WESTERN CENTER ON LAW & POVERTY

Housing Update No. 101
2021 Case Summaries

COVID-19 Emergency Eviction Protections

Supreme Court enjoins portion of New York's COVID Emergency Eviction Act
Chrysafis v. Marks, 141 S.Ct. 2482 (2021)
In a summary order, the Supreme Court enjoined enforcement of part A of New York state's COVID Emergency Eviction and Foreclosure Prevention Act, which did not allow landlords to contest tenants' self-certification of hardship. The Court found that the provision violated landlord's due process rights. Justices Breyer, Sotomayor and Kagan dissented.

Ninth Circuit rejects Contracts Clause challenge to municipal eviction moratorium
Apartment Association of Los Angeles County, Inc. v. City of Los Angeles, 10 F.4th 905 (9th Cir. 2021)
Following the City of Los Angeles' passage of its COVID-19 eviction moratorium, a landlords' trade association Apartment Association of Los Angeles County, Inc. sued the City for violating the U.S. Constitution's Contracts Clause. The Ninth Circuit declined to even consider whether the moratorium violated the Contracts Clause because it concluded the moratorium was an appropriate and reasonable way to achieve an important and legitimate public purpose during the COVID-19 pandemic.

Current Status: In November 2021, the Apartment Association filed a Petition for Writ of Certiorari in the U.S. Supreme Court. Responses from the City of Los Angeles and intervenors are due March 11, 2022.

U.S. Supreme Court upholds ruling vacating CDC's eviction moratorium
Alabama Assn. of Realtors v. Dept. of Health and Human Services, 141 S.Ct. 2485 (2021).
Following the end of Congress's COVID-19 eviction moratorium on December 31, 2020, the CDC imposed its own moratorium which was extended through July 2021. It relied on its authority to create and enforce any regulations necessary to prevent the transmission of communicable disease. Realtor associations and rental property managers filed suit to enjoin the CDC's moratorium and the District Court granted their motion for summary judgment, ruling that the CDC did not have statutory authority to issue the moratorium. The Court then granted the Government's emergency motion for stay of judgment pending appeal. By the time the case reached the Supreme Court for its first review, it declined to vacate the order because of the impending expiration. When the CDC extended the moratorium again, the Court reconsidered the case and ruled that the CDC exceeded its power in issuing the eviction moratorium.

Landlords' constitutional challenge to COVID-19 stay-at-home order survives motion to dismiss
Bols v. Newsom, 515 F.Supp.3d 1120 (S.D. Cal., Jan. 26, 2021).
Commercial property landlords and business owners brought a Section 1983 action against Governor Newsom, the California Attorney General, County of San Diego County officials, and City of San Diego officials. The action claimed that the State's and County's shelter-in-place orders violated the Equal Protection Clause, the Due Process Clause, the Takings Clause, the Contracts Clause, and the California constitution. Defendants filed motions to dismiss all claims. The court found the plaintiffs' allegations were sufficient to state each claim and denied the defendants' motions to dismiss as to all claims.

District court rejects landlord's claims against the state and superior court for

failing to efficiently process court documents during the pandemic
Dawodu v. California, 2021 WL 4816837 (C.D. Cal., Sept. 3, 2021).
Plaintiff landlord owns several rental properties. After the COVID-19 pandemic necessitated temporary business closures, landlord alleged that because his tenants refused to pay the rent, he was incurring property expenses. His claims were based on the allegation that he could not timely evict his tenants because the courts were closed or operating at limited capacity. He sued the State, the County of Riverside, and the Superior Court of California pursuant to Section 1983 and included state law claims for intentional infliction of emotional distress and negligent interference with prospective economic relations. The court dismissed the 1983 claim against the State and the Superior Court, citing 11th Amendment sovereign immunity. It declined to exercise supplemental jurisdiction over the state law claims and dismissed the action with prejudice and without leave to amend.

