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8 *Francine Maxwell; and San Diego Tenants Union*

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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 IN AND FOR THE COUNTY OF SAN DIEGO

15 Black Men and Women United San Diego;  
16 Francine Maxwell; and San Diego Tenants  
Union,

17 Plaintiffs and Petitioners,

18 vs.

19 San Diego Housing Commission; and Does 1  
20 through 10, inclusive,

21 Defendants and Respondents.

Case No.: 37-2023-00047874-CU-CR-CTL

**FIRST AMENDED PETITION FOR WRIT  
OF MANDATE AND COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF**

1 Plaintiffs and Petitioners Black Men and Women United San Diego, Francine Maxwell, and San  
2 Diego Tenants Union allege as follows against Defendants and Respondents San Diego Housing  
3 Commission and DOES 1-10:

4 **INTRODUCTION**

5 1. The federal Housing Choice Voucher (HCV) program provides financial assistance in  
6 the form of a rent subsidy – a voucher – to help low-income families secure and maintain housing in  
7 the private market. A family with a voucher pays approximately 30% of its income to rent. The portion  
8 of the rent remaining after the family’s contribution is paid to the private landlord out of HCV funds.

9 2. Before increasing rent – and receiving *more* HCV funds – landlords participating in the  
10 HCV program must first obtain approval from the local agency administering the HCV program. The  
11 local agency is required to review each rent increase to determine if it is reasonable.

12 3. San Diego Housing Commission (SDHC) is the local agency responsible for  
13 administering the HCV program in the City of San Diego, where more than 40,000 low-income men,  
14 women, and children rely on the HCV program to be able to afford rent and avoid homelessness.

15 4. SDHC engages in the practice of approving rent increases that do not comply with state  
16 law, including the California Tenant Protection Act which caps annual rent increases at 10%.

17 5. To pay for these illegal rent increases, SDHC diverts limited HCV funds away from the  
18 low-income families the funds are intended to help. By using public funds to subsidize landlords’  
19 illegal rent increases, SDHC is engaging in the waste of public funds. These are illegal expenditures.  
20 SDHC’s practice serves as a financial incentive for private landlords to violate tenant protection laws.

21 6. SDHC expends public funds on illegal rent increases despite knowing that such illegal  
22 expenditures have no public benefit and no useful purpose, and cause harm to low-income individuals  
23 in need of rental assistance and eligible for the HCV program, including unhoused residents.

24 7. SDHC’s practice has a discriminatory effect and serves as a barrier to fair housing in  
25 the City of San Diego.

26 8. This suit seeks injunctive and declaratory relief to end SDHC’s practice of approving  
27 and subsidizing illegal rent increases in the HCV program. This suit also seeks to compel SDHC to  
28 obtain restitutionary disgorgement to recover all public funds SDHC paid to private landlords for these

1 illegal rent increases.

2  
3 **PARTIES**

4 9. Plaintiff and Petitioner Black Men and Women United San Diego is an  
5 association committed to helping and mentoring Black men, women, and youth. Black Men and  
6 Women United San Diego works to further equity and access of opportunity in the San Diego  
7 region and beyond. It serves as a think tank to identify and tackle pressing issues of concern,  
8 engages in advocacy to improve policies and reform institutions, and provides education to  
9 members of the public through print media and radio. Black Men and Women United San Diego  
10 members include residents of neighborhoods in the City of San Diego, the County of San Diego,  
11 and beyond. Black Men and Women United San Diego and its members seek to compel SDHC  
12 to comply with state and federal laws, and administer its programs in a manner that furthers fair  
13 housing and race equity. The interest that Black Men and Women United San Diego seeks to  
14 protect herein is central to its mission, the interest of its members, and the communities that it  
15 seeks to protect.

16 10. Plaintiff and Petitioner Francine Maxwell is the immediate past Chair—and a current  
17 member—of Black Men and Women United San Diego, a former NAACP San Diego Branch  
18 President, a community engagement specialist, an organizer including an organizer for San Diego  
19 Tenants Union, and a resident of the City of San Diego. Ms. Maxwell has a beneficial interest in  
20 SDHC complying with the law, and administering its programs in a manner that furthers fair housing  
21 and race equity.

22 11. Plaintiff and Petitioner San Diego Tenants Union (hereinafter “Union”) is a tenants’  
23 rights association that seeks to create opportunities for low-income City Heights residents to learn  
24 about their rights as tenants, become resident leaders, have access to legal guidance to remediate  
25 conflicts with landlords, and advocate for city-wide changes in housing policy. Union members  
26 include residents throughout the City of San Diego. The majority of its members are minority  
27 families or individuals who are participating in or are wait listed for SDHC’s Section 8 Housing  
28 Choice Voucher program. Through community engagement, organizing, and outreach, the Union

1 educates its members about tenant rights and fair housing. The Union provides assistance to  
2 members seeking to obtain and maintain rental units in low-poverty, high-opportunity  
3 neighborhoods, outside of racially segregated areas of San Diego. SDHC's actions in approving rent  
4 increases that do not comply with the law directly harm members of the Union. The Union and its  
5 members have a beneficial interest in SDHC complying with the law, and administering its programs  
6 in a manner that furthers fair housing and race equity.

