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Attorney for Defendant

\_\_\_\_\_

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

\_\_\_\_\_

Plaintiff

v.

\_\_\_\_\_

Defendant.

Case No:

**EMERGENCY MOTION FOR ORDER  
CONTINUING TRIAL DATE;  
MEMORANDUM OF POINTS AND  
AUTHORITIES AND DECLARATION  
OF MICHAEL W. BLACKSBURG IN  
SUPPORT THEREOF**

**TRIAL DATE: OCTOBER 30, 2006**

TO EACH PARTY AND ATTORNEY OF RECORD:

This motion is made on the following grounds:

1. Defendant \_\_\_\_\_ obtained the aid of her legal counsel, \_\_\_ on Friday, October 27, 2006, a few days before trial.
2. Defendant \_\_\_\_\_ is defending this Unlawful Detainer action on the grounds, *inter alia*, that she requested a reasonable accommodation of her disabilities and Plaintiff \_\_\_\_\_, her landlord, failed to provide said accommodation. One of element of her affirmative defense is a showing that she is disabled and her treating physician, Dr. \_\_\_\_\_, is on holiday until Monday, November 6, 2006, which means that subpoenaing his testimony is not possible until Monday, November 6, with his appearance reasonably ascertained the following week.
3. Dr. \_\_\_\_\_ testimony is critical because he is \_\_\_\_\_'s treating psychiatrist and is the only person able to testify about her medical disabilities, how her disabilities relate to the occurrence of the landlord's three day notice, and her ability to maintain the apartment with the help of her current in-home caretakers.

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This motion is based upon this Notice and on the accompanying supporting Memorandum of Points and Authorities and Declaration of \_\_\_\_\_ Esq. (“Declaration”), served and filed herewith, and on the records and files in this action, and on any evidence that may be presented at the hearing of the motion.

Respectfully submitted,

Dated: November 2, 2006

\_\_\_\_\_

Attorney for \_\_\_\_\_

**MEMORANDUM OF POINTS AND AUTHORITIES**  
**I. STATEMENT OF FACTS**

**I. INTRODUCTION**

Defendant \_\_\_\_\_ (“\_\_\_\_\_”) is a tenant at 3839A Judah Street, San Francisco, California (the “Premises”). In the present action, Plaintiff, \_\_\_\_\_ (“\_\_\_\_\_”), is seeking possession of \_\_\_\_\_’s apartment pursuant to a Three Day Notice to Vacate (the “Notice to Vacate”). The Notice to Vacate alleges that \_\_\_\_\_ “created a substantial interference with the comfort, safety and enjoyment of the other tenants in the building ... by causing noxious orders [sic] and fumes from garbage, cat feces and cat urine and other substances,” and the “the substances which cause the orders [sic] are a health hazard.”

\_\_\_\_\_ is not being evicted because she was unable to pay the rent.

\_\_\_\_\_ has chronic physical and mental disabilities that affect her ability to act with the normal speed of the average person. She requested a reasonable accommodation of her disabilities in the form of more time to clean her apartment.

\_\_\_\_\_’s attorney, Michael W. Blacksborg, became attorney of record on Friday, October 27, 2006, one business day before the trial date, October 30, 2006. See Declaration of Michael W. Blacksborg. Mr. Blacksborg immediately began reviewing documents and preparing \_\_\_\_\_’s defense. On Monday, October 31, 2006, Mr. Blacksborg learned the name of \_\_\_\_\_’s treating psychiatrist, Dr. Krause, and learned on Wednesday, November 1, 2006 that Dr. Krause is on holiday and not able to be contacted until Monday, November 6, 2006.

The nuisance complained of at \_\_\_\_\_’s home has been abated since September 13, 2006 and therefore, there is not exigency in removing \_\_\_\_\_ from the property. See Declaration of Marie Needels, RN, Adult Protective Services (to be hand delivered upon signature).

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**II. LEGAL ANALYSIS**

Good cause exists for the Court to grant a continuance of trial in this matter. California Rule of Court Rule 375 states that a moving party must provide an affirmative showing of good cause for the Court to grant a trial continuance.

Good cause exists to continue the trial because \_\_\_\_\_’s defenses under the Federal Fair Housing Amendments Act and California’s Fair Employment and Housing Act is dependent upon Dr. Krause’s medical testimony and he is unavailable to testimony before November 7, 2006 (if he’s willing to testify on one day’s notice, which is highly unlikely).

Under Federal and state fair housing laws, landlords must make reasonable accommodations of tenant’s disabilities in their policies, rules and practices. 42 U.S.C. §3604(f)(3)(B). In order to assert the defense to eviction that plaintiff has failed to provide a reasonable accommodation, defendant must show that, inter alia, she is a disabled person under the law. See e.g., United states v. California Mobile Home Park Mgmt. Co., 107 F.3d 1374, 1380 (9<sup>th</sup> Cir.1997).

Under Radecki v. Joura, (114 F.3d 115) a tenant may give notice of her disability up to the date of eviction and still avail herself of the protections provided by Fair Housing laws.

**a. Fair Housing law applies.**

\_\_\_\_\_ has been diagnosed with serious physical and mental health disabilities, and has been under a doctor’s care for many years. She receives Supplemental Security Income benefits based on her disabilities from the Social Security Administration. See Exhibit A to Declaration of Michael W. Blacksborg, attachment. Therefore she is a disabled individual who is protected by Fair Housing laws. 42 U.S.C. §3602(h)(1).

**b. Defendant informally requested a reasonable accommodation and the request was denied.**

Plaintiff has been on notice that defendant has disabilities both, orally by \_\_\_\_\_ and formally by Mr. Blacksborg.

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c. \_\_\_\_\_'s request was reasonable and necessary because of her disability.

Under Federal law, a housing provider has a duty to make reasonable efforts to accommodate a tenant's disabilities before the provider evicts the tenant. Roe v. Housing Authority of the City of Boulder, 909 F.Supp. 814 (D. Colo. 1995); Roe v. Sugar River Mills Assoc., 820 F.Supp. 6363 (D.N.H. 1993). In Roe v. Sugar River, the tenant had used obscene and offensive language and had threatened physical violence. Yet, the court held that the landlord must first make reasonable accommodations to minimize or eliminate the impact of the tenant's disability before evicting the tenant.

\_\_\_\_\_ made numerous requests for accommodation, by verbally asking for help and through letters. Dr. Krause will provide testimony at trial that due to the introduction of weekly cleaners, there is a very low likelihood that \_\_\_\_\_'s home might begin creating the odors it is complained of creating. Allowing \_\_\_\_\_ to stay in her housing is therefore a reasonable accommodation with no burden on plaintiff. A landlord may be required to shoulder some costs of accommodating disabled tenants, as long as the cost is not unduly burdensome. United States v. California Mobile Home Park, 29 F.3d 1413, 1416-17.

For the foregoing reason, this motion should be granted.

**III. CONCLUSION**

\_\_\_\_\_ must be provided the opportunity to put forward her defense of reasonable accommodation at trial, and, she will show that as a disabled individual protected by Fair Housing laws, she requested a reasonable accommodation and it was denied. For the reasons stated above, \_\_\_\_\_ respectfully requests that the Court continue this trial to November 13, 2006.

Dated: November 2, 2006

**LAW OFFICE OF MICHAEL W. BLACKSBURG**

1  
2 Michael W. Blacksburg  
Attorney for \_\_\_\_\_

3 **DECLARATION OF MICHAEL W. BLACKSBURG**

4 I, MICHAEL W. BLACKSBURG, hereby declare as follows:

5 1. I am a solo practicing attorney in San Francisco, California.

6 2. On Thursday, October 26, 2006, I volunteered through the Courthouse Project  
7 (sponsored by the Superior Court and Volunteer Legal Services Program) in a “Limited Scope  
8 Representation” capacity, pro bono, to aid Ms. \_\_\_\_\_ during her mandatory  
9 settlement conference related to the unlawful detainer action filed against her by her landlord Mr.  
10 \_\_\_\_\_ . The matter could not be successfully settled.

11  
12 3. The following morning, I received a phone call from Volunteer Legal Services  
13 Program to determine if I was willing to continue to work with \_\_\_\_\_, pro bono, in  
14 the hopes of settling this matter before trial. I agreed and mailed a Substitution of Attorney to  
15 the Superior Court and served opposing counsel, Mr. Henry Shain, Esq.  
16

17 4. From Friday, October 27, 2006 through Sunday, October 29, 2006, I prepared the  
18 preliminary documents required for Monday’s appearance, including Motions in Limine, Voir  
19 Dire Questions, Proposed Jury Instructions, a Trial Brief and a Statement of the Case.  
20

21 5. On Monday, October 30, 2006, \_\_\_\_\_ substituted his attorney and  
22 Mr. Daniel Piccinini, Esq. substituted in as legal counsel. Unfortunately, the case could not be  
23 resolved to either parties’ satisfaction and I began preparing \_\_\_\_\_’s defense.

24 6. On Tuesday, October 31, 2006, I formally requested a reasonable accommodation  
25 on behalf of \_\_\_\_\_. See letter attached hereto as Exhibit A to Daniel Piccinini,  
26 dated October 31, 2006.  
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1           7.       \_\_\_\_\_’s prime defense to this action is that she is diagnosed with  
2 numerous physical and mental disabilities that, under Federal and California law, would require  
3 the landlord to make reasonable accommodations of her disabilities. \_\_\_\_\_  
4 contends that no such accommodations were made.

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6           8.       As her attorney, I was able to find that her treating psychiatrist is a Dr. Krause,  
7 MD, located in Novato, California. I obtained his telephone number and learned that Dr. Krause  
8 is on holiday until Monday, November 6, 2006.

9           9.       I am unable to subpoena Dr. Krause until Monday, November 6, 2006,  
10 conditional upon learning of his prime address. Even when I do subpoena him to testify to  
11 \_\_\_\_\_’s disabilities, he will most likely need one week to prepare his calendar to  
12 come to San Francisco to testify.

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14           10.       \_\_\_\_\_’s defense of reasonable accommodation is dependent upon Dr.  
15 Krause’s testimony on \_\_\_\_\_’s disabilities, how said disabilities manifest  
16 themselves in connection with her maintaining her home and what, in his professional opinion, a  
17 reasonable accommodation might be.  
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19           I declare under penalty of perjury under the laws of the State of California that the  
20 foregoing is true and correct. Executed on November 2, 2006, at San Francisco, California.

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22 \_\_\_\_\_  
23 Michael W. Blacksbury, Esq.  
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