

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

THANH HUYNH, et al.,  
Plaintiffs,  
v.  
KATHERINE HARASZ, et al.,  
Defendants.

Case No. 14-CV-02367-LHK

**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

Re: Dkt. Nos. 79, 80

Plaintiffs<sup>1</sup> bring this action against the Housing Authority of the County of Santa Clara (“HACSC”) and Katherine Harasz, in her official capacity as HACSC’s Executive Director (collectively, “Defendants”). Before the Court are Defendants’ motion for summary judgment and Plaintiffs’ motion for summary judgment. ECF No. 79 (“Def. Mot.”); ECF No. 80 (“Pls. Mot.”). The Court held a hearing on these motions on May 12, 2016, at 1:30 p.m. ECF No. 104. Having considered the parties’ submissions, the relevant law, the record in this case, and oral argument at the May 12, 2016 hearing, the Court GRANTS in part and DENIES in part Plaintiffs’ motion for

<sup>1</sup> The named Plaintiffs are Thanh Huynh, Venus Benabides, Rudy Garcia, Lynda Gomes, Nicholas Wallace, Lillie Ware, Stephen Jones, Dehab Haile, and Freihiwet Tesfamariam.

1 summary judgment and DENIES Defendants' motion for summary judgment.

2 **I. BACKGROUND**

3 **A. Factual Background**

4 The Section 8 Voucher Program provides monthly housing subsidies to low-income  
5 individuals and their families. ECF No. 30 ("SAC") ¶ 23. Unlike traditional public housing  
6 programs, subsidies provided under the Section 8 Program are "not tied to a particular unit in a  
7 particular building." *Id.* ¶ 24. Instead, voucher holders find a private landlord willing to accept a  
8 Section 8 voucher. If the private landlord agrees to rent to the voucher holder, the landlord is paid  
9 a monthly subsidy by a local Public Housing Agency ("PHA"), known as the "housing assistance  
10 payment." *Id.* ¶ 27. The voucher holder pays the remaining balance. *Id.* ¶ 23.

11 Various federal regulations govern how a local PHA may operate its Section 8 Program.  
12 Under 24 C.F.R. § 982.503(a), for instance, a "PHA must adopt a payment standard schedule that  
13 establishes voucher payment standard amounts for each [market] area in the PHA['s] jurisdiction."  
14 24 C.F.R. § 982.503(a). These voucher payment standards are based on the fair market value of  
15 rental units and "are used to calculate the monthly housing assistance payment for a family." *Id.*  
16 According to Plaintiffs, Santa Clara County voucher holders were generally responsible "for  
17 paying a [monthly] rental amount equal to 30% of their income," although the exact percentage  
18 varied. SAC ¶ 25. Likewise, 24 C.F.R. § 982.402(a) provides that a PHA "must establish subsidy  
19 standards that determine the number of bedrooms needed for families of different sizes and  
20 compositions." 24 C.F.R. § 982.402(a). "For each family, the PHA determines the appropriate  
21 number of bedrooms under the PHA subsidy standards." *Id.* Each voucher holder is "allocated a  
22 specific number of bedrooms . . . based on their family size and composition." SAC ¶ 26.  
23 Although "a family [may] choose[] to live in a unit with more bedrooms than the family is  
24 allocated under the [subsidy] standard," the subsidy standard establishes "the maximum amount  
25 [of] housing assistance" that a voucher holder may receive. *Id.* Finally, 24 C.F.R. § 982.54(a)  
26 requires PHAs to "adopt a written administrative plan that establishes local policies for  
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1 administration of the program in accordance with HUD requirements.” 24 C.F.R. § 982.54(a).

2 Given the complex interplay between these regulations, the Court takes a moment to  
3 review them in additional detail. Family size and composition determine the number of bedrooms  
4 that a voucher holder is allocated, which in turn determines the voucher holder’s subsidy standard.  
5 The subsidy standard is tied to a payment standard schedule, which is set by the market value for  
6 rental units within a particular area. By way of example, HACSC will “pay no more than  
7 \$1628.00 towards a 2-bedroom unit.” SAC ¶ 25. A Santa Clara County voucher holder allocated  
8 a two-bedroom unit would therefore receive a maximum subsidy of \$1628. The voucher holder  
9 may decide to rent a three-bedroom unit, but will not receive any more than \$1628, unless the  
10 market value for a two-bedroom unit changes.

11 Defendant HACSC is the PHA responsible for administering the Section 8 Program in  
12 Santa Clara County. *Id.* ¶ 17. As Executive Director, Katherine Harasz (“Harasz”) is responsible  
13 for “carrying out the duties outlined in the [HACSC’s] Administrative Plan and the regulations  
14 promulgated by [HUD].” *Id.* ¶ 16.

15 In early 2013, “the federal government imposed an \$85 billion across-the-board cut in  
16 discretionary federal spending.” Def. Mot. at 5. Known as “sequestration” or the “sequester,” this  
17 reduction “resulted in an approximately \$2 billion decrease to HUD’s housing support programs,  
18 including \$21 million in funding for HACSC’s Voucher Program.” *Id.* In order to address this  
19 decrease in funding, HACSC made significant revisions to its administration of the Section 8  
20 Program on March 1, 2013. SAC ¶ 28.

21 Two such changes are relevant to the instant action. First, prior to March 1, 2013,  
22 “children of the opposite sex (unless they were very, very young children) and persons from  
23 different generations (parents, grandparents, children) were not required to share a room.” *Id.* ¶  
24 29. After March 1, 2013, “the head of household (with spouse, co-head, Registered Domestic  
25 Partner, or boyfriend/girlfriend if any) [were assigned] one room and an additional bedroom [was  
26 assigned] for every two persons regardless of age or gender.” *Id.* Second, “[t]he revised  
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1 calculations increased each participant's total tenant payment from 30% to 35% of their gross  
2 monthly income or \$50 a month, whichever [was] higher." Def. Mot. at 5–6.

3 These changes resulted in many voucher holders receiving a smaller bedroom allocation  
4 and a smaller subsidy. SAC ¶ 31. Subsequent to these changes, each named Plaintiff submitted a  
5 reasonable accommodation request for an additional bedroom based on at least one family  
6 member having a documented disability. *Id.* ¶ 3. HACSC denied these requests. The situation of  
7 each named Plaintiff is described in greater detail below.

### 8 **1. Thanh Huynh**

9 Thanh Huynh ("Huynh") was imprisoned in a Vietnam internment camp for a decade  
10 following the Vietnam War. *Id.* ¶ 49. After coming to the United States in 1992, Huynh was  
11 diagnosed with post-traumatic stress disorder ("PTSD") and major depression. *Id.* Because of  
12 these ailments, Huynh allegedly "suffers from anxiety, depression and severe night terrors," which  
13 cause him to scream at night and lock his bedroom door for security. *Id.* Huynh states that as a  
14 result of his disorders, he is unable to share a bedroom with anyone else. At night, Huynh sleeps  
15 alone in a single room, his wife and daughter share a room, and his son stays in the third room. *Id.*  
16 Huynh's daughter attends school at the University of Irvine for most of the year, and returns to  
17 live with her family during holidays. ECF No. 79-2 (Exh. B) at 13. Huynh's psychiatrist has  
18 provided documentation supporting Huynh's need for a separate bedroom. SAC ¶ 49.

19 Prior to September 2013, HACSC provided Huynh's family with a three-bedroom housing  
20 voucher. However, subsequent to the administrative changes outlined above that were caused by  
21 the 2013 sequester, HACSC reduced Huynh's housing voucher from a three-bedroom unit to a  
22 two-bedroom unit and increased the share of the family's gross income used to calculate their  
23 rental obligation from 30% to 35%. *Id.* ¶ 51.

24 On October 2, 2013, Huynh submitted a reasonable accommodation request to increase his  
25 housing voucher back to a three-bedroom allocation. *Id.* ¶ 52. On October 21, 2013, HACSC  
26 denied Huynh's request. The letter denying Huynh's request stated that a two-bedroom voucher  
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1 met his family’s needs without overcrowding, and was therefore the largest size necessary based  
 2 on family size. *Id.* ¶ 53. In response to this denial, Huynh requested an administrative hearing.  
 3 On December 12, 2013, HACSC officer Karen Goodman held a hearing on Huynh’s case. *Id.*  
 4 ¶ 54. On January 14, 2014, Goodman upheld the denial of Huynh’s request. Goodman  
 5 determined that Huynh was disabled, that “[Huynh’s] approved voucher size provide[s] [him] with  
 6 a separate bedroom,” and that the Section 8 program only allows subsidization of the smallest  
 7 number of bedrooms needed to house a family without overcrowding. *Id.* ¶ 55. Per Goodman,  
 8 Huynh could occupy a separate bedroom while his remaining family members could choose  
 9 amongst themselves how to arrange their living situation. On January 27, 2014, Huynh wrote to  
 10 Alex Sanchez, HACSC’s former Executive Director, requesting a reversal of Goodman’s decision.  
 11 Sanchez denied Huynh’s request in a ten page letter. *Id.* ¶¶ 56–57; ECF No. 49 (Exh. G).