District court allows intervention by tenants' rights groups in challenge to eviction moratorium
GHP Management Corp. v. City of Los Angeles, 339 F.R.D. 621 (C.D. Cal., Nov. 22, 2021).
Thirteen apartment building owners and their property managers sought declaratory judgment against the City of Los Angeles after it instituted its eviction protection ordinance at the beginning of the COVID-19 pandemic. Plaintiffs alleged the moratorium violated the Fifth Amendment's Takings Clause and the California Constitution's Takings Clause. Alliance for Community Empowerment, Strategic Actions for a Just Economy and Coalition for Economic Survival moved to intervene as defendants on behalf of the City's tenants. Landlords opposed the intervention, arguing that they were not seeking injunctive relief invalidating or enjoining enforcement of the ordinance to distinguish their case from the pending *AAGLA* lawsuit. They argued that declaratory judgment in their favor would only affect the small number of named Plaintiffs and would not implicate any significant interest of the proposed interveners. The court rejected landlords' argument, finding that a judgment would impact the interests of the City's tenants and the interveners were adequate representatives of these interests.

Southern District Court denies motion to enjoin enforcement of San Diego eviction moratorium
*Southern California Rental Housing Association v. County of San Diego, 2*021 WL 3171919 (S.D. Cal., July 26, 2021)
Landlord association SCRHA filed suit challenging San Diego county's short-term eviction moratorium ordinance which went into effect on June 3, 2021 and would end 60 days after the Governor lifts all COVID-19 related stay-at-home and work-at-home orders. During the pendency of the action, these orders were lifted, so that the Ordinance would ultimately expire on August 10, 2021. The lawsuit alleged that the San Diego ordinance violates the Contracts Clause and the Takings Clause of the United States Constitution and that it also violated the California Constitution because the San Diego Board of Supervisors did not have the authority to impose an ordinance that extended to incorporated areas of the County. The court denied SCRHA's motion, holding that Plaintiffs were unlikely to succeed on the merits because the ordinance did not constitute a violation of the Contracts or Takings Clause nor did it violate the California Constitution. The court further held that Plaintiffs failed to show that its members would suffer irreparable harm and that the public interest in keeping San Diego residents sheltered in their homes to slow down the spread of COVID-19 weighed against enjoining the ordinance.

Current Status: Plaintiffs appealed the denial of injunctive relief to the Ninth Circuit Court of Appeals, even though the ordinance has since expired. Oral arguments in the appeal were heard on February 9, 2022, and submission of the case is deferred pending the en banc decision in Brach v. Newsom, 18 F.4th 1031 (in relation to issue of mootness).

Landlord-Tenant

LA Appellate Division holds landlord's failure to register unit provides complete UD defense

Yanez v. Vasquez, 65 Cal.App.5th Supp. 1 (2021)
Landlord rented a converted garage to tenant, and then filed an unlawful detainer based on allegations that tenant did not allow access to the property. Tenant filed a motion for summary judgment, arguing that the unit was illegal under LA's rental ordinance, and landlord's failure to register the unit rendered the lease unlawful and unenforceable against the tenant. The trial court granted the motion and landlord appealed. After finding that landlord had waived the issue of untimely service of the motion, the Appellate Division found that landlord's failure to obtain and serve a registration statement for the property was a complete defense, regardless of the fact that the complaint did not demand rent. Congratulations to Kaimi and ICLC team on this win.

Class action challenging unlawful late penalties survives motion to dismiss
Zeff v. Greystar, 2021 WL 632614 (N.D. Cal., Feb. 18, 2021)
Greystar is a huge landlord that owns 79 large complex in the Bay Area alone. Greystar requires tenants to pay utilities through its online platform, adds on an administrative fee for the utilities, and then classifies both payments as "rent." It then charges a $100 fee for any late "rent." Greystar also fails to comply with security deposit rules. The federal district court found that as property manager and agent of the landlord, Greystar could be held liable as an agent under the UCL. The court rejected Greystar's other arguments; tenants' class claims based on Civil Code sections 1671 and 1950.5 will proceed.

Court of Appeal grants class cert to tenants challenging habitability, security deposits
Peviani v. Arbors at California Oaks Property Owner, LLC 62 Cal.App.5th 874 (2021), *reh'g denied* (Apr. 29, 2021), *review denied* (July 14, 2021)
Reversing the trial court, the Court of Appeal found that tenants qualified for class certification to pursue their claims on a variety of issues including landlord's failure to return security deposits, failure to maintain common areas in a habitable condition, and false advertising.

