

1 Attorney for Defendant,
2

3
4 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
5 **CITY & COUNTY OF SAN FRANCISCO**
6 **LIMITED JURISDICTION**

7 .

8 **Plaintiff,**

9 **v.**

10 **Defendant.**

)
) Case No.: **CUD-**
)
)
) **DEFENDANT'S SUPPLEMENTAL**
) **TRIAL BRIEF:**
) **TIMING OF REASONABLE**
) **ACCOMMODATION REQUEST**
)
)
)

11
12
13
14 **PRELIMINARY STATEMENT**

15 This case is an action in unlawful detainer in which the sole ground alleged in the 3-Day
16 Notice to Pay Rent or Quit was the non-payment of August 2010 rent. The defendant sent in
17 her August 2010 payment on September 3, 2010 because she was unable to keep track of dates,
18 as a result of her disability.

19
20 **STATEMENT OF THE FACTS**

21 In December 2007, defendant sustained serious injuries to her knee, legs, neck, spin, and
22 head in an accident. She was under the care of psychiatrist, orthopedic surgeon, head and neck
23 surgeon, dentist, osteopathic physician, acupuncturist, as well as underwent physical therapy for
24 18 months.

25 In January 2008, after multiple tests and brain/spine MRIs, she was instructed by San
26 Francisco General Hospital's Chief Surgeon to schedule a surgery. She did not proceed because
27 she was unemployed, without health insurance coverage, and her savings had been depleted by
28 mounting medical bills.

1
2 To this date, she continues to suffer from memory lapses, depression, anxiety, upset,
3 disorientation, lingering headache, debilitating pain, and tiredness. She often has difficulty
4 keeping balance and her legs, feet, and ankles swell up easily, making it difficult to leave her
5 apartment. Her health problem and mental impairment make it very difficult to work as a
6 free-lance consultant because she often cannot keep track of dates and details. This mental
7 impairment also caused her to miss her rent due date from time to time.
8

9
10 The 3-Day Notice to Pay Rent or Quit was served on the defendant on March 31, 2011,
11 specifying the non-payment of August 2010 rent as the sole ground. This was the first time the
12 defendant became aware that plaintiff had probably recorded her rent payments wrong, as she
13 was sure that she had made 12 rent payments in 2010.

14 In the first week of June, as soon as her counsel was able to reconstruct her 2010-2011
15 payment records and examine her 2 checks meant for March and April rent which were returned
16 by plaintiff, it became clear that plaintiff must have recorded her payment meant for August
17 2010 as September payment, as a result of her paying the rent late.

18 On June 8, 2011, defendant served a letter on plaintiff requesting reasonable
19 accommodation pursuant to Fair Housing Amendments Act (FHAA), 42 U.S.C. § 3601 et seq.
20 (1995) and *Giebeler v. Associates ABL*, No. 00-17508; Docket No. CV-98-20405-RMW (9th Cir.
21 2003). Given defendant's difficulty in keeping track of rent due dates as a direct result of her
22 disability, defendant requested to have her sister, who has been paying her rent since September
23 2010, become the guarantor or cosigner of her lease and wire transfer the rent payment directly
24 to the plaintiff's account on the due date each month. The plaintiff did not respond to this
25 request. Plaintiff was put on further notice of defendant's disability when defendant's answer
26 listed her affirmative defenses. On August 15, defendant again requested the above reasonable
27 accommodation and offered to pay all the rent to bring her account up to date. This request was
28 rejected by the plaintiff on August 15, claiming that the request was made after the service of 3-
Day Notice to Pay Rent or Quit, hence too late.

1 In this case, defendant's disability impaired her ability to keep track of rent due dates and
2 her late payment of her August 2010 rent flowed directly from her disability. Under the law, the
3 plaintiff is required to take reasonable steps to accommodate her disability.

4 This brief addresses the issue of whether a request for reasonable accommodation made
5 after the 3-day Notice to pay Rent or Quit had expired was made too late and hence relieve
6 plaintiff his obligation to provide reasonable accommodation.

7
8 **FAIR HOUSING ACT DOES NOT REQUIRE THAT A REQUEST BE**
9 **MADE IN A PARTICULAR MANNER OR AT A PARTICULAR TIME**

10 The Department of Justice ("DOJ") and the Department of Housing and Urban
11 Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act.
12 Contrary to plaintiff's argument that the request must be made prior to the 3-Day Notice, DOJ
13 and HUD in their "Joint Statement of the Department of Housing and Urban Development and
14 the Department of Justice -- Reasonable Accommodations under the Fair Housing Act", made
15 it abundantly clear that the *Fair Housing Act does not require that a request be made in a*
16 *particular manner or at a particular time* (see attached on page 10. The complete 15-page
17 document can be found at <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>)
18

19
20 **CASE LAW IS CLEAR THAT LANDLORD'S DUTY OF**
21 **REASONABLE ACCOMMODATION EXISTS THROUGH**
22 **TIME OF RECOVERY OF POSSESSION**

23 Plaintiff's argument's that a reasonable accommodation request must be made prior to the
24 service of 3-Day Notice is also unsupported by case law. A long line of cases had made it
25 abundantly clear that, in the eviction context, a tenant may request an accommodation before
26 trial, at trial or up until he or she is actually evicted.

27 In *Boston Housing Authority v. Bridgewater*, 452 Mass. 833 (2009), the court held that
28 the tenant meets his obligation to request an accommodation by making such request to the judge

1 at eviction trial. At his trial, Bridgewaters made the judge aware of his disability, testifying
2 about his mental disability, and his subsequent treatment program.