12 Huynh continues to live in a three-bedroom unit. Huynh pays out of pocket for the third  
 13 bedroom because of HACSC’s denial of Huynh’s reasonable accommodation request.

## 14 **2. Venus Benabides and Rudy Garcia**

15 Venus Benabides (“Benabides”) lives with her two adult sons, Rudy Garcia (“Rudy”) and  
 16 Elias. SAC ¶ 58. Since October 2014, Elias has worked at a local security firm. ECF No. 79-2  
 17 (Exh. C) at 14. Benabides alleges that she and Rudy suffer from bipolar disorder. SAC ¶ 59–60.  
 18 “Under HACSC’s [old] subsidy standards, Elias and Rudy would have been required to share a  
 19 room.” *Id.* ¶ 61. However, in December 2011, the family was granted a temporary reasonable  
 20 accommodation for a three-bedroom voucher due to Rudy’s need for his own bedroom. *Id.*; see  
 21 ECF No. 49 at 45–46 (classifying Rudy’s condition as “temporary” in nature).

22 After the federal sequester, HACSC reduced Benabides’ voucher size from three bedrooms  
 23 to two. HACSC also removed the temporary reasonable accommodation that HACSC had  
 24 provided Rudy, with HACSC noting that this accommodation was not considered permanent in  
 25 nature. HACSC did not explain why HACSC considered Rudy’s bipolar disorder as being  
 26 temporary. *Id.* In July and August 2013, Benabides sent letters to HACSC requesting a separate  
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1 bedroom for Rudy as a reasonable accommodation for Rudy’s mental illness. Benabides included  
 2 in one of these letters a certification form signed by Rudy’s therapist. SAC ¶¶ 63–65. In  
 3 November 2013, Benabides also submitted a reasonable accommodation request for a separate  
 4 bedroom because of her own mental disability. *Id.* ¶ 67. HACSC denied Benabides’ requests for  
 5 a separate bedroom for both her and for Rudy. These denials were upheld after an informal  
 6 hearing. *Id.* ¶ 69–70. During this hearing, HACSC officer Teresa Faz stated that “even though  
 7 you have provided medical documentation that both you and your son need your own sleeping  
 8 space, there is no nexus between your request and your stated disability. If you decide to relocate  
 9 to a smaller unit (2 bedrooms), the disability does not require the requested accommodation of an  
 10 additional bedroom to your voucher size since HACSC does not govern a household’s sleeping  
 11 arrangements within a unit. If your family chooses, you could have one bedroom, your son the  
 12 second bedroom, and the 3rd person could use the living room area for sleeping purposes.” *Id.* ¶  
 13 70.

14 Benabides continues to live in a three-bedroom unit. Benabides pays out of pocket for the  
 15 third bedroom because of HACSC’s denial of Benabides’ reasonable accommodation requests.  
 16 ECF No. 79-2 (Exh. C.) at 18.

### 17 **3. Lynda Gomes and Nicholas Wallace**

18 Lynda Gomes (“Gomes”) lives with her son Nicholas Wallace (“Nicholas”) and daughter  
 19 Bobbie. SAC ¶ 72; ECF No. 79-2 (Exh. D) at 24. Gomes states that she has a heart condition that  
 20 requires her to use a machine at night for treatment. SAC ¶ 73. In addition, Gomes states that  
 21 Nicholas has been diagnosed with depression, PTSD, and anxiety disorder. *Id.* ¶ 74. Gomes  
 22 alleges that both she and Nicholas require a separate bedroom for their disabilities.

23 Prior to September 2013, this voucher was based on a subsidy standard for a three-  
 24 bedroom unit, and Gomes lived in a three-bedroom unit. *Id.* ¶ 75. Gomes’s voucher was  
 25 subsequently reduced to a subsidy standard for a two-bedroom unit. In February 2014, Gomes  
 26 submitted reasonable accommodation requests for a separate bedroom for her and for Nicholas.

1 *Id.* ¶ 77. These requests were denied on April 10, 2014, and the denial was upheld after an  
 2 informal hearing. *Id.* ¶¶ 77–78. During this hearing, HACSC officer Teresa Faz stated that “I find  
 3 that there is no nexus between your request to increase your voucher size by one bedroom for the  
 4 purpose of meeting your request for reasonable accommodations for you and your son Nicholas.  
 5 Both of your doctor’s documentation stated that you both have disabilities that require that you  
 6 have your own sleeping areas, however, that need is being met by your current two-bedroom  
 7 voucher.” *Id.* ¶ 78.

8 Later in 2014, Gomes moved into a two-bedroom unit, ECF No. 79-2 (Exh. D) at 32.  
 9 Nicholas sleeps in one bedroom, Bobbie sleeps in the second bedroom, and Gomes sleeps in the  
 10 living room. *Id.* at 27.

#### 11 **4. Lillie Ware and Stephen Jones**

12 Lillie Ware (“Ware”) lives with her adult son Stephen Jones (“Stephen”) and two-year old  
 13 granddaughter Lania in a three-bedroom unit. SAC ¶ 80. Ware states that she has been diagnosed  
 14 with PTSD and major depression. *Id.* ¶ 81. Ware also states that Stephen has been diagnosed with  
 15 attention deficit disorder and a learning disorder. *Id.* ¶ 82. Ware alleges that both she and Stephen  
 16 need a separate bedroom to accommodate their disabilities.

17 “As a result of the 2013 sequester, HACSC reduce[d] the family’s Section 8 voucher size  
 18 from three bedrooms to two.” *Id.* ¶ 84. In January and March 2014, Ware submitted reasonable  
 19 accommodation requests for a three-bedroom voucher based on her and Stephen’s disabilities. *Id.*  
 20 ¶ 86–87. These requests were supported by medical documentation. *Id.* Ware’s request was  
 21 denied on July 21, 2014, and the denial was upheld after an informal hearing. *Id.* ¶ 87–88. During  
 22 the hearing, HACSC officer Teresa Faz stated that “I find that there is no nexus between your  
 23 request to increase your voucher size by one bedroom for the purpose of a reasonable  
 24 accommodation for your son Stephen Jones.” *Id.* ¶ 88.

25 As a result of HACSC’s actions, Ware moved into a two-bedroom unit. ECF No. 79-2  
 26 (Exh. E) at 21. Currently, Ware sleeps in one bedroom, Stephen sleeps in the second bedroom,  
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1 and Lania sleeps in the living room. *Id.* at 98–99.

## 2 **5. Dehab Haile and Freihwet Tesfamariam**

3 Debra Haile (“Haile”) lives with her daughter Freihwet Tesfamariam (“Freihwet”) and  
4 her son Sesinos in a three-bedroom unit. *Id.* ¶ 90. Freihwet “has been diagnosed with severe  
5 depression, agoraphobia, panic disorder, and asthma.” *Id.* ¶ 91. Freihwet’s “disabilities cause  
6 panic attacks, insomnia, and impulses to engage in self-harm.” *Id.* “In order to manage [these]  
7 symptoms,” Haile states that “it is necessary for Freihwet to have her own bedroom.” *Id.*  
8 Haile’s voucher size was reduced to two bedrooms in September 2013. Haile thereafter submitted  
9 a reasonable accommodation request for Freihwet’s disability, supported by medical  
10 documentation. *Id.* ¶ 94. HACSC denied Haile’s request on January 15, 2014, and the denial was  
11 upheld following an informal hearing. *Id.* ¶ 95–96. During the hearing, HACSC officer Teresa  
12 Faz stated that “there is no nexus between your request and the stated disability . . . If your family  
13 chooses, you could have one bedroom, your daughter the other, and the third person could use the  
14 living room area for sleeping purposes.” *Id.* ¶ 96.

15 Although Haile’s family continues to live in a three-bedroom unit, Haile pays out of pocket  
16 for the third bedroom because of HACSC’s denial of Haile’s reasonable accommodation request.

17 The following chart summarizes the accommodations of each named Plaintiff.

19 <b>Named Plaintiff</b>	20 <b>Number of Family Members</b>	21 <b>Bedroom Allocation Before Sequester</b>	22 <b>Bedroom Allocation After Sequester</b>	23 <b>Description of Current Situation</b>
24 Huynh	4	3	2	Remains in three-bedroom unit
25 Benabides & Garcia	3	3	2	Remains in three-bedroom unit
26 Gomes & Nicholas	3	3	2	Nicholas and Bobbie sleep in bedrooms, Gomes sleeps in living area
27 Ware & Stephen	3	3	2	Ware and Stephen sleep in bedrooms, Lania sleeps in living area
28 Haile &	3	3	2	Remains in three-bedroom unit



Freihiwet				
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**B. Procedural History**

On April 14, 2014, Huynh filed the original complaint in this case in Santa Clara County Superior Court. ECF No. 1-1 (“Compl.”). Defendants removed this case to federal court on May 22, 2014. ECF No. 1. On May 29, 2014, Defendants moved to dismiss the original complaint. ECF No. 8 (“Mot. to Dismiss”). The Court granted in part and denied in part Defendants’ motion to dismiss on September 2, 2014, ECF No. 14 (“MTD Order”), and Huynh subsequently filed a First Amended Complaint. ECF No. 18 (“FAC”). On January 7, 2015, the Court granted Huynh’s request to file a Second Amended Complaint, and on January 12, 2015, Huynh—now joined by the rest of the named Plaintiffs—filed the SAC. Defendants answered the SAC on February 6, 2015. ECF No. 31.