Court of Appeal affirms 2.7 million dollar award in wrongful eviction suit
Duncan v. Kihagi, 68 Cal.App.5th 519 (2021).
Tenants sued landlords for violations of San Francisco's rent stabilization ordinance based on landlords reducing services and initiating fraudulent owner move in eviction. The jury awarded tenants $3.5 million, and the court reduced it to $2.7 million. The Court of Appeal found that the court did not abuse its discretion in admitting evidence of the landlords' conduct at other properties and that there was substantial evidence to support the jury's verdicts. It also affirmed the reduced amount of 2.7 million dollars, holding that the trial court did not abuse its discretion. Thank you to the Center for Consumer Law & Economic Justice for requesting publication of this decision!

SD Appellate Division reverses eviction judgment based on fatally defective 60-Day Notice
Esa Management, LLC v. Jacob, 63 Cal.App.5th Supp. 1 (2021).
Plaintiff Esa Management served a sixty-day notice of termination on tenant. The notice stated "nonpayment of rent" as the reason for the termination but did not include the amount of rent owed or any information to allow tenant to cure the default in his obligation to pay rent. Plaintiff filed an unlawful detainer and the trial court found in the landlord's favor. The Appellate Division reversed. The notice of termination was fatally defective because it failed to state the amount of rent owed and how to pay the rent demanded as required by C.C.P. Section 1161(2). The Court reasoned that it did not matter that the notice complied with Civil Code Section 1946.1 because the notice was for non-payment of rent, albeit one with a longer notice period, and thus compliance with C.C.P Section 1161 is mandatory. The Court further held that although tenant failed to raise the defective notice as a defense, the notice provisions of Section 1161 are not waivable.

LA Appellate Division rejects narrow application of affirmative defense based on domestic violence
Elmassian v. Flores, 69 Cal.App.5th Supp. 1 (2021).
Tenant raised affirmative defense that landlord based unlawful detainer on domestic violence acts against her. At trial, another resident testified to seeing repeated acts of domestic violence against the tenant in the hallways and hearing violence from the tenant's apartment. The trial court still granted a directed verdict against the tenant on the domestic violence defense. The Appellate Division reversed, finding a tenant may assert the domestic violence defense even when the action is also based on other grounds. In this case, there was substantial evidence presented supporting the

defense and the trial court erred by not allowing the jury to consider it. The Appellate Division also determined that C.C.P. § 1161.3's written report requirements are satisfied even when the report does not identify the domestic violence perpetrator, the relationship between victim and perpetrator, and only documents one instance of domestic violence. Congratulations to the tenants' attorneys: Taylor Campion and Jennafer Wagner at FVAP, Eric Post and Danny Sandoval at BASTA, and pro bono counsel at Jones Day.

Second Appellate District finds small verdict does not entitle tenant to "prevailing party" benefits
Harris v. Rojas, 66 Cal.App.5th 817 (2021)
Harris leased commercial space from Rojas. The lease contained a provision making the defaulting or breaching party liable for attorneys' fees and costs. In 2017, Harris sued Rojas for breach of contract, among other tort claims, and Rojas countersued. While the breach of contract case was pending, Rojas filed an unlawful detainer case against Harris for nonpayment. Harris did not appear and judgment for possession and $13,014.66 was entered. Neither party noticed the two related cases, so both were adjudicated in separate courts with separate records. The jury in Harris's civil suit awarded him a gross judgment $6,450 out of his request for $200,000, but also awarded Rojas $6,450 on a negligence claim. Harris then moved for attorneys' fees, which the trial court denied based on its finding that there was no prevailing party. On appeal, the Second District affirmed, reasoning that the award in comparison to the amount requested by Harris was too small to consider him a prevailing party and that in taking both the civil suit and unlawful detainer together, Harris could not be considered a prevailing party since Rojas was the "net winner."