3 The court held that the tenant fulfilled the notice requirement of a reasonable
4 accommodation request by apprising the judge of his need for an accommodation. By opposing
5 his eviction, asking to remain in his apartment, and stating that he was being successfully treated
6 for his disabilities, the tenant indicated that the relief he sought was that the landlord depart from
7 its eviction policy and reinstate his tenancy. Combined with tenant's assertions at trial that he
8 was mentally disabled and had been successfully treated subsequently, the court finds this
9 amounted to a timely request for an accommodation.

10 In *Douglas v. Kriegsfeld Corporation*, 884 A.2d 1109 (D.C. Cir. 2005), the court finds
11 that a reasonable accommodation defense is available at any time before a judgment of
12 possession is entered. In *Douglas*, the landlord of Section 8 housing served the tenant with a
13 thirty-day notice to "cure or quit" for violation of her lease covenant to "maintain the apartment
14 in clean and sanitary condition" on August 23, 2001. The tenant neither cleaned up nor vacated
15 the premises, and the landlord accordingly filed an action for possession on November 30, 2001.

16 On February 5, 2002, counsel for the tenant sent a letter to the Director of the Department
17 of Consumer and Regulatory Affairs (DCRA) "requesting a reasonable accommodation under
18 the Federal Fair Housing Act" for a "disability (mental)," namely a "mood disorder," that
19 affected the tenant's ability to keep the apartment "safe and sanitary. Counsel added: The
20 "District of Columbia Government is prepared to assist her with cleaning the apartment." DCRA
21 never took action.

22 On February 20, 2002, counsel for the tenant wrote to the landlord requesting a
23 reasonable accommodation in which the counsel explained the basis for accommodation but did
24 not describe the type of accommodation sought and what the District of Columbia government
25 would offer. Evidence showed that landlord's counsel-who has acknowledged receipt-never
26 responded to this letter. One of the stated reasons the trial court rejected the tenant's disability
27 discrimination defense was that the request for reasonable accommodation came several months
28

1 after the landlord had served the thirty-day notice to cure or quit and filed the lawsuit, hence the
2 request was made too late.

3 On the issue of timing, the *Douglas* court found the trial court had erred and opined:

4 “[A] discriminatory denial can occur at any time during the entire
5 period before a tenant is “actually evicted”; actionable discrimination
6 is not limited to the shorter cure period specified in a notice to cure or
7 quit, or to any other period short of the eviction order itself. ***As a
8 general rule, therefore, a “reasonable accommodation” defense is
9 available at any time before a judgment of possession has been
10 entered,*** if the other requirements of the defense are met. The trial court
11 did not apply this general rule under the Fair Housing Act that ***a
12 reasonable accommodation defense will be timely until the proverbial
13 last minute.***” [emphasis added]

14 In *Housing Authority of Bangor v. Maheux*, 748 A.2d 474, 476 (Me. 2000), the
15 landlord notified Maheux that her lease was being terminated on the grounds that the threatening
16 conduct of her son seriously disrupted the right of other tenants to the quiet enjoyment of their
17 homes. Thereafter, landlord filed a complaint for forcible entry and detainer against the tenant
18 Maheux. Maheux asserted an affirmative defense that landlord was obligated to make a
19 "reasonable accommodation" for her family in light of her son's diagnosed "Oppositional Defiant
20 Disorder." A judgment was entered against the tenant, and the tenant filed a motion for relief
21 from judgment and for stay of issuance of writ. On appeal, the court ruled in favor of the tenant
22 and held that ***the landlord is under duty to accommodate until eviction writ is issued.***[emphasis
23 added]

24 It should be noted that, in this instant case, plaintiff has thus far failed to provide a single
25 citation to this court to support his position that a reasonable accommodation request must be
26 made before a notice is served or during the pendency of said notice.

27 Guidance from the case law is abundantly clear: the reasonable accommodation request
28 can be made anytime before the actual execution of the writ and that the jury's job is to determine
whether the landlord discriminated against the tenant when the request was made even if made

1 after the expiration of the notice.

2
3 **DEFENDANT WOULD PREVAIL IN FEDERAL LAWSUIT**
4 **BASED ON PLAINTIFF'S FAIR HOUSING ACT VIOLATION**

5 Should the court denies defendant the right to present evidence of her disability and her
6 request for reasonable accommodation at trial, the following anomaly would result: plaintiff is
7 successful in evicting defendant and she loses her home, but she could file a complaint in Federal
8 Court alleging a violation of the Fair Housing Act and be compensated for the loss of her home.
9 That loss would be the difference between her rent-controlled rent and the market rent for as long
10 as the tenant would have stayed in the unit. As a result, by failing to allow defendant to present
11 her affirmative defense of Fair Housing Act violation, this court would expose plaintiff to
12 hundreds of thousands of dollars in damages in a federal lawsuit.
13

14
15 **CONCLUSION**

16 There can be no doubt that, under the Federal and State Fair Housing Acts and the legal
17 precedents, even though plaintiff only became aware of defendant's disabilities upon the receipt
18 of her initial request for a reasonable accommodation after the 3-Day Notice was served, the duty
19 to comply with the FHAA still exists, and the plaintiff has a present obligation to the tenant.
20

21 At this trial, the facts surrounding defendant's disability, her repeated requests for a
22 reasonable accommodation and the denial thereof, are all relevant to defendant's affirmative
23 defenses of discrimination and retaliation, and must be allowed into evidence to be evaluated by
24 the jury.
25

26 At the close of the trial, defendant will ask the court for jury instructions on Fair
27 Housing Act, disabilities, and reasonable accommodation. "[T]he question of what constitutes a
28 reasonable accommodation . . . 'requires a fact-specific, individualized analysis of the disabled

1 individual's circumstances and the [possible reasonable] accommodations.'" *McGary v. City of*
2 *Portland*, at 1270.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: August 20, 2011

Attorney for Defendant