The SAC contains five substantive causes of action, based on violations of (1) the Fair Housing Amendments Act, (2) the Fair Employment and Housing Act, (3) the California Disabled Persons Act, (4) Section 504 of the Rehabilitation Act, and (5) the Americans with Disabilities Act. The SAC also includes a sixth cause of action for declaratory relief.

On September 17, 2015, Plaintiffs moved for class certification pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3). After holding a hearing on Plaintiffs’ motion, the Court granted Plaintiffs’ motion on November 12, 2015. ECF No. 67 (“Class Cert. Order”).

Specifically, the Court certified the following Class:

Santa Clara County Section 8 voucher holders who have disabilities and/or have family members with disabilities who (1) made a reasonable accommodation request to HACSC for an additional bedroom after July 1, 2013, (2) had a documented and undisputed need for a separate bedroom, (3) were denied a disability-related increase in the number of bedrooms by HACSC, (4) were not previously granted a permanent reasonable accommodation request, (5) did not request the additional bedroom for a live-in caregiver or for storage of medical equipment, and (6) have at least one family member who is not disabled.

*Id.* at 23. In addition, the Court appointed Thanh Huynh, Venus Benabides, Rudy Garcia, Lynda Gomes, Nicholas Wallace, Lillie Ware, Stephen Jones, Dehab Haile, and Freihiwet Tesfamariam

1 as Class Representatives and the Law Foundation of Silicon Valley as Class Counsel. *Id.*

2 Pursuant to Federal Rule of Civil Procedure 23(c)(2), the parties filed a proposed Notice  
3 and Opt Out Form for the Court's review on April 1, 2016. ECF No. 90; Fed. R. Civ. P. 23(c)(2)  
4 (requiring parties to send "the best notice that is practicable under the circumstances . . . [f]or any  
5 class certified under Rule 23(b)(3)"). The Court made suggested amendments to these documents,  
6 which the parties adopted in full on April 6, 2016. ECF No. 93. The Court approved the amended  
7 Notice and Opt Out Form on April 6, 2016, which included an opt out deadline of May 5, 2016.  
8 ECF No. 95; *see Torrissi v. Tuscon Elec. Power Co.*, 8 F.3d 1370, 1374 (9th Cir. 1993) (approving  
9 opt out deadline of less than one month after notice). There have been three opt outs.

10 On November 25, 2015, Defendants filed before the Ninth Circuit a petition for permission  
11 to appeal the Court's class certification order. ECF No. 71. The Ninth Circuit denied this petition  
12 on April 6, 2016. ECF No. 96.

13 On March 10, 2016, the parties filed cross-motions for summary judgment. ECF No. 79  
14 ("Def. Mot."); ECF No. 80 ("Pls. Mot."). Defendants' summary judgment motion included two  
15 requests for judicial notice. ECF No. 79-4; ECF No. 88-1. Plaintiffs filed a response to  
16 Defendants' motion on March 24, 2016, and Defendants filed a reply on March 31, 2016. ECF  
17 No. 86 ("Pls. Opp'n"); ECF No. 88 ("Def. Reply"). Likewise, Defendants filed a response to  
18 Plaintiffs' motion on March 24, 2016, and Plaintiffs filed a reply on March 31, 2016. ECF No. 85  
19 ("Def. Opp'n"); ECF No. 87 ("Pls. Reply").

20 On May 10, 2016, the Court issued an order which included three questions for the parties  
21 to address at the May 12, 2016 hearing on the parties' cross-motions for summary judgment. ECF  
22 No. 101. In addition, the Court requested the parties to file a response to the following question:

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24 Do the parties agree that—as a purely legal matter—a hypothetical blanket reasonable  
25 accommodation policy where all requests for a larger subsidy are denied without  
26 consideration of a disabled individual's fact-specific circumstances would violate state and  
27 federal antidiscrimination law? In answering this question, the parties are to set aside the  
28 question of whether, as a factual matter, HACSC actually implemented a blanket  
reasonable accommodation policy.

1 ECF No. 101 at 1. The parties filed their respective responses on May 11, 2016. ECF Nos. 102 &  
2 103.

## 3 **II. JUDICIAL NOTICE AND EVIDENTIARY OBJECTIONS**

### 4 **A. Requests for Judicial Notice**

5 Defendants first request judicial notice of the following documents: (1) the Court's class  
6 certification order, (2) the original complaint in this case, and (3) the SAC. ECF No. 79-4.  
7 Plaintiffs do not oppose Defendants' request, and the Court finds these documents subject to  
8 judicial notice. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir.  
9 2006) (holding that "court filings and other matters of public record" are subject to judicial  
10 notice). However, to the extent any of the factual allegations in these documents is disputed, the  
11 Court does not take judicial notice of these disputed allegations. *See, e.g., Lee v. City of Los*  
12 *Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) ("A court may take judicial notice of matters of public  
13 record . . . But a court may not take judicial notice of a fact that is subject to reasonable dispute.")  
14 (internal quotation marks omitted). Accordingly, Defendants' first request for judicial notice is  
15 GRANTED.

16 Defendants' second request for judicial notice, however, includes excerpts of various  
17 depositions as well as several emails sent amongst various HACSC officials. ECF No. 88-1.  
18 Defendants appear to seek judicial notice not of the fact that a particular witness was deposed or  
19 that a particular email was sent, but for the truth of the matters discussed therein. The content of  
20 these depositions and emails are not the sort of undisputed facts subject to judicial notice. *See,*  
21 *e.g., United States v. \$127,000 in U.S. Currency*, 2012 WL 2917467, \*5 (N.D. Cal. July 7, 2012)  
22 ("A court . . . may take judicial notice of undisputed facts . . . , but it may not take judicial notice  
23 of disputed ones."); *accord Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (holding that  
24 court may not take judicial notice of deposition excerpts subject to reasonable dispute). Rather,  
25 these transcripts and emails address (1) whether Defendants had a reasonable accommodation  
26 policy, (2) what this reasonable accommodation policy required Defendants to do, and (3) how

1 Defendants implemented this policy. The parties disagree on these issues, and the resolution of  
 2 these issues is critical to the resolution of this case. Defendants' second request for judicial notice  
 3 is therefore DENIED.

4 **B. Objections to Plaintiffs' Exhibits**

5 In opposing Plaintiffs' motion for summary judgment, Defendants have objected to 27 of  
 6 Plaintiffs' Exhibits. For purposes of organization, these Exhibits have been grouped into five  
 7 categories: (1) deposition testimony, (2) HACSC policy documents, (3) HACSC internal  
 8 documents, (4) denial letters and forms, and (5) other materials produced during discovery. Def.  
 9 Opp'n at 22 n.7. The Court addresses each category in turn.

10 **1. Deposition Testimony (Exhibits 8–10 & 16–17)**

11 First, Defendants argue that "Plaintiffs failed to attach the court reporter's certification" to  
 12 certain deposition transcripts, which is "required for [purposes of] authenticity and admissibility."  
 13 *Id.* However, in opposing Plaintiffs' summary judgment motion, Defendants have included  
 14 excerpts from the same depositions, as summarized by the table below:

Description	Plaintiffs' Exh. No.	Defendants' Exh. No.
December 30, 2015 Sangalang Deposition	ECF No. 81-8	ECF No. 85-1 (Exh. M)
December 16, 2015 Sanchez Deposition	ECF No. 81-9	ECF No. 85-1 (Exh. K)
July 1, 2015 Burrier Deposition	ECF No. 81-10	ECF No. 85-1 (Exh. D)
December 11, 2015 Montano Deposition	ECF No. 81-16	ECF No. 85-1 (Exh. J)
June 15, 2015 Gonzalez Deposition	ECF No. 81-17	ECF No. 85-1 (Exh. C)

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22 Defendants have thus objected to the same testimony upon which Defendants also ask the Court to  
 23 rely. The only meaningful difference between Defendants' Exhibits and Plaintiffs' Exhibits is that  
 24 Defendants' Exhibits included a reporter's certification.

25 In *Orr v. Bank of America, NT & SA*, 285 F.3d 764, 774 (9th Cir. 2002), the Ninth Circuit  
 26 stated that "[a] deposition or an extract therefrom is authenticated in a motion for summary  
 27

1 judgment when it identifies the names of the deponent and the action and includes the reporter's  
 2 certification that the deposition is a true record of the testimony of the deponent." However, "a  
 3 district court's admission of unauthenticated evidence in a summary judgment motion is harmless  
 4 error when the same item of evidence has been authenticated by an opposing party." *Id.* at 776.  
 5 Because Defendants have included authenticated copies of all the deposition testimony to which  
 6 Defendants object, it would be harmless error to consider Plaintiffs' Exhibits. Defendants'  
 7 objections to Exhibits 8–10 and 16–17 are therefore OVERRULED.