Landlord's attorney cannot be held liable for fraudulently obtained judgment under consumer protection laws, district court holds
Montijo v. Hrdlicka, 2021 WL 3857643 (E.D. Cal., Aug. 30, 2021)
Plaintiff tenants, the Montijos, were evicted through an unlawful detainer action in which the court, after a trial, awarded the landlord the right of possession but not monetary damages. The Montijos vacated and struggled to find a new apartment. They were shocked when a potential landlord informed them their credit history reflected a money judgment against them by a previous landlord. They later learned their former landlord's attorney, Defendant Hrdlicka, appeared in court without notice to "prove-up" default judgments in several cases, including the Montijos' case. The Montijos sued Hrdlicka, alleging he violated the federal Fair Debt Collection Practices Act and California's Unfair Competition Law by wrongfully entering default judgment against them. Hrdlicka moved to dismiss the complaint. The court granted Hrdlicka's motion to dismiss without leave to amend. The court based its decision on the fact the unlawful detainer court did not award monetary damages, and it found that Hrdlicka's attempt to collect holdover damages and attorneys' fees through a default judgment did not constitute a "debt" under the federal Fair Debt Collection Practices act and California's Unfair Competition Law.

Motions to quash limited by California Supreme Court
Stancil v. Superior Court, 11 Cal.5th 381 (2021).
Docktown Marina tenant filed a motion to quash based on landlord's failure to include a specific superior court branch on the unlawful detainer summons. Tenant filed a writ challenging the trial court's denial of the motion and ultimately brought the issue to the California Supreme Court. The Court affirmed the denial of the tenant's writ, holding that "no defendant may use a motion to quash service of summons as a means of disputing the merits of the unlawful detainer complaint's allegations or argue the plaintiff failed to comply with the pleadings requirements....in section 1166." However the Court declined to adopt the landlords' argument that motions to quash could never be used in unlawful detainer cases, and confirmed that tenants have the right to quash service of the special 5-day summons where the accompanying complaint fails to state a cause of action in unlawful detainer. The decision also contains helpful language on basic unlawful detainer principles including that unlawful detainers "are limited in scope and demand strict adherence to the statute's procedural requirements."

Appellate Division finds residential landlords need not accept rent from sub-tenants where original tenant defaulted
Lara v. Menchini, 285 Cal.App.5th Supp. 1 (2021)
Mr. Menchini sub-leased his unit to two roommates after moving in. Mr. Menchini typically collected rent from each roommate and paid the rent in one check. When Mr. Menchini fell behind, landlord issued a nonpayment notice to Mr. Menchini only and would not accept rent directly from the subtenants. The trial court held, and the San Francisco Superior Court Appellate Division affirmed, that a landlord is not

required to permit sub-tenants to cure the original tenant's default and that rent-controlled apartments cannot pass between friends.

Court of Appeal holds landlord's successor may enforce notice of termination
Lee v. Kotyluk, 59 Cal.App.5th 719 (2021).
Landlords filed an unlawful detainer action against their commercial tenant based on an eviction notice issued by the prior owner. The tenant moved for judgment on the pleadings, arguing the notice to quit was defective because the current owner had not served it. The trial court agreed but the Court of Appeal reversed. Relying on the statutory language, the Court found a notice need not identify the party to whom the tenant must return the property. It also found the notice was not defective on its face simply because it was served by the owner's predecessor in interest.

Court of Appeal affirms trial court's post-dismissal set aside of discovery sanctions
Manhan v. Gallagher, 62 Cal.App.5th 504 (2021).
Plaintiffs won a discovery sanctions motion, and then dismissed the case. Then defendants successfully had the sanctions order set aside. Plaintiffs appealed and lost. Lesson: don't dismiss your case until you get paid the sanctions you win. Also a reminder: just as attorneys who provide free representation can (and should) be awarded attorneys' fees, so can our clients be awarded sanctions. *Do v. Superior Ct*., 109 Cal. App. 4th 1210, 1212 (2003).

Second Appellate District voids default judgment against tenant who never received notice of action
Kremerman v. White, 71 Cal.App.5th 358 (2021).
The Court of Appeal reversed the trial court, holding that a default judgment entered after landlord served the tenant via substituted service was void. The Court held that landlord's service was defective and the trial court's denial of the tenant's motion to vacate the $71,000 judgment was abuse of discretion.

Court of Appeal allows trustee landlord to evict using family move-in provision of SF rent ordinance
Boshernitsan v. Bach, 61 Cal.App.5th 883 (2021).
Landlord held title to a duplex in a living trust and sought to evict the tenant unit under a provision of San Francisco's rental ordinance that allows owners to move in close family members. Tenant argued that the ordinance defines "landlord" as a natural living person, and the property owner was a living trust, not a natural human being. The trial court agreed but the Court of Appeal reversed, finding that allowing the trustee to qualify as a "landlord" under the ordinance was consistent with its intent.

