LAFLA – registration opening soon
- June 25<sup>th</sup>-Bay Area Summer Training Day at the California Endowment in downtown Oakland – registration opening soon
- July 17<sup>th</sup>-LA Housing Task Force – registration opening soon
- Watch your inbox for a Save the Date for a two-part summer webinar on the new statewide Affirmatively Furthering Fair Housing Law
- Go [here](#) for Tenants' Together sponsored training on AB 291, featuring Navneet Grewal and Daniel Saver *\*Please note that the webinar starts at minute 34 – the beginning is just testing the audio.\**



## Research and Resources

- From the National Housing Conference: check out the "[Paycheck to Paycheck](#)," an interactive online tool that allows users to research and compare rental and homeownership affordability challenges of workers in 81

occupations in 259 metro areas nationwide.

- From PRRAC: a new report with the National Education Association "[Housing and Schools: The Importance of Engagement for Educators and Education Advocates.](#)"
- From National Low Income Housing Coalition: check out The Gap: A Shortage of Affordable Homes 2019 report, available at: <https://reports.nlihc.org/gap>.

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