### 8 **2. HACSC Policy Documents (Exhibits 3–4)**

9 The Court also finds unavailing Defendants' objection to documents describing HACSC's  
 10 subsidy standard and reasonable accommodation policy. As summarized below, Defendants filed  
 11 these same documents for the Court's review amongst their own Exhibits:

Description	Plaintiffs' Exh. No.	Defendants' Exh. No.
HACSC Subsidy Standard Policy	ECF No. 81-3	ECF No. 85-3 (Exh. C)
HACSC Reasonable Accommodation Policy	ECF No. 81-4	ECF No. 85-3 (Exh. B)

12 Defendants' objections to Exhibits 3–4 are therefore OVERRULED.

### 13 **3. HACSC Internal Documents (Exhibits 5, 11–12, 14–15 & 27)**

14 Defendants also object to Plaintiffs' use of internal HACSC documents, which Defendants  
 15 contend were not properly authenticated. These objections lack merit.

16 First, Exhibit 5 is a document that describes changes to the Section 8 program following  
 17 the 2013 sequester. The document includes HACSC's logo on the upper left hand corner and  
 18 HACSC's Bates number at the bottom right hand corner. Defendants do not contend that this  
 19 document is actually inauthentic or inadmissible. In fact, Defendants rely upon the same facts  
 20 discussed in this document—such as the changes to HACSC's bedroom allocation policy—in their  
 21 own summary judgment motion. Def. Mot. at 5–6. Thus, even if Exhibit 5 was excluded, the  
 22 Court could simply cite Defendants' own filings to reach the same conclusions.

23 Second, Exhibit 11 is a document "showing the number of . . . reasonable accommodation  
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1 requests” that HACSC received from “July 15, 2013 through December 31, 2013.” ECF No. 81 at  
2 3. This same document was filed with Plaintiffs’ class certification motion. ECF No. 43-7.  
3 Defendants did not object to this document at that time, and Defendants do not now contend that  
4 the document is actually inauthentic or inadmissible.

5 Third, Exhibit 12 is a March 5, 2014 letter sent from HACSC to Kara Brodfuehrer, an  
6 attorney who previously represented Huynh. Akin to the deposition testimony documents  
7 discussed above, Defendants filed this same letter in opposing Plaintiffs’ motion for class  
8 certification. ECF No. 49 (Exh. G). Although Defendants did not file this letter in briefing the  
9 instant motions, Federal Rule of Civil Procedure 56 allows courts to consider all materials in the  
10 record when reviewing summary judgment motions. Fed. R. Civ. P. 56(c)(3) (“The court need  
11 consider only the cited materials, but it may consider other materials in the record.”).

12 Fourth, Exhibit 14 is an HACSC document which provides information on HACSC’s  
13 reasonable accommodation policy. The document includes HACSC’s logo on the upper left hand  
14 corner and HACSC’s Bates number at the bottom right hand corner. Defendants do not argue that  
15 Exhibit 14 is inauthentic or inadmissible, and the information in this Exhibit—such as HACSC’s  
16 obligation to comply with various antidiscrimination laws—can be found in any number of  
17 Defendants’ own Exhibits.

18 Fifth, Exhibits 15 and 27 are emails sent by HACSC employees discussing how reasonable  
19 accommodation requests should be handled. Defendants filed these same emails as Exhibits in  
20 opposing Plaintiffs’ motion for summary judgment. ECF No. 85-3 (Exh. E); ECF No. 85-3 (Exh.  
21 D). Accordingly, Defendants’ objections to Exhibit 15 and Exhibit 27 are OVERRULED. For the  
22 reasons stated above, Defendants’ objections to Exhibits 5, 11–12, and 14 are also OVERRULED.

#### 23 **4. Denial Letters and Forms (Exhibits 18–26, 29 & 31–33)**

24 Next, Defendants object to letters that Class Members received from HACSC denying their  
25 reasonable accommodation requests. Defendants also object to two internal HACSC memoranda  
26 where an HACSC specialist recommended granting a Class Member’s reasonable accommodation  
27



1 request, only to have an HACSC supervisor overrule this recommendation.

2           These objections fail for a number of reasons. First, several of these denial letters and  
3 memoranda were filed in support of Plaintiffs’ motion for class certification. ECF No. 43-13;  
4 ECF No. 43-14; ECF No. 43-18. Defendants did not object to these materials despite  
5 opportunities to do so in their brief in opposition to class certification, at oral argument on class  
6 certification, and before the Ninth Circuit in their petition for permission to appeal class  
7 certification. Even now, Defendants do not argue that these documents are actually inauthentic or  
8 inadmissible. In fact, in opposing Plaintiffs’ motion for summary judgment, Defendants filed a  
9 nearly identical internal memorandum, where an HACSC specialist recommended granting a  
10 reasonable accommodation request, only to have that recommendation be overruled. ECF No. 85-  
11 1 (Exh. I). Furthermore, each denial letter and internal memoranda at issue bears, at the bottom  
12 right hand corner, an HACSC Bates number.

13           More to the point, Defendants concede that they used standard language to deny reasonable  
14 accommodation requests. As Defendants explain, “the standard verbiage disseminated by Ms.  
15 Sangalang in her email to . . . housing programs employees, as well as the boilerplate language  
16 prepared by Ms. Burrier . . . [were] prepared . . . to ensure consistency in the manner in which the  
17 results of [HACSC’s] determinations were conveyed to each and every Voucher Program  
18 participant.” Def. Opp’n at 22. In other words, the parties dispute whether HACSC applied a  
19 blanket policy to deny reasonable accommodation requests. The parties do not dispute whether  
20 HACSC—after deciding to deny a request—sent each Class Member a form letter. *Id.* at 22–23.

21           As a final matter, at the summary judgment stage, “a party does not necessarily have to  
22 produce evidence in a form that would be admissible at trial.” *Fraser v. Goodale*, 342 F.3d 1032,  
23 1036 (9th Cir. 2003). “[W]hen evidence is not presented in an admissible form in the context of a  
24 motion for summary judgment, *but . . . may be presented in an admissible form at trial*, a court  
25 may still consider that evidence.” *Burch v. Regents of Univ. of Cal.*, 433 F. Supp. 2d 1110, 1120  
26 (E.D. Cal. 2006). Accordingly, a court may consider a document on summary judgment so long



1 as “[a] competent witness with personal knowledge [can] authenticate the document” at issue. *Hal*  
 2 *Roach Studios, Inc. v. Richard Feiner and Co., Inc.*, 896 F.2d 1542, 1551 (9th Cir. 1989). Here,  
 3 each denial letter could be authenticated by the Class Member who received the letter. Fed. R.  
 4 Evid. 901(b)(1) (allowing authentication based upon “[t]estimony of a witness . . . that an item is  
 5 what it is claimed to be.”); *see, e.g.*, ECF No. 81-21 (Huynh Denial Letter); ECF No. 81-23 (Ware  
 6 Denial Letter). Defendants’ objections to Exhibits 18–26, 29 & 31–33 are therefore  
 7 **OVERRULED.**

#### 8 **5. Other Materials Produced by Defendants During Discovery (Exhibit 6)**

9 Finally, Defendants object to Exhibit 6, which are Defendants’ March 23, 2015 answers to  
 10 the first set of Plaintiffs’ Request for Admissions. It is unclear on what basis Defendants seek to  
 11 object. First, Exhibit 6 includes, at the end, the signature of Helene Simvoulakis-Panos, an  
 12 attorney representing Defendants. Defendants also do not dispute that Exhibit 6 is a true and  
 13 accurate copy of their answers to Plaintiffs’ Request for Admissions. Accordingly, Defendants’  
 14 objection to Exhibit 6 is **OVERRULED.**

15 In sum, Defendants’ objections have all been overruled. Many objections were made  
 16 without a legal basis or were based on a technical objection that had no effect because Defendants  
 17 relied on the same documents for the instant motions. Accordingly, given the fact that trial is only  
 18 a month away, Defendants are strongly discouraged from renewing any such objections which  
 19 have caused an unnecessary expenditure of Court and party resources.

#### 20 **C. Objections to Defendants’ Exhibits (Exhibit O)**

21 As a final matter, Plaintiffs object to Defendants’ filing of a spreadsheet that summarizes  
 22 HACSC’s review of Class Members’ reasonable accommodation requests. This spreadsheet  
 23 includes “the HACSC entity identification number for each household, the number of persons  
 24 residing in each household, the subsidy size for each household, the type of disability being  
 25 alleged, if known, as well as the alleged reasons why a separate bedroom is required to  
 26 accommodate said disability.” ECF No. 85-1 at 4. This spreadsheet is Exhibit O in ECF No. 85-  
 27

1 1, filed with Defendants’ opposition to Plaintiffs’ motion for summary judgment.