7 12. Defendant and Respondent SDHC is the public housing agency (PHA) responsible  
8 for administering federal HCV program funds and public housing for the City of San Diego. SDHC  
9 administers the HCV program in the City of San Diego. It receives funds from both the federal  
10 government and the State of California. It owns, leases, and manages more than 3,500 rental housing  
11 units in the City of San Diego. It is responsible for carrying out the laws of the State of California  
12 and conforming ordinances, regulations, and policies of the Department of Housing and Urban  
13 Development to the requirements of state law. It is based in and conducts business in San Diego,  
14 California.

15 13. Plaintiffs and Petitioners are currently unaware of the true names and capacities of the  
16 persons or entities named herein as DOES 1-10, but are informed and believe, and on that basis  
17 allege, that each of such defendants and respondents is legally required to act in the manner herein  
18 sought. Plaintiffs and Petitioners will seek leave to amend this petition and complaint when said  
19 defendants' and respondents' true names and capacities have been ascertained.

20 14. Plaintiffs and Petitioners are informed and believe and thereon allege that at all times  
21 mentioned below, each defendant and respondent was the principal, agent, representative, partner, or  
22 co-conspirator of the remaining defendants and respondents, and each other, and that in doing the  
23 acts alleged, each of the defendants and respondents were acting within the course and scope of their  
24 agency, employment, partnership, conspiracy, or other authorized relationship with the other  
25 defendants and respondents and with the permission and ratification of respondents. Whenever and  
26 wherever reference is made in this petition to any acts of defendants and respondents, such  
27 allegations and references shall also be deemed to mean the acts of each defendant and respondent  
28 acting individually, jointly, or severally.

1 **JURISDICTION AND VENUE**

2 15. This Court has personal jurisdiction over Defendants and Respondents because  
3 Defendants and Respondents are located in and conduct business in San Diego County.

4 16. This Court has subject matter jurisdiction over the claims asserted because relief is  
5 sought pursuant to Gov. Code §§ 12900 *et seq.* and Code Civ. Proc. §§ 526a and 1085.

6 17. Venue is proper in this county because Defendants and Respondents are located in  
7 San Diego County, and the acts and omissions upon which this action is based occurred in San  
8 Diego County.

9 **BACKGROUND**

10 **State Law Governing Rent Increases**

11 18. The California Tenant Protection Act regulates the amount by which a landlord can  
12 increase rent. (Civ. Code § 1947.12(a).)

13 19. During a 12-month period, rent increases may not exceed 5% plus the percentage  
14 change in the cost of living or 10%, whichever is lower. (*Id.*)

15 20. The legislature exempted certain housing from the rent increase cap. (Civ. Code §  
16 1947.12(d).)

17 21. The housing the legislature exempted is that which is required to be “affordable” –  
18 i.e., not market-rate housing – through some kind of deed, agreement, or other recorded document.  
19 Because these units are already required to be rented at below market-rate rent (“affordable”), the  
20 legislature exempted these units from the rent increase cap.

21 22. In contrast to housing that is required to be below market-rate, the rent increase cap is  
22 intended to cover – and does cover – market-rate rental housing. This includes market-rate rental  
23 housing that is rented by HCV recipients.

24 23. By the very nature of the tenant-based HCV program, the units HCV recipients rent  
25 are market-rate units. HCV recipients must find these rental units on the private market. Owners of  
26 these rental units charge full market-rate rent to all tenants, regardless of whether the tenant is a  
27 HCV recipient.  
28

1       24.       By renting to a HCV recipient, the owner of a market-rate rental unit is not agreeing  
2 to provide below market-rate rent, but rather the owner is agreeing to receive a portion of its market-  
3 rate rent from an entity other than the tenant.

4       25.       Under the HCV program, HCV recipients pay approximately 30% of their income to  
5 rent. The local agency responsible for administering the HCV funds pays the remaining rent portion.  
6 But when the owner of the market-rate rental unit significantly increases the rent, the HCV recipient  
7 may end up paying for that rent increase. Such increases make market-rate rental units inaccessible  
8 to HCV recipients.

9       26.       Rent increases which violate the California Tenant Protection Act also undermine the  
10 purpose of the HCV program which is to make market-rate rental units accessible to HCV recipients.

11       27.       The California Tenant Protection Act (Assembly Bill No. 1482) was signed into law  
12 the same day California prohibited source of income discrimination, i.e. discrimination against HCV  
13 recipients (Senate Bill No. 329).