Fair Housing

Ninth Circuit blocks Oakland's effort to hold bank accountable for economic harms stemming from discriminatory lending
*City of Oakland v. Wells Fargo & Company,*14 F.4th 1030 (9th Cir. 2021)
The City of Oakland sued Wells Fargo for harms associated with predatory and discriminatory lending that resulted in foreclosures and caused economic harms to the city. In an *en banc* decision on an interlocutory appeal, the Ninth Circuit adopted a narrow view of the Fair Housing Act's reach and found that the city's injuries to its tax base and increased expenditures were not proximately caused by Wells Fargo's discriminatory practices.

Ninth Circuit affirms judgment in favor of the City of Costa Mesa in disability discrimination lawsuit
Yellowstone Womens First Step House, Inc. v. City of Costa Mesa, 2021 WL 4077001 (9th Cir., Sept. 8, 2021, No. 19-56410), see also 2019 WL 6998664 (judgment in favor of City of Costa Mesa)
Plaintiff filed suit against the City of Cosa Mesa alleging a pattern and practice of discrimination on the basis of disability under the Fair Housing Act, the Americans with Disabilities Act, California's Fair Employment and Housing Act, and California Government Code §§ 11135 and 65008. Since approximately 1997, Plaintiff operated two sober-living transitional housing residences located in residential districts zoned

for single-family homes. The residents of the transitional housing facilities are individuals in recovery for alcohol and substance abuse and most were participants in Specialized Treatment for Optimized Programming (STOP), a program administered by the Dept. Of Corrections and Rehabilitation to transition parolees back into the community. In 2013, the City enacted Ordinance No. 14-13, creating a procedure for reasonable accommodation for the operation of group homes (defined as a facility being used as a supportive living environment for persons who are considered handicapped under state or federal law) in single-family residential neighborhoods. The Ordinance required operators of group homes to apply for a special use permit to allow an exception to single-family residential zoning laws. Plaintiff argued that they were exempt from the ordinance as a "single housekeeping unit," and that the City of Costa Mesa had enacted other ordinances criminalizing Plaintiff's operation of its two residences and was thus discriminating on the basis of the presence of disabled individuals in the two homes. The Central District Court found that while the residents of the homes are persons with disabilities, that Plaintiff's evidence was not sufficient to meet its burden of showing that the City prohibited the operation of the two homes or discriminated against Plaintiffs in the administration of its ordinance because of the disability of Plaintiff owners or intended occupants. Judgment was entered in favor of the City and Plaintiff appealed to the Ninth Circuit Court of Appeals which affirmed the Central District's judgment.

Complaint for de facto termination of housing assistance survives motion to dismiss
Manzo v. Anaheim Housing Authority, 2021 WL 4805456 (C.D. Cal., June 3, 2021).
Section 8 voucher tenant requested that her abusive husband be removed from her household and notified the Housing Authority of the change and decreased income. A few months later, the housing authority notified the tenant that her family was "overhoused" and only qualified for a one-bedroom unit, forcing her to move. The Housing Authority subsequently terminated tenant's voucher without a hearing. The tenant sued and the District Court denied the Housing Authority's motion as to all claims. Among other things, the court held that the tenant could base her Section 1983 claims on the federal Housing Act and that the tenant properly stated claims against the Housing Authority itself, not just its employees. Congratulations to Ugochi Anaebere-Nicholson of Public Law Center and pro bono counsel at O'Melveny and Myers on this victory.

Ninth Circuit Appeal pending in emotional support animal case
McClendon v. Bresler, 2021 WL 3017511 (C.D. Cal., Apr. 20, 2021) *appeal filed* .
McClendon v. Bresler (C.D. Cal., Oct. 21, 2021, No. 220CV07758RGKGJS) 2021 WL 6424918, at *1
Person with disability and two friends applied to rent home despite advertisement stating no dogs. In response to the application, which included a disclosure that the household included a "registered support animal" the landlord states that "My policy has been not to accept dogs, even if service dogs." Tenant did not otherwise disclose her disability. Landlord declined the application and tenant sued, alleging fair housing violations. The court granted summary judgment against the tenant on her reasonable accommodation claim, finding that she did not demonstrate landlord's knowledge of her disability. The court found that a material issue of fact exists as to whether landlord's statements constituted an impermissible preference. Tenant has filed an appeal in the Ninth Circuit.

District Court rejects landlord's motion to dismiss Black tenants' discrimination claims
Williams v. Camden USA Inc., (S.D. Cal., Feb. 26, 2020, No. 319CV00691AJBAHG) 2020 WL 953285
Tenant and her daughter filed this fair housing case against their landlord based on the property manager's discriminatory conduct. After the court granted leave to amend the complaint after a prior motion to dismiss, tenant added more detail about the property manager's conduct, which included making comments about the tenant's name, telling the tenant that the complex was not "the ghetto" after towing her car, and ultimately issuing a 60 day notice after tenant complained. The court found that while individual incidents would not demonstrate discriminatory animus, taken together, the property manager's conduct and the landlord's issuance of the 60 notice.

Ninth Circuit adopts narrow interpretation of Fair Housing Act obligations to only protect people who pay rent for housing
Salisbury v. City of Santa Monica (9th Cir. 2021) 998 F.3d 852, *cert. denied* (2022) 142 S.Ct. 771
Mr. Salisbury lived with his father in a mobilehome park that was acquired by the City

of Santa Monica. Despite living in the home for his entire life beginning when he was a teenager, he was never added to the lease. He acquired title to the mobilehome park and remained in the park after his father died. He filed a lawsuit in state court asserting his tenancy rights but lost because he had not followed procedural requirements. When the park refused to grant him a reasonable accommodation to park his vehicle next to his home, he sued in federal court for Fair Housing Act violations. The Ninth Circuit affirmed the district court's decision granting summary judgment to the City, finding that the City did not have to accommodate the disability of a person who did not "enter into a lease or pay rent." The court held that the Fair Housing Act only applies to rentals where the tenancy is supported by adequate consideration. Reader please note that, state law, the Fair Employment and Housing Act explicitly protects a much broader class of people than those who pay rent for housing.

Ninth Circuit rejects fair housing claims against municipal utility
Southwest Fair Housing Council, Inc. v. Maricopa Domestic Water Improvement District (9th Cir. 2021) 17 F.4th 950
Public housing residents and a fair housing organization challenged a municipal corporation's imposition of a special fee on public housing tenants, arguing that the fee had a disparate impact because the public housing residents are disproportionately, Black, Native American, and single mothers. After finding that tenants met their prima facie burden, the Court found no liability under the Fair Housing Act because the corporation established a legitimate business interest and tenants failed to provide evidence of an equally effective, less discriminatory alternative. The Court was persuaded by the corporation's showing that the County refused to pay off delinquent bills of public housing tenants.

District Court denies landlord summary judgment in fair housing case, finding no collateral estoppel based on unlawful detainer judgment
Pardo-Pena v. Spector (C.D. Cal., Nov. 3, 2021, No. 2:20-CV-03562-MAA) 2021 WL 6496732
Defendant landlord sought summary judgment of plaintiff tenant's claims for fair housing violations based on sexual harassment. Landlord argued that unlawful detainer judgment and civil harassment orders required judgment based on res judicata, collateral estoppel, and the *Rooker-Feldman* doctrine, which bars subject matter jurisdiction where a case is essentially an appeal of a state court decision. The Court rejected all of these arguments, finding that the tenant's fair housing claims had not been fully adjudicated in the prior actions, and that Plaintiff was not seeking to reserve the state court's decision in the unlawful detainer.

Ninth Circuit reverses summary judgment and fee order; finding that tenant raised material issues of fact and that landlord was not entitled to fees
Green v. Mercy Housing, Inc., 851 Fed.Appx. 16 (9th Cir. 2021); *Green v. Mercy Housing, Inc.*, 991 F.3d 1056 (9th Cir. 2021).
In a pair of decisions issued in a fair housing case, the Ninth Circuit reversed the trial court's entry of summary judgment, finding that material issues of fact remained for the tenant's reasonable accommodation and race-based discrimination claims, and reversed the trial court's order granting the landlord fees. On the fee issue, the Ninth Circuit held that plaintiffs bringing Fair Housing Act claims may only be assessed attorneys' fees and costs where the court determines that the claims were "frivolous, unreasonable, or groundless."

Ninth Circuit rejects disability accommodation claim where landlord refused to extend time to vacate
Howard v. HMK Holdings, LLC, 988 F.3d 1185 (9th Cir. 2021).
Landlord HMK Holdings gave its tenants, the Howards, sixty days' notice to quit. Ms. Howard sought an extension to vacate the premises, citing her husband's disability. HMK granted the first extension and explained it intended to give only one extension. As the deadline to vacate drew closer, Ms. Howard sought another extension. HMK declined the second extension, and the Howards sued for failure to accommodate under the FHAA. The trial court found, and the Ninth Circuit affirmed, HMK did not have a duty to accommodate the Howards' request after it terminated their lease because the extensions were not necessary to preserve Mr. Howards' health. They reasoned the Howards could have temporarily relocated within their locality without issue. They also held that failure to engage in the interactive process to accommodate tenants with disabilities is not a stand alone cause of action under the federal Fair Housing Act. Advocates note: state law, the Fair Employment and Housing Act, is more protective than federal law on this issue.

Land Use

SCOTUS makes it a little bit easier for landlords to complain about tenant protection laws
Pakdel v. City and County of San Francisco, California, 141 S.Ct. 2226 (2021)
SCOTUS held that exhaustion of state remedies is not a prerequisite to a 1983 action and that it was sufficiently final for the City of San Francisco's Department of Public Works to reject property owner's request for exemption before they filed a suit alleging unconstitutional takings. Reversing the Ninth Circuit, the Court held that owners were not required to comply with the agency's administrative procedures before seeking relief in court after they unsuccessfully sought to avoid the City's condo conversion ordinance, which required them to offer their tenant a lifetime lease.

Ninth Circuit affirms dismissal of constitutional challenge to rent stabilization ordinance
Hotop v. City of San Jose, 982 F.3d 710 (9th Cir. 2020).
A number of individual apartment owners challenged the City of San Jose's rent stabilization ordinance, which requires them to register rent-stabilized units with the city and provide the names of current tenants, rental rate, and related information. The landlords alleged the registration requirement constituted an unreasonable government search, an illegal taking, and violated their Equal Protection and Due Process rights. The district court found and the Ninth Circuit affirmed that the plaintiffs failed to adequately state a claim as to all counts. Law Foundation of Silicon Valley and Sacred Heart Community Service filed an amicus in support of the City.

District court rejects challenge to rent control ordinance as an unconstitutional taking
Kagan v. Los Angeles, 2021 WL 958571 (C.D. Cal. Feb. 11, 2021).
Landlord who sought to evict a long term tenant with a disability sued the City of Los Angeles, alleging the City's enforcement of LA's rent control ordinance constituted a taking in violation of the Fifth Amendment and a violation of substantive and procedural due process. The Court granted the City's motion to dismiss, finding that the landlord voluntarily rented their land so no taking occurred. It also found that the landlord failed to allege any facts supporting its due process claims. Landlord has filed an appeal in the Ninth Circuit.

Homelessness

Ninth Circuit reverses preliminary injunction ordering $1 billion to address homelessness crisis
LA Alliance for Human Rights v. County of Los Angeles, 14 F.4th 947 (9th Cir. 2021).
LA Alliance and eight individual plaintiffs sued the City and County of Los Angeles for failing to take action to address the homeless encampments on Skid Row. Several community groups including LA CAN intervened. After settlement talks failed, district court judge Carter granted a preliminary injunction ordering the City and County to pay $1 billion in escrow to address the homelessness crisis and offer shelter or housing to all individuals experiencing homelessness in Skid Row within 180 days. The City and County filed emergency motions with the Ninth Circuit to stay the order pending a hearing. The Ninth Circuit reversed, finding the district court relied on extra-record evidence and the plaintiffs failed to sufficiently allege standing.

Big thanks to our legal intern Alyssa Telles for her work on these case summaries. As always, please let us know if you or colleagues worked on one of these cases so that

we can credit you in future versions. Thank you!

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