2 In Plaintiffs’ reply, filed on March 31, 2016, Plaintiffs objected to Exhibit O and stated  
3 that the Exhibit had not been “produced during discovery, and should therefore be excluded.” Pls.  
4 Reply at 7 n.2. Plaintiffs further stated that “Plaintiffs’ counsel ha[d] not . . . been able to review  
5 the accuracy of the information contained therein, and could therefore be substantially prejudiced  
6 by inclusion of this evidence.” *Id.*

7 On May 10, 2016, the Court ordered the parties to prepare to “address the admissibility of  
8 Exhibit O in ECF No. 85-1” at the May 12, 2016 summary judgment hearing. ECF No. 101 at 1.  
9 Specifically, the Court asked the parties to discuss “(1) what evidence Defendants drew upon to  
10 produce Exhibit O, (2) whether this evidence was produced to Plaintiffs, and (3) how Exhibit O  
11 was created.” *Id.* at 1–2.

12 During the summary judgment hearing, Plaintiffs stated that Exhibit O had not been  
13 produced during discovery, did not include information on any of the named Plaintiffs, and  
14 inappropriately characterized Class Members’ reasonable accommodation requests. In response,  
15 Defendants conceded that Exhibit O relied upon some information that had never been produced  
16 to Plaintiffs, and that Defendants created and produced Exhibit O for the first time in March 2016.

17 Pursuant to Federal Rule of Civil Procedure 26(a), a party must provide the opposing party  
18 “a copy . . . of all documents . . . and tangible things that the disclosing party has in its possession,  
19 custody, or control and may use to supports its claims or defenses.” Fed. R. Civ. P. 26(a). This  
20 affirmative obligation continues throughout the course of litigation: under Federal Rule of Civil  
21 Procedure 26(e), “if [a] party learns that in some material respect the disclosure or response is  
22 incomplete or incorrect, and if the additional or corrective information has not otherwise been  
23 made known to the other parties during the discovery process,” then the disclosing party must  
24 “supplement or correct its disclosure or response in a timely manner.” Fed. R. Civ. P. 26(e)(1)(A).  
25 Federal Rule of Civil Procedure 37(c)(1) further provides that, “[i]f a party fails to provide  
26 information . . . as required by [Federal Rule of Civil Procedure] 26(a) or (e), the party is not  
27

1 allowed to use that information . . . on a motion, at a hearing, or at trial, unless the failure was  
 2 substantially justified or is harmless.” Fed. R. Civ. P. 37(c)(1). “Where the exclusion [of some  
 3 evidence] would not amount to dismissal of one or more of the plaintiff’s claims, a court need not  
 4 find that the failure to disclose was in bad faith before excluding [the evidence at issue].” *Jackson*  
 5 *Family Wines, Inc. v. Diageo N. Am., Inc.*, 2014 WL 104902, \*1 (N.D. Cal. Jan. 9, 2014).

6 Here, the information in Exhibit O does not fall within the “substantially justified” or  
 7 “harmless” exceptions. Defendants were on notice since at least March 31, 2016 of Plaintiffs’  
 8 objections to Exhibit O. Nonetheless, Defendants acknowledged at the May 12, 2016 summary  
 9 judgment hearing that Defendants did not look into whether all documents used to create Exhibit  
 10 O had been produced to Plaintiffs until after the Court’s May 10, 2016 order. Additionally, the  
 11 information contained in Exhibit O purports to document the reasonable accommodation requests  
 12 of many Class Members, with information on the family size, unit size, voucher size, and reason  
 13 behind the reasonable accommodation request. This information is critical to determining whether  
 14 Defendants handled each request on a case-by-case basis and thus whether Defendants violated  
 15 state and federal law. Defendants’ failure to produce documents used to create Exhibit O—even if  
 16 inadvertent—is not substantially justified and is not harmless. Fact discovery closed on January  
 17 15, 2016, expert discovery closed on March 25, 2016, cross-motions for summary judgment have  
 18 been fully briefed, and trial begins next month.

19 Accordingly, Plaintiffs’ objection to Exhibit O is SUSTAINED. The Court does not  
 20 consider Exhibit O in the instant Order. Moreover, Defendants may not use Exhibit O at the  
 21 pretrial conference or at trial. Any summary charts that Defendants intend to use at trial must rely  
 22 upon evidence that was timely produced during discovery.

### 23 **III. LEGAL STANDARD**

24 Summary judgment is appropriate if, viewing the evidence and drawing all reasonable  
 25 inferences in the light most favorable to the nonmoving party, there are no genuine issues of  
 26 material fact, and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a);  
 27

1 *Celotex Corp. v. Catrett*, 477 U.S. 317, 321 (1986). At the summary judgment stage, the Court  
 2 “does not assess credibility or weigh the evidence, but simply determines whether there is a  
 3 genuine factual issue for trial.” *House v. Bell*, 547 U.S. 518, 559–60 (2006). A fact is “material”  
 4 if it “might affect the outcome of the suit under the governing law,” and a dispute as to a material  
 5 fact is “genuine” if there is sufficient evidence for a reasonable trier of fact to decide in favor of  
 6 the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “If the  
 7 evidence is merely colorable, or is not significantly probative, summary judgment may be  
 8 granted.” *Id.* (citations omitted).

9 The moving party bears the initial burden of identifying those portions of the pleadings,  
 10 discovery, and affidavits that demonstrate the absence of a genuine issue of material fact. *Celotex*  
 11 *Corp.*, 477 U.S. at 323. Where the party opposing summary judgment will have the burden of  
 12 proof at trial, the party moving for summary judgment need only point out “that there is an  
 13 absence of evidence to support the nonmoving party’s case.” *Id.* at 325; accord *Soremekun v.*  
 14 *Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). If the moving party meets its initial  
 15 burden, the nonmoving party must set forth, by affidavit or as otherwise provided in Rule 56,  
 16 “specific facts showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 250.

#### 17 **IV. DISCUSSION**

18 Plaintiffs’ central contention in their summary judgment motion is that Defendants  
 19 “implemented a blanket policy, in practice if not in name, which denies all requests for reasonable  
 20 accommodation for an additional bedroom where a live in aid or medical equipment [is] not  
 21 involved,” in violation of the Fair Housing Amendments Act (“FHAA”), the Fair Employment and  
 22 Housing Act (“FEHA”), the California Disabled Persons Act (“CDPA”), Section 504 of the  
 23 Rehabilitation Act (“Section 504”), and the Americans with Disabilities Act (“ADA”). Pls. Mot.  
 24 at 18. Defendants’ summary judgment motion, on the other hand, is essentially a mirror image of  
 25 Plaintiffs’ motion, with Defendants arguing that their reasonable accommodation procedures did  
 26 not violate state and federal law. Def. Mot. at 11. In addition, Defendants claim that they did not  
 27

1 provide housing to Plaintiffs and thus can not be held liable under state and federal  
2 antidiscrimination law. *Id.* at 16–25.

3 Because Defendants have already raised—and the Court has already rejected—  
4 Defendants’ argument that the antidiscrimination laws do not apply to them, the Court turns first  
5 to the case’s central contention: whether Defendants implemented a blanket reasonable  
6 accommodation policy in violation of state and federal law.

7 As to Defendants’ reasonable accommodation policy, the parties agree that Defendants  
8 apply a two-step process to review Plaintiffs’ reasonable accommodation requests. First, “the  
9 amount of money given to Plaintiffs [i]s calculated by the same subsidy standard applied equally  
10 to both disabled and non-disabled households.” Def. Reply at 1. That subsidy standard provides  
11 one bedroom for the head of household and spouse or partner, and one bedroom for every two  
12 other residents regardless of age and gender. Def. Mot. at 6. After applying this disability-neutral  
13 subsidy standard, Defendants then reviews any reasonable accommodation requests that might  
14 have been filed. Def. Reply at 1.

15 According to Plaintiffs, Defendants must review every reasonable accommodation request  
16 on a case-by-case basis. Instead, however, Plaintiffs contend that Defendants apply a blanket  
17 uniform policy to deny each request, without considering the factual circumstances behind the  
18 request. On the other hand, Defendants aver that they do engage in a case-by-case review of every  
19 request. Additionally, Defendants state that, for each Class Member, Defendants determined that  
20 no nexus existed between the Class Member’s disability and the requested accommodation.

21 These positions implicate several factual and legal disputes. For purposes of clarity, the  
22 Court examines the parties’ arguments in two parts. First, the Court addresses whether, as a legal  
23 matter, Defendants’ alleged blanket reasonable accommodation policy violates state and federal  
24 law. Second, the Court addresses whether, as a factual matter, Defendants actually implemented  
25 such a policy.