14       28.       In a rental unit protected by the California Tenant Protection Act, a rent increase of  
15 more than 10% is illegal and unreasonable by default.

16       29.       In a unit not protected by the California Tenant Protection Act – i.e., a unit that does  
17 not meet the statutory requirements for protection under the California Tenant Protection Act – a  
18 ninety-day notice is required for a rent increase of more than 10% of the amount charged to that  
19 tenant at any time during the 12 months before the effective date of the increase, either in and of  
20 itself or when combined with any other rent increases for the 12 months before the effective date of  
21 the increase. (Civil Code § 827(b).)

#### 22 HCV Program and the Rent Reasonableness Standard

23       30.       Once admitted to the HCV program, HCV recipients must find a rental unit on the  
24 private market. After the public housing agency (PHA) approves the rental unit for participation in  
25 the HCV program, the PHA formalizes the financial arrangement in a Housing Assistance Payment  
26 (HAP) contract. The three parties to the HAP contract are the HCV recipient (who pays  
27 approximately 30% of her income to rent), the PHA (which pays the balance of the rent directly to  
28 the landlord), and the landlord.

1 31. The HAP contract states that rent increases may not exceed the reasonable rent for the  
2 unit, and the PHA's rent reasonableness determination must be in accordance with HUD  
3 requirements.

4 32. Annually, the PHA must adopt a written Section 8 Administrative Plan, which sets  
5 forth the PHA's local policies for the administration of the program (on matters for which the PHA  
6 has discretion to establish local policies) and governs the PHA's day-to-day operations. The  
7 Administrative Plan adopted by the PHA must comply with HUD regulations and requirements. (24  
8 C.F.R. § 982.54.)

9 33. Annually, a PHA that is under a Moving to Work (MTW) Agreement with HUD must  
10 submit to HUD an MTW Plan. The MTW Agreement makes clear that even if HUD approves the  
11 PHA's MTW Plan, to the extent activities in the MTW Plan are inconsistent with state law, the PHA  
12 must still administer its activities in compliance with state law.

13 34. PHAs must administer the HCV program in accordance with federal regulations.  
14 Federal regulations require that each PHA evaluate rent increases for rent reasonableness (including  
15 compliance with local rent control), maintain records that document the basis for all PHA  
16 determinations on rent reasonableness, and set forth the PHA's method for determining rent  
17 reasonableness. (42 U.S.C. § 1437f(o)(10)(A)-(C); 24 C.F.R. §§ 982.4, 982.54(d)(15), 982.158(f)(7),  
18 982.507, 982.509.)

19 35. A PHA shall not approve a rent increase that is unreasonable. (42 U.S.C. §  
20 1437f(o)(10)(B).)

21 36. HUD regulations acknowledge that state or local law may also control the amount of  
22 rent that can be paid to the owner in addition to rent reasonableness. (24 C.F.R. § 982.509.)

23 37. PHA approval is required for any changes to the amount of rent due. (24 CFR §  
24 982.308(g).) The landlord must notify the PHA at least 60 days before any proposed changes may go  
25 into effect so that the PHA can determine whether to allow the increase. (*Id.*)

26 38. The Rent Reasonableness Chapter of HUD's Housing Choice Voucher Program  
27 Guidebook states: "Rent Control. **In regulated localities, rents are limited to the lesser of the**  
28

1 **PHA-determined reasonable rent or the rent controlled amount** unless units leased under the  
2 voucher program are exempt from local rent control under the local rent control ordinance.” (HUD,  
3 Housing Choice Voucher Program Guidebook, § 2.4.1 (September 2020) (emphasis added).)

4 39. The Rent Reasonable Chapter also explains the basis for and importance of the rent  
5 reasonableness determination:

6 PHAs must ensure that rents charged by owners to Housing Choice Voucher  
7 (HCV) program participants are reasonable. The PHA must compare the rent for  
8 the voucher unit to rents for similar unassisted units in the marketplace.

9 **Ensuring rent reasonableness is very important for effective program**  
10 **operations. If a PHA approves rents that are too high, government funds are**  
11 **wasted and limited housing subsidies are squandered.** Alternatively, if rents  
12 are approved at levels lower than comparable units in the private market, better  
13 owners and higher quality units are discouraged from participating in the program.  
14 In addition, families may be inappropriately restricted in where they can live.

15 Determining rent reasonableness is especially critical when a PHA uses its  
16 authority to set a payment standard higher than the FMR [Fair Market Rent] for  
17 all or a portion of its jurisdiction. Some owners will apply pressure to increase  
18 their rents to, or closer to, the payment standard. PHAs should be careful to not  
19 overpay, or the effect will be to inflate rents in a portion of the market.

20 (*Id.* at § 1 (emphasis added).)

#### 21 The State-Based Duty to Affirmatively Further Fair Housing

22 40. On January 1, 2019, California’s Affirmatively Furthering Fair Housing (AFFH) law  
23 (AB 686) took effect. (Gov. Code § 8899.50.)

24 41. “A public agency shall administer its programs and activities relating to housing and  
25 community development in a manner to affirmatively further fair housing, and take no action that is  
26 materially inconsistent with its obligation to affirmatively further fair housing.” (Gov. Code §  
27 8899.50(b)(1).)

28 42. ““Affirmatively furthering fair housing” means taking meaningful actions, in addition  
to combating discrimination, that overcome patterns of segregation and foster inclusive communities  
free from barriers that restrict access to opportunity based on protected characteristics. Specifically,  
affirmatively furthering fair housing means taking meaningful actions that, taken together, address



1 significant disparities in housing needs and in access to opportunity, replacing segregated living  
2 patterns with truly integrated and balanced living patterns, transforming racially and ethnically  
3 concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance  
4 with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of  
5 a public agency’s activities and programs relating to housing and community development.” (Gov.  
6 Code § 8899.50(a)(1).)

7 43. California’s AFFH law codifies into state law the federal Fair Housing Act’s AFFH  
8 requirement. California enacted this law after the previous federal administration announced efforts  
9 to stop implementing and weaken the regulatory framework aimed at effectuating the Fair Housing  
10 Act’s AFFH provision. SDHC supported the previous federal administration’s efforts to weaken the  
11 federal AFFH framework. For instance, when the previous federal administration called for  
12 assistance with identifying outdated, ineffective, or excessively burdensome regulations, SDHC  
13 Deputy Chief Executive Officer Jeff Davis proposed that SDHC identify the AFFH assessment tool  
14 as one such regulation, after which SDHC expressly identified the AFFH assessment tool in its  
15 formal comments to HUD.

16 **STATEMENT OF FACTS**

17 **San Diego Housing Commission’s Housing Practice**

18 44. At all times relevant to this complaint, SDHC engaged in the practice of approving  
19 illegal rent increases requested by landlords participating in the HCV program. These rent increases  
20 were unlawful because they did not comply with state law.

21 45. First, SDHC’s practice of approving illegal rent increases resulted in households in  
22 rental units covered by the California Tenant Protection Act incurring rent increases that exceeded  
23 the 10% cap.

24 46. Second, on information and belief, SDHC’s practice of approving illegal rent  
25 increases resulted in households not covered by the California Tenant Protection Act incurring rent  
26 increases of more than 10% without receiving the required notice period of ninety days.

27 47. After approving these illegal rent increases, SDHC used public funds to subsidize the  
28

1 cost, thereby transferring public funds to private landlords who were not entitled to these funds, and  
2 diverting these funds away from the low-income families the funds were intended to help.

3 48. Defendants' practice had – and continues to have – the effect of encouraging and  
4 financially incentivizing landlords to violate state laws aimed at protecting tenants.

5 49. While SDHC was diverting its limited HCV funds to subsidize private landlords'  
6 illegal rent increases, SDHC proposed – as a cost-saving measure – the elimination of the utility  
7 allowances HCV recipients rely on. (Utility allowances offset tenant-paid utility costs.)

8 Example of San Diego Housing Commission's Practice

9 50. The following example is one of multiple instances of SDHC approving illegal rent  
10 increases and then subsidizing those illegal rent increases with HCV funds.

11 51. In May 2023, a HCV recipient received notice from SDHC that SDHC had approved  
12 her landlord's request for a more than 10% rent increase. This HCV recipient had not received notice  
13 from her landlord of any rent increase, and her rental unit was covered by the California Tenant  
14 Protection Act.

15 52. This HCV recipient promptly informed SDHC that the rent increase was not legal.  
16 SDHC told this HCV recipient that the rent increase is an issue between her and her landlord, does  
17 not involve SDHC, and if she cannot resolve it with her landlord, she should seek legal help.

18 53. Through her representative, this HCV recipient approached her landlord regarding the  
19 rent increase and lack of notice. This landlord responded that the rent increase was legal because  
20 SDHC approved it.

21 54. While the notice this HCV recipient received from SDHC did not provide directions  
22 on how to appeal the rent increase, this HCV recipient timely submitted a request for administrative  
23 review of the rent increase. In June 2023, SDHC denied this HCV recipient's request for  
24 administrative review, stating "An Administrative Review is not conducted for general policy  
25 issues."

26 55. In mid-June 2023, this HCV recipient's landlord informed this HCV recipient that he  
27 would not be increasing her rent effective July 2023 as planned. Days later, this landlord issued this  
28 HCV recipient a rent increase notice. The notice did not comply with state law and the increase was

1 for more than 10%.

2 56. In July 2023, this HCV recipient received a new notice from SDHC stating that  
3 SDHC had approved her landlord's new request for a more than 10% rent increase. This HCV  
4 recipient promptly contacted SDHC and raised the same concerns regarding the rent increase notice  
5 not complying with state law. SDHC's response was the same.

6 57. In September 2023, the rent increase went into effect with SDHC subsidizing 100%  
7 of the rent increase. Over the next year, SDHC will divert thousands of dollars in HCV program  
8 funds to subsidize just this one landlord's illegal rent increase.

9 58. This is just one of multiple instances of SDHC approving illegal rent increases and  
10 then subsidizing those illegal rent increases with HCV funds.

11 59. SDHC has continued its practice of approving illegal rent increases. For example, in  
12 March 2024, SDHC approved a rent increase that did not comply with state law. This was a rent  
13 increase of 97%, doubling the rent from \$1,500 to \$2,950 per month. The rental unit was covered by  
14 the California Tenant Protection Act. The HCV recipient is a 79-year old long-term tenant who relies  
15 on full-time oxygen and uses a walker. She is extremely low-income.

16 60. Through representatives, this HCV recipient approached her landlord regarding the  
17 unlawful rent increase. The landlord responded that SDHC would not have approved the increase if  
18 it did not comply with the law. The landlord further stated that he would not rescind the increase  
19 unless SDHC tells him it is illegal, and if anyone should be concerned, it should be SDHC—not the  
20 HCV recipient—because SDHC will be the one paying the majority of the increase.

21 Effect on Racial Minorities

22 61. Based on United States Census Bureau American Community Survey data, renter  
23 households in the City of San Diego are approximately 54.2% minorities (8.4% African American)  
24 and 45.6% white (not Hispanic or Latino). Meanwhile, HCV recipients in the City are approximately  
25 77.1% minorities (30% African American) and 22.8% white (not Hispanic or Latino). SDHC's  
26 practice – and the resulting diversion of HCV funds – disproportionately adversely impacts racial  
27 and ethnic minorities in the HCV program and impedes fair housing. SDHC's practice has a  
28 discriminatory effect and – being illegal – has no substantial legitimate justification.

1           62.           On information and belief, after SDHC began implementing this practice of  
2 approving – and subsidizing – illegal rent increases, SDHC’s waitlist for the HCV program  
3 increased from 10-12 years to 12-15 years. On information and belief, individuals on SDHC’s HCV  
4 waitlist are disproportionately racial and ethnic minorities. SDHC’s practice – and the resulting  
5 diversion of HCV funds – disproportionately adversely impacts minorities on SDHC’s HCV waitlist,  
6 restricts access to housing opportunities, and impedes fair housing. SDHC’s practice – being illegal  
7 – has no substantial legitimate justification.

8           63.           Low-income City residents who are racial minorities constitute a subset of the  
9 population eligible for the HCV program and a protected class. This subset of individuals is  
10 disproportionately represented in the unhoused population.

11           64.           At all relevant times, SDHC knew that racial minorities in the City experience  
12 homelessness at a higher rate than white individuals, that a disproportionate number of unhoused  
13 individuals in the City are racial minorities, and that there are significant racial disparities in access  
14 to housing opportunities. The SDHC-funded 2019 Community Action Plan on Homelessness for the  
15 City of San Diego states “Black/African American and American Indian/Alaskan Natives are over-  
16 represented in San Diego’s unhoused population, with Black/African Americans representing 6% of  
17 the general population in the City of San Diego, but 29% of the Emergency Shelter population...”  
18 The 2017 We All Count annual report released by the San Diego Regional Task Force on  
19 Homelessness states: “Compared to the general population of San Diego, a much higher population  
20 of the unsheltered homeless identified as Black or African-American (21 percent compared to 5  
21 percent).” The Action Plan on Addressing Homelessness Among Black San Diegans released in  
22 September 2022 by the Regional Task Force on Homelessness states “Black San Diegans make up  
23 28% of the homeless population in our region even though they only represent 5% of the overall  
24 population. This is the result of historical, systemic, pervasive racial discrimination and ongoing  
25 inequity in our nation and community.” That 2022 Action Plan – which recognizes racial disparities  
26 in access to housing – also states “today in the San Diego region, where Black people make up only  
27 five percent of the population, Black people are 6 times more likely than non-Black people to  
28 experience homelessness.”

1 65. Despite this knowledge, SDHC diverted – and continues to divert – HCV program  
2 funds to subsidize private landlords’ illegal rent increases instead of using these public funds to  
3 assist unhoused residents – disproportionately racial minorities – eligible for the HCV program.  
4 SDHC’s practice disproportionately harms this subset of individuals when compared to the entire  
5 population of eligible City residents, deprives these individuals of housing opportunities, and  
6 impedes fair housing.

7 66. On information and belief, the population of City residents in need of rental  
8 assistance, eligible for the HCV program, and not served by the HCV program consists of a  
9 population with an even greater percentage of racial minorities than the percentage of racial  
10 minorities currently in the HCV program. However, even applying the racial composition of existing  
11 HCV recipients, minoritized households are significantly more likely to be negatively impacted by  
12 SDHC’s practice as white households. African American households are even more likely to be  
13 negatively impacted by SDHC’s practice, more than three times as likely as white households. Thus,  
14 of those who are eligible for the HCV program and in need of rental assistance – including unhoused  
15 residents – but not currently in the HCV program, the subset of racial minorities is  
16 disproportionately adversely impacted by SDHC’s practice.

17 67. SDHC’s practice has a disproportionate adverse effect on racial and ethnic minorities  
18 and – being illegal – has no substantial legitimate justification.

19 68. At all relevant times, SDHC’s practice has had – and is predicted to continue to have  
20 – discriminatory effects and serve as a barrier to fair housing in violation of SDHC’s obligation to  
21 affirmatively further fair housing.

22 **FIRST CAUSE OF ACTION**

23 Waste of Public Funds—Code Civ. Proc. § 526a  
24 (Plaintiffs Against Defendant San Diego Housing Commission)

25 69. Plaintiffs re-allege and incorporate by reference each of the allegations set forth in the  
26 preceding paragraphs as though set forth in full.

27 70. Code of Civil Procedure section 526a permits private individuals or entities to bring  
28 an action to “obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or

1 injury to, the estate, funds, or other property of a local agency.”

2 71. Members of Plaintiffs Black Men and Women United San Diego and San Diego  
3 Tenants Union, and Plaintiff Francine Maxwell are, and in the year prior to commencement of this  
4 action were, tax-paying residents of the City of San Diego, paid taxes that funded both SDHC and  
5 the program, and therefore have standing to bring an action under Code of Civil Procedure Section  
6 526a.

7 72. SDHC administers its programs and services in a manner that subsidizes illegal rent  
8 increases imposed by private landlords in the HCV Program. Because these actions violate federal  
9 and state law, including the California Tenant Protection Act, SDHC engages in an illegal  
10 expenditure of public funds.

11 73. SDHC expends public funds on rent increases despite knowing that SDHC’s actions  
12 incentivize private landlords to violate laws intended to protect tenants and prevent homelessness.

13 74. SDHC expends public funds on illegal rent increases despite knowing that such rent  
14 increases have no public benefit and no useful purpose, and cause harm to residents of the City of  
15 San Diego, disproportionately adversely impacting racial minorities.

16 75. Plaintiffs seek a declaration regarding SDHC’s waste of public funds and an order  
17 enjoining SDHC from continuing the illegal expenditure of taxpayer monies. Such a declaration and  
18 order is necessary because Plaintiffs’ efforts to stop this misuse and illegal use of funds to protect the  
19 City and SDHC from liability and to avoid a claim under Code of Civil Procedure Section 526a went  
20 ignored, and any further efforts would have been futile.

21 76. Plaintiffs also seek to compel SDHC to obtain restitutionary disgorgement to recover  
22 all public funds SDHC paid to private landlords for these illegal rent increases.

23  
24 **SECOND CAUSE OF ACTION**

25 Violation of the Fair Employment and Housing Act — Gov. Code §§ 12900, *et seq.*  
26 (Plaintiffs Against Defendant San Diego Housing Commission)

27 77. Plaintiffs re-allege and incorporate by reference each of the allegations set forth in the  
28 preceding paragraphs as though set forth in full.

1           78.       The California Fair Employment and Housing Act (FEHA) prohibits housing  
2 discrimination based on race, color, religion, sex, gender, gender identity, gender expression, sexual  
3 orientation, marital status, national origin, ancestry, familial status, source of income, disability,  
4 veteran or military status, or genetic information. (Gov. Code §§ 12920, 12955.)

5           79.       Under FEHA’s prohibition on discrimination based on source of income, landlords  
6 are prohibited from engaging in the discriminatory practice of treating tenants who have a Housing  
7 Choice Voucher differently than tenants who do not have a Housing Choice Voucher, including by  
8 administering a rental policy or practice that has a discriminatory effect on tenants with vouchers,  
9 applying inferior terms to tenants with vouchers, failing to comply with tenant protection laws when  
10 renting to tenants with vouchers, and setting higher rents for voucher-households than for non-  
11 voucher households. (Gov. Code §§ 12955, 12927(c)(1); 2 CCR § 12141.)

12           80.       Under FEHA, it is unlawful to engage in discriminatory housing practices that make  
13 housing opportunities unavailable or render infeasible housing opportunities, engage in financial  
14 assistance practices that have a discriminatory effect, or fail to enforce generally imposed  
15 requirements in a discriminatory manner. (Gov. Code §§ 12900, *et seq.*; 2 CCR §§ 12005, *et seq.*)

16           81.       Entities – including government agencies – are prohibited from aiding and abetting  
17 the doing of any of the acts declared unlawful by FEHA. (Gov. Code § 12955(g); 2 CCR §  
18 12005(w).)

19           82.       Under FEHA, there is direct liability for failing to take prompt action to correct and  
20 end a discriminatory housing practice by a third-party, where the entity knew or should have known  
21 of the discriminatory conduct and had the power to correct it. (2 CCR §§ 12010(a)(1)(C), 12005(w).)

22           83.       FEHA authorizes a claim for housing discrimination irrespective of intent, when the  
23 alleged act or omission has the effect of discriminating on the basis of race or source of income.  
24 (Gov. Code § 12955.8(b).)

25           84.       Proof of an intentional violation of FEHA includes an act or failure to act that  
26 demonstrates an intent to discriminate. (Gov. Code § 12955.8(a).) There is intentional discrimination  
27 when the intent to discriminate is a motivating factor in the commitment of a discriminatory housing  
28 practice, even though other factors may also have motivated the practice. (*Id.*) An intent to

1 discriminate may be established by direct or circumstantial evidence. (*Id.*)

2 85. At all times relevant to this action, SDHC was in a position to stop the diversion of  
3 public funds by not approving landlords' requests for illegal rent increases. SDHC knew or should  
4 have known that SDHC's approval of landlords' requests for illegal rent increases were unlawful  
5 acts by SDHC, and would result in unlawful acts by both private landlords in a contractual  
6 relationship with SDHC and by SDHC in directing public funds to the private landlords to subsidize  
7 the illegal rent increases SDHC had approved. At all relevant times, SDHC was in a position of  
8 power to prevent such unlawful acts by not approving the requests for approval of the illegal rent  
9 increases.

10 86. At all times relevant to this action, SDHC aided and abetted unlawful acts by private  
11 landlords by approving illegal rent increases and subsidizing those illegal rent increases with public  
12 funds.

13 87. At all times relevant to this action, SDHC aided and abetted unlawful acts by private  
14 landlords SDHC was in a contractual relationship with, including the discriminatory act of treating  
15 tenants with a Housing Choice Voucher different than tenants who do not have a Housing Choice  
16 Voucher.

17 88. At all times relevant to this action, SDHC's rent increase approval practice has and is  
18 predicted to have a disproportionate adverse impact on racial and ethnic minorities, causing and  
19 which is predicted to cause discriminatory effects and serve as a barrier to fair housing in violation  
20 of FEHA.

21 89. At all times relevant to this action, SDHC knew its practice violated FEHA, caused  
22 discriminatory effects including by disproportionately harming minorities, and impeded fair housing  
23 in the City of San Diego. SDHC had many opportunities to revise its practice to reduce disparities,  
24 and SDHC chose not to revise its practice to reduce disparities. SDHC has and continues to  
25 administer its practice in a way that violates FEHA, has discriminatory effects, disproportionately  
26 harms minorities, and impedes fair housing in the San Diego area.

27 90. SDHC's practice is intended to and does disproportionately harm racial and ethnic  
28 minorities.



1 91. SDHC's unlawful and discriminatory housing practice harmed and will continue to  
2 harm Plaintiffs unless restrained by this Court.

3 92. Plaintiffs are directly and beneficially interested in SDHC's compliance with all  
4 applicable provisions of the law and with all legal duties, as set forth herein.

5 93. Through its housing practice, SDHC has violated and will continue to violate FEHA  
6 unless restrained by this Court.

7 94. Based on the foregoing, Plaintiffs are entitled to and demand declaratory and  
8 injunctive relief to enjoin SDHC from violating FEHA and administering its practice in a  
9 discriminatory manner.

10 **THIRD CAUSE OF ACTION**

11 Writ of Mandate—Code Civ. Proc. § 1085  
12 (Petitioners Against Respondent San Diego Housing Commission)

13 95. Petitioners re-allege and incorporate by reference each of the allegations set forth in  
14 the preceding paragraphs as though set forth in full.

15 96. Petitioners are beneficially interested in and affected by Respondent's policy and  
16 practice in administering the HCV Program with respect to approving landlords' proposed rent  
17 increases. Petitioners are also interested in their capacity as an association of residents in  
18 Respondent's performance of its public duties.

19 97. Respondent's current practice is to not consider state law when determining whether  
20 rent increases are reasonable.

21 98. Respondent has a policy and practice of approving landlord requests for rent increases  
22 in the HCV program when the requested increases do not comply with the law.

23 99. Respondent has a clear and present ministerial duty to administer the HCV program  
24 in the manner required by law. By the actions mentioned herein, Respondent has failed and refused  
25 to administer the HCV program in a manner required by law as alleged in this Petition. Specifically,  
26 Respondent has failed to comply with state law, including Civ. Code § 1947.12 and Civil Code §  
27 827(b); failed to apply those statutes when assessing rent reasonableness; and approved – and  
28 subsidized with public funds – rent increases that violate state law, including Civ. Code § 1947.12(a)

1 and Civ. Code § 827(b). Respondent has also failed to comply with its duty to administer their  
2 programs and activities in a manner to affirmatively further fair housing as required by Gov. Code §  
3 8899.50.

4 100. At all times, Respondent has had and continues to have the legal ability to perform  
5 their duties but has failed to do so.

6 101. Petitioners have no other plain, speedy, and adequate remedy in the ordinary course  
7 of law expect by way of writ of mandate pursuant to Code of Civil Procedure § 1085.

8 102. Respondent has failed to administer the HCV program at all relevant times in a  
9 manner which ensures compliance with applicable state and federal laws, and federal regulations.

10 **FOURTH CAUSE OF ACTION**

11 Declaratory Relief—Code of Civ. Proc. § 1060  
12 (Plaintiffs Against Defendant San Diego Housing Commission)

13 103. Plaintiffs re-allege and incorporate by reference each of the allegations set forth in the  
14 preceding paragraphs as though set forth in full.

15 104. There is an actual and justiciable controversy between Plaintiffs and SDHC regarding  
16 whether SDHC’s actions comply with all applicable laws. SDHC contends that its actions comply  
17 with its legal duties and Plaintiffs dispute this contention.

18 105. A judicial declaration of the respective parties’ rights and duties is needed so that the  
19 parties can each conduct themselves in accordance with those rights and duties. Without such a  
20 judicial declaration, there will continue to be disputes and controversy over whether SDHC’s actions  
21 comply with applicable law.

22 106. Plaintiffs are entitled to a legal declaration of their rights and SDHC’s obligations  
23 under applicable law as alleged in this complaint.

24 107. Plaintiffs are entitled to a judicial declaration that SDHC’s actions do not comply  
25 with the law.

26 108. Plaintiffs are entitled to a judicial declaration of the invalidity of the expenditure of  
27 public funds on private landlords’ illegal rent increases.  
28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs and Petitioners pray for the following:

3 1. For a peremptory writ of mandate and injunctive relief commanding San Diego  
4 Housing Commission to:

- 5 a. Refrain from committing an illegal expenditure of public funds by ceasing to approve  
6 and spend public funds on illegal rent increases, pursuant to Code Civ. Proc. § 526a;  
7 b. Refrain from committing a waste of public funds by ceasing to approve and spend  
8 public funds on illegal rent increases, pursuant to Code Civ. Proc. § 526a;  
9 c. Administer its rent increase approval policy and practice in a manner that comports  
10 with all applicable laws, including the California Tenant Protection Act, when  
11 determining rent reasonableness; and  
12 d. Administer its rent increase approval policy and practice in a manner that  
13 affirmatively furthers fair housing as required by Gov. Code § 8899.50 and complies  
14 with the Fair Employment and Housing Act (Gov. Code §§ 12900 *et seq.*).

15 2. For a declaration of the invalidity of San Diego Housing Commission’s expenditure  
16 of public funds on illegal rent increases, and for a declaration that San Diego Housing Commission’s  
17 rent increase approval policy and practice violates applicable laws, including the California Tenant  
18 Protection Act (including Civ. Code § 1947.12), the Fair Employment and Housing Act (Gov. Code  
19 §§ 12900 *et seq.*), and California’s Affirmatively Furthering Fair Housing requirement (Gov. Code §  
20 8899.50).

21 3. For restitution and disgorgement as allowed by law;

22 4. For reasonable attorneys’ fees;

23 5. For costs of suit incurred herein;

24 6. For such other and further relief as the Court deems just and proper.

25  
26 Dated: April 26, 2024

By:



**Pease Law, APC**

Parisa Ijadi-Maghsoodi, Esq.


Bryan W. Pease, Esq.

*Attorneys for Plaintiffs and Petitioners*

**VERIFICATION**

1 I, Francine Maxwell, am one of the Plaintiffs and Petitioners in the above-entitled action  
2 and a member of Black Men and Women United San Diego. I have read the foregoing First  
3 Amended Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief and  
4 know the contents thereof. The same is true of my own knowledge, except as to those matters  
5 which are therein alleged on information and belief, and as to those matters, I believe it to be  
6 true.  
7

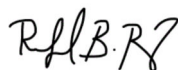
8 I declare under penalty of perjury under the laws of the State of California that the  
9 foregoing is true and correct. Executed on April 25, 2024 in San Diego, California

10  
11   
12 \_\_\_\_\_  
Francine Maxwell

**VERIFICATION**

I, Rafael Bautista, am an agent of San Diego Tenants Union, one of the Plaintiffs and Petitioners in the above-entitled action. I am authorized to make this verification on behalf of San Diego Tenants Union. I have read the foregoing First Amended Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this April 26, 2024, in San Diego, California.



\_\_\_\_\_  
Rafael Bautista