26 **A. As Alleged, Defendants’ Blanket Reasonable Accommodation Policy Would Violate**  
27 **State and Federal Law**

1 The elements necessary to state a claim for disability discrimination under Plaintiffs’  
2 various causes of action are essentially identical. “To make out a claim of discrimination based on  
3 failure to reasonably accommodate” under the FHAA, for instance, “a plaintiff must demonstrate  
4 that (1) he suffers from a handicap as defined by the FHAA; (2) defendants knew or reasonably  
5 should have known of the plaintiff’s handicap; (3) accommodation of the handicap may be  
6 necessary to afford plaintiff an equal opportunity to use and enjoy the dwelling; and (4) defendants  
7 refused to make such accommodation.” *Giebeler v. M & B Assocs.*, 343 F.3d 1143, 1147 (9th Cir.  
8 2003) (internal quotation marks omitted).<sup>2</sup>

9 Similarly, “[a] *prima facie* case is established under the FEHA where the plaintiff shows  
10 that she is a member of a protected class, that she applied and was qualified for a housing  
11 accommodation, was denied such housing accommodation, and that similarly situated individuals  
12 not in a protected class applied for and obtained housing.” *McDonald v. Coldwell Banker*, 543  
13 F.3d 498, 503 (9th Cir. 2008).

14 The CDPA provides that “[a]ny person renting, leasing, or otherwise providing real  
15 property for compensation shall not refuse to make reasonable accommodation in rules, policies,  
16 practices, or services, when those accommodations may be necessary to afford individuals with a  
17 disability equal opportunity to use and enjoy the premises.” Cal. Civ. Code § 54.1(b)(3)(B). As  
18 courts have observed, “[t]his language closely parallels the language defining a ‘reasonable  
19 accommodation’ claim under the FEHA.” *Montano v. Bonnie Brae Convalescent Hosp., Inc.*, 79  
20 F. Supp. 3d 1120, 1132 (C.D. Cal. 2015).

21 Next, “[t]o prove a public program or service violates Title II of the ADA, a plaintiff must  
22 show: (1) he is a qualified individual with a disability; (2) he was either excluded from  
23 participation in or denied the benefits of a public entity’s services, programs or activities, or was  
24 otherwise discriminated against by the public entity; and (3) such exclusion, denial of benefits, or  
25

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26 <sup>2</sup> Although the FHAA employs the term “handicap” rather than “disability,” the “terms ‘handicap’  
27 and ‘handicapped’ [in the FHAA] have interchangeable meaning with ‘disability’ and ‘disabled’”  
as used in the ADA and Section 504. *Giebeler*, 343 F.3d at 1146 n.2.

1 discrimination was by reason of his disability.” *Weinreich v. Los Angeles Cnty. Metro. Transp.*  
 2 *Auth.*, 114 F.3d 976, 978 (9th Cir. 1997) (internal quotation marks omitted) (emphasis removed).

3 Finally, “under Section 504 of the Rehabilitation Act, a plaintiff must show: (1) he is an  
 4 individual with a disability; (2) he is otherwise qualified to receive the benefit; (3) he was denied  
 5 the benefits of the program solely by reason of his disability; and (4) the program receives federal  
 6 financial assistance.” *Id.* (internal quotation marks and footnote omitted) (emphasis removed).

7 To summarize, for each of the SAC’s substantive causes of action, Plaintiffs must—in  
 8 essence—establish (1) that Plaintiffs had a disability which Defendants knew or should have  
 9 known about, (2) that Plaintiffs made a reasonable accommodation request, and (3) that this  
 10 request was denied. There is no dispute as to the first and third requirements. The core legal  
 11 dispute thus relates to (2), the second requirement: whether Class Members’ request for a larger  
 12 subsidy for an additional bedroom is a reasonable accommodation.

13 Given the similarity between Plaintiffs’ causes of action, courts have generally held that  
 14 this reasonable accommodation requirement should be interpreted consistently across state and  
 15 federal antidiscrimination laws. *See, e.g., Giebeler*, 343 F.3d at 1149 (“[W]e have applied  
 16 [Section 504] regulations and case law when interpreting the FHAA’s reasonable accommodation  
 17 provisions.”); *id.* (“[W]e have relied on ADA cases in applying [Section 504], because, as a  
 18 general matter, there is no significant difference in the analysis or rights and obligations created by  
 19 the two Acts.”) (internal quotation marks omitted); *Montano*, 79 F. Supp. 3d at 1126 (“Many, if  
 20 not all, of plaintiff’s requested accommodations are ‘reasonable’ within the meaning of the  
 21 applicable statutes—the FHA[A], ADA, Rehabilitation Act, FEHA, and CDPA.”); *Oconomowoc*  
 22 *Residential Programs v. City of Milwaukee*, 300 F.3d 775, 783 (7th Cir. 2002) (“The requirements  
 23 for reasonable accommodation under the ADA are the same as those under the FHAA.”).

24 Both parties also agree that a single standard should govern Plaintiffs’ reasonable  
 25 accommodation claims. The parties cite *Giebeler v. M & B Associates*, where the Ninth Circuit  
 26 determined that “an accommodation is reasonable under the FHAA when it imposes no  
 27



1 fundamental alteration in the nature of the program or undue financial or administrative burdens.”  
 2 343 F.3d at 1157 (internal quotation marks omitted); *see* Def. Mot. at 13 (citing *Giebeler*); Pls.  
 3 Mot. at 11 (same). In light of the parties’ positions and in accord with Ninth Circuit precedent, the  
 4 Court shall not distinguish between Plaintiffs’ causes of action in determining whether  
 5 Defendants’ alleged blanket policy runs afoul of state and federal law. Instead, the Court shall  
 6 employ the standard set forth in *Giebeler*, with reference to other authority where appropriate.

7 *Giebeler* established a two part test to determine whether a particular accommodation  
 8 should be considered reasonable under the FHAA. First, a plaintiff must demonstrate causation:  
 9 “[p]laintiffs must show that, but for the accommodation, they likely will be denied an equal  
 10 opportunity to enjoy the housing of their choice.” 343 F.3d at 1155. “[W]ithout a causal link  
 11 between defendants’ policy and the plaintiff’s injury, there can be no obligation on the part of  
 12 defendants to make a reasonable accommodation.” *Id.* Next, a plaintiff must establish that the  
 13 requested accommodation was “reasonable”: a “reasonable” accommodation is one that “imposes  
 14 no fundamental alteration in the nature of the program or undue financial or administrative  
 15 burdens.” *Id.* at 1157 (internal quotation marks omitted). The Court addresses these prongs—  
 16 causation and reasonableness—in turn.

### 17 **1. Causation**

18 On causation, a plaintiff must “show that [an] alteration [to] a particular policy may be  
 19 necessary to her use and enjoyment of the property.” *Id.* at 1155 (internal quotation marks  
 20 omitted). “[E]qual opportunity is a key component” to this analysis: “an accommodation must be  
 21 possibly necessary to afford the plaintiff [an] *equal* opportunity to use and enjoy a dwelling” as a  
 22 non-disabled individual. *Id.* (emphasis added).

23 In *Giebeler*, for instance, plaintiff had AIDS and was no longer able to work. *Id.* at 1144.  
 24 “Once he was no longer earning a salary, his former apartment became too expensive for him. In  
 25 addition, he needed assistance with daily matters because of his illness and so wanted to live  
 26 closer to his mother.” *Id.* Plaintiff sought and found an available apartment, which was less  
 27

1 expensive than his former apartment. However, because plaintiff could not meet the necessary  
2 income requirements for this new apartment, plaintiff's mother offered to cosign on plaintiff's  
3 lease. "The owners of the apartment complex refused to rent either to Giebeler or to his mother,  
4 citing a management company policy against cosigners." *Id.* Plaintiff thereafter requested a  
5 reasonable accommodation to the cosigner policy on the basis of his disability. *Id.* at 1145. This  
6 request was denied, with defendants arguing that changing its cosigner policy "would (1) prefer  
7 disabled over nondisabled impecunious individuals; (2) accommodate Giebeler's poverty rather  
8 than his disability; and (3) increase M & B's financial exposure." *Id.* at 1148.

9 The Ninth Circuit rejected this argument and held that "the causal link between  
10 [defendants'] failure to accommodate and Giebeler's disability [was] obvious." *Id.* at 1155.  
11 "Giebeler was unemployed because of his disability and therefore had insufficient income to  
12 qualify for the apartment." *Id.* Allowing plaintiff's mother to cosign on an apartment lease was  
13 "necessary to enable Giebeler to live in [the] apartment at [issue]." *Id.* On the element of equal  
14 opportunity, the Ninth Circuit recognized that defendants' policy denied plaintiff "an opportunity  
15 for which he would otherwise be qualified." *Id.* at 1156. As the court observed, "Giebeler is  
16 similarly situated to other tenants at [the apartment complex] in terms of the financial resources he  
17 can bring to a tenancy at [the apartment complex]. It is [only] his way of demonstrating and  
18 deploying these resources that is different." *Id.*

19 In reaching its decision, the *Giebeler* court relied extensively upon the U.S. Supreme  
20 Court's decision in *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391 (2002). In *Barnett*, plaintiff, after  
21 injuring his back, had been "transferred to a less physically demanding mailroom position." *Id.* at  
22 394. However, under U.S. Airways' "seniority-based employee bidding" system, a more senior  
23 employee could, from time to time, bid for plaintiff's mailroom position. *Id.* Two employees  
24 senior to plaintiff did bid for plaintiff's position, and plaintiff sought an exception under the ADA  
25 to U.S. Airways' seniority requirements on the basis of his disability. *Id.*

26 U.S. Airways denied this request and argued that "the fact that an accommodation would  
27

1 violate the rules of a seniority system always shows that the accommodation is not a ‘reasonable’  
2 one.” *Id.* at 396. According to U.S. Airways, the ADA “seeks only ‘equal’ treatment for those  
3 with disabilities”—it does not “require an employer to grant preferential treatment.” *Id.* at 397.  
4 Hence, the ADA “does not require the employer to grant a request that, in violating a disability-  
5 neutral rule, would provide [such] a preference.” *Id.*

6 The U.S. Supreme Court rejected this reading. As the *Barnett* Court held, “preferences  
7 will sometimes prove necessary to achieve the [ADA’s] basic equal opportunity goal.” *Id.*  
8 Indeed, the ADA in fact “requires preferences in the form of ‘reasonable accommodations’ that  
9 are needed for those with disabilities to obtain the *same* workplace opportunities that those  
10 without disabilities automatically enjoy.” *Id.* (first emphasis added). Moreover, “any special  
11 ‘accommodation’ requires the employer to treat an employee with a disability differently, *i.e.*,  
12 preferentially.” *Id.* (emphasis added). Thus, “the fact that the difference in treatment violates an  
13 employer’s disability-neutral rule cannot by itself place the accommodation beyond the [ADA’s]  
14 potential reach.” *Id.*

15 To underscore this point, the *Barnett* Court drew attention to certain “neutral” rules, such  
16 as “[n]eutral office assignment rules [which] would automatically prevent the accommodation of  
17 an employee whose disability-imposed limitations require him to work on the ground floor” and  
18 “[n]eutral ‘break-from-work’ rules [which] would automatically prevent the accommodation of an  
19 individual who needs additional breaks from work.” *Id.* at 397–98. Reasonable accommodation  
20 provisions “could not accomplish” their “intended objective[s]” if the disabled were not given  
21 some form of “preferential treatment” to these otherwise neutral rules. *Id.* at 397.<sup>3</sup>

22 Consistent with *Giebler* and *Barnett*, in *McGary v. City of Portland*, 386 F.3d 1259, 1262

23  
24  
25 <sup>3</sup> Although *Barnett* addressed a claim brought under Title I of the ADA, which prohibits  
26 employment discrimination, and the instant Plaintiffs bring a claim under Title II, which prohibits  
27 discrimination in the provision of public services, that difference is immaterial in the reasonable  
accommodation context. See, e.g., *Wong v. Regents of Univ. of Cal.*, 192 F.3d 807, 816 n.26 (9th  
Cir. 1999) (applying same legal standards for reviewing reasonable accommodation claims  
brought under Title I, Title II, and Section 504).

1 (9th Cir. 2004), the Ninth Circuit rejected the argument that a plaintiff had “failed to allege he was  
2 denied the equal opportunity to ‘use and enjoy’ his dwelling[] since he was not denied use of his  
3 home or prohibited from living there.” The “equal opportunity” and “use and enjoy” elements, the  
4 *McGary* court noted, should be read “broad[ly].” *Id.* A disabled individual could bring a viable  
5 FHAA claim if a policy or program prevented that individual from using and enjoying a particular  
6 aspect of their home on an equal basis as a non-disabled individual. Thus, the *McGary* court held  
7 that imposing generally applicable fees without considering a reasonable accommodation request  
8 could constitute interference with the use and enjoyment of one’s home. *Id.* at 1263–64.  
9 Similarly, refusing to grant a disabled person additional time to clean up the person’s yard in order  
10 to comply with a city nuisance policy could also constitute interference. *Id.*

11 Other courts are in accord with the reasoning in *Giebelier*, *Barnett*, and *McGary*. Several  
12 courts, for example, have held that the FHAA—and, in particular, the “use and enjoy” and “equal  
13 opportunity” requirements—should be interpreted broadly. *See, e.g., Bentley v. Peace and Quiet*  
14 *Realty 2 LLC*, 367 F. Supp. 2d 341, 345 (E.D.N.Y. 2005) (“[T]he FHA[A] must be given a  
15 ‘generous construction’ in order to carry out ‘a policy that Congress considered to be of the  
16 highest priority.’”) (quoting *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 211–12 (1972)).

17 More to the point, in *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1226 (11th Cir.  
18 2008), the Eleventh Circuit observed that “[t]he word ‘equal’ is a relative term that requires a  
19 comparator to have meaning.” Within the FHAA context, “equal opportunity” means that  
20 “handicapped people must be afforded the same (or ‘equal’) opportunity to use and enjoy a  
21 dwelling as non-handicapped people, which occurs when accommodations address *the needs*  
22 *created by the handicaps.*” *Id.* “Thus, waiving an ordinance that applies to both handicapped and  
23 non-handicapped people may be ‘necessary’ to afford the handicapped an ‘equal opportunity’ if  
24 the waiver addresses a need created by the handicap.” *Id.*

25 Likewise, in *Anderson v. City of Blue Ash*, 798 F.3d 338, 361 (6th Cir. 2015), the Sixth  
26 Circuit held that “[e]qual use and enjoyment of a dwelling are achieved when an accommodation  
27

1 ameliorates the effects of the disability such that the disabled individual can use and enjoy his or  
2 her residence as a non-disabled person could.” Applying this principle, the Sixth Circuit  
3 concluded that a disabled plaintiff, who requested that she be allowed to have a miniature horse in  
4 her backyard as a service animal “to play and get exercise,” had plausibly shown causation. *Id.* at  
5 346, 362. Plaintiff’s accommodation, the Sixth Circuit reasoned, was “necessary for her to have  
6 an equal opportunity to enjoy a particular use of her house—independent recreation and exercise  
7 in her backyard.” *Id.* at 362.

8 In the instant case, Defendants apply a disability-neutral subsidy standard that allocates  
9 one bedroom for the head of household and spouse or partner, and one bedroom for every two  
10 other household members regardless of age or gender. This policy is applied to all voucher  
11 holders. Where there are voucher holders with a medically documented disability that requires a  
12 separate bedroom, then the disability-neutral subsidy standard, coupled with an alleged blanket  
13 policy, would deny disabled persons an equal opportunity to use and enjoy their homes.

14 For example, a three person family with two disabled family members who both have a  
15 medically-documented need for a separate bedroom would receive a two-bedroom subsidy  
16 allocation. By not providing the requested reasonable accommodation, one family member would  
17 have to sleep in the living room. On this point, federal regulations allow, but do not require,  
18 HACSC to consider a living area as a sleeping area. *See, e.g.*, 24 C.F.R. § 982.401(d)(2)(ii) (“The  
19 dwelling unit must [also] have at least one bedroom or living/sleeping room for each two  
20 persons.”). However, HACSC concedes that they do not require non-disabled households to use  
21 the living room as a sleeping area. *See* Def. Reply at 4 (“[O]nly if an accommodation request is  
22 made[] do Defendants consider a living area [as a sleeping area] for determining if more money is  
23 justified as an accommodation.”). Thus, Defendants’ disability-neutral subsidy standard, coupled  
24 with an alleged blanket denial policy, can deny certain disabled voucher holders an equal  
25 opportunity to use and enjoy their homes as compared to non-disabled voucher holders.

26 Defendants argue that an exception to this disability-neutral subsidy standard would create  
27

1 preferential treatment for disabled voucher holders, and that such preferential treatment is  
 2 impermissible. This argument was rejected by the U.S. Supreme Court in *Barnett*. As the *Barnett*  
 3 Court stated, “any special ‘accommodation’ requires the employer to treat an employee with a  
 4 disability differently, *i.e.*, preferentially.” 535 U.S. at 397. “[T]he fact that the difference in  
 5 treatment violates an employer’s disability-neutral rule cannot by itself place the accommodation  
 6 beyond the Act’s potential reach.” *Id.* “Were that not so, the ‘reasonable accommodation’  
 7 provision could not accomplish its intended objective.” *Id.* Accordingly, in *Barnett*, the U.S.  
 8 Supreme Court held that an employee could be provided preferential treatment so that his  
 9 disability-related needs could trump an employer’s otherwise neutral seniority bidding rules. Such  
 10 preferential treatment may be necessary to further the purpose of antidiscrimination laws.

11 The Ninth Circuit applied this principle in both *McGary* and *Giebeler*. In *McGary*, the  
 12 Ninth Circuit held that a homeowner could be granted preferential treatment so that his disability-  
 13 related needs would allow him extra time to comply with a city’s otherwise neutral nuisance  
 14 abatement policy. In *Giebeler*, the Ninth Circuit held that a prospective tenant could request an  
 15 exception from an otherwise neutral policy against cosigners.

16 Here, Plaintiffs’ request that, after undertaking a case-by-case review, Defendants provide  
 17 an exception to Defendants’ otherwise neutral subsidy standard policy in order to afford Plaintiffs  
 18 an equal opportunity to use and enjoy their homes. Defendants’ alleged decision to instead act on  
 19 a blanket and classwide basis does not allow for the individualized analysis of equal use and  
 20 enjoyment that may be necessary under *Barnett*, *McGary*, and *Giebeler*. Thus, Plaintiffs have  
 21 shown “that [an] alteration [to] a particular policy may be necessary to her use and enjoyment of  
 22 the property.” *Id.* at 1155 (internal quotation marks omitted). Accordingly, the Court finds that  
 23 the causation requirement has been met.

## 24 2. Reasonableness

25 The Court turns next to the reasonableness requirement. On this point, the Court requested  
 26 in its May 10, 2016 order that the parties answer whether, “as a purely legal matter—a  
 27



1 hypothetical blanket reasonable accommodation policy where all requests for a larger subsidy are  
 2 denied without consideration of a disabled individual's fact-specific circumstances would violate  
 3 state and federal antidiscrimination law." ECF No. 101 at 1.

4 Defendants answered in the negative. ECF No. 102. As Defendants stated, "[t]he  
 5 individual's fact-specific circumstances are *irrelevant* so long as Defendants may consider a living  
 6 area as a sleeping area, consistent with federal regulations, when processing accommodation  
 7 requests." ECF No. 102 at 2 (emphasis added). Defendants continued, "[i]f the living area may  
 8 be considered a sleeping area . . . , then more money from the Voucher Program is not required . . .  
 9 *whether or not* there is *any* question as to the existence of the disability, the need for the room, or  
 10 whether the need can be met in another way." *Id.* (emphasis added).

11 This legal statement does not comport with Ninth Circuit precedent. In *Wong v. Regents of*  
 12 *University of California*, 192 F.3d 807 (9th Cir. 1999), the Ninth Circuit stated that "[b]ecause the  
 13 issue of reasonableness depends on the individual circumstances of each case, this determination  
 14 *requires a fact-specific, individualized analysis of the disabled individual's circumstances* and the  
 15 accommodations that might allow him to meet the program's standards." *Id.* at 818 (emphasis  
 16 added). "Mere speculation that a suggested accommodation is not feasible falls short of the  
 17 reasonable accommodation requirement; [state and federal law] create a duty to gather sufficient  
 18 information from the disabled individual and qualified experts as needed to determine what  
 19 accommodations are necessary to enable the individual to meet the standards in question." *Id.*  
 20 (internal quotation marks and alteration omitted).

21 Two years later, in *Duvall v. County of Kitsap*, 260 F.3d 1124, 1139 (9th Cir. 2001), the  
 22 Ninth Circuit again held that public entities must "undertake a fact-specific investigation to  
 23 determine what constitutes a reasonable accommodation." In *Humphrey v. Memorial Hospitals*  
 24 *Association*, 239 F.3d 1128, 1137 (9th Cir. 2001), the Ninth Circuit further stated that "[o]nce an  
 25 employer becomes aware of the need for accommodation, that employer has a mandatory  
 26 obligation under the ADA to engage in an interactive process with the employee to identify and  
 27



1 implement [an] appropriate reasonable accommodation.”<sup>4</sup> “The interactive process requires  
 2 communication and good-faith exploration of possible accommodations between employers and  
 3 individual employees.” *Id.* Those “who fail to engage in the interactive process in good faith[]  
 4 face liability for the remedies imposed by the statute if a reasonable accommodation would have  
 5 been possible.” *Id.* at 1137–38.

6 Consistent with *Humphrey*, the Ninth Circuit in *Allen v. Pacific Bell*, 348 F.3d 1113, 1115  
 7 (9th Cir. 2003) (per curiam), determined that “[e]ven if [a plaintiff] was not qualified to perform a  
 8 [certain] job with reasonable accommodation, [a defendant] still ha[s] a duty to engage in an  
 9 interactive process to consider whether an alternative accommodation . . . would be possible.”

10 More recently, in *Dark v. Curry County*, 451 F.3d 1078, 1088 (9th Cir. 2006), the court  
 11 held that a plaintiff “has the burden of showing the existence of a reasonable accommodation that  
 12 would have enabled him to perform the essential functions of an available job.” “To avoid  
 13 summary judgment,” a plaintiff “need only show that an accommodation seems reasonable on its  
 14 face, i.e., ordinarily or in the run of cases.” *Id.* (internal quotation marks omitted) (emphasis  
 15 removed). U.S. Circuit Judge Diarmuid O’Scannlain, writing for the court, also emphasized that  
 16 “our cases make clear that [defendants bear] an affirmative obligation to engage in an interactive  
 17 process in order to identify, if possible, a reasonable accommodation” for a plaintiff. *Id.*

18 Taken together, these cases contradict Defendants’ position that an “individual’s fact-  
 19 specific circumstances are irrelevant.” ECF No. 102 at 1. These cases instead demonstrate that a  
 20 public entity such as HACSC must undertake a fact-specific, case-by-case review of each  
 21 reasonable accommodation request. If, after conducting such a review, the entity determines that  
 22 some accommodation may be necessary, the entity may need to then engage in an interactive  
 23 process to determine what accommodation to provide. Likewise, after conducting an  
 24 individualized review, the entity may also determine that the requested accommodation is not

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25  
 26 <sup>4</sup> As noted in footnote 3, courts—including the Ninth Circuit—routinely rely upon employment  
 27 discrimination cases to interpret the reasonable accommodation requirement in the housing  
 28 context.

1 needed. Pursuant to this principle, if—as Plaintiffs allege—Defendants implemented a blanket  
 2 reasonable accommodation policy where all requests for a larger subsidy were denied without any  
 3 consideration of an individual’s fact-specific circumstances, then Defendants would have violated  
 4 state and federal antidiscrimination law.

5 Consequently, Plaintiffs’ motion for summary judgment on the legal issue of whether  
 6 Defendants’ alleged blanket policy violates state and federal law is GRANTED. Defendants’  
 7 motion for summary judgment on this legal issue is therefore DENIED.

8 **B. There is a Genuine Dispute of Material Fact As to Whether Defendants Implemented**  
 9 **a Blanket Policy**

10 Plaintiffs also contend that, as a factual matter, Defendants implemented a blanket  
 11 reasonable accommodation policy. Instead of conducting an individual review, Plaintiffs argue  
 12 that Defendants “categorically refus[ed] to grant reasonable accommodations to the class.” Pls.  
 13 Mot. at 15. On the other hand, Defendants claim that they conducted an individualized assessment  
 14 of each request and determined that there was no nexus between the request and the alleged  
 15 disability.

16 In support of their position, Plaintiffs note that, between July 15, 2013 and December 31,  
 17 2015, there were “215 total requests for reasonable accommodation for a separate bedroom” by  
 18 the Class. *Id.* at 18. All 215 of these requests were denied. *Id.* at 19. As an example, HACSC  
 19 denied Gomes’s request for a third bedroom even though both Gomes and one of her two sons are  
 20 disabled and have a documented need for their own bedrooms. Plaintiffs allege that HACSC’s  
 21 decision required that Gomes sleep in her living room while her two sons sleep in the two  
 22 bedrooms. As stated above, HACSC does not required non-disabled households to use the living  
 23 room as a sleeping area.

24 Moreover, “[i]n denying accommodations for an extra bedroom, HACSC routinely sent  
 25 nearly identical denial letters with little to no customization.” *Id.* Finally, Plaintiffs cite  
 26 deposition testimony which allegedly demonstrates that “HACSC’s administration of the  
 27 reasonable accommodation policy is perfunctory and mechanical.” *Id.* at 16. Defendants dispute

1 these claims and have presented deposition testimony and other evidence in support of their  
2 position.

3 In adjudicating motions for summary judgment, the Court “does not assess credibility or  
4 weigh the evidence, but simply determines whether there is a genuine factual issue for trial.”  
5 *House*, 547 U.S. at 559–60. With this standard in mind, the Court finds summary judgment  
6 inappropriate as to whether Defendants actually implemented a blanket reasonable  
7 accommodation policy.

8 A jury could find that Defendants addressed the named Plaintiffs’ reasonable  
9 accommodation requests in a case-by-case manner. For example, Huynh made a reasonable  
10 accommodation request and subsequently received a letter denying his request. Huynh thereafter  
11 requested an administrative hearing, and submitted evidence in support of his need for an  
12 additional bedroom to the hearing officer. At the hearing, HACSC officer Karen Goodman  
13 upheld the denial of Huynh’s request, discussed Huynh’s disability-related needs, and determined  
14 that a larger subsidy was not necessary. Huynh requested that Goodman’s decision be reversed,  
15 and in response HACSC sent Huynh a lengthy letter explaining why Huynh’s request was denied.  
16 ECF No. 81-12. The other named Plaintiffs also requested and received informal hearings from  
17 HACSC. A jury could find that Plaintiffs’ reasonable accommodation requests received case-by-  
18 case, fact-specific review.

19 Likewise, the fact that Defendants used standard rejection letters may be consistent with  
20 Defendants’ explanation that Defendants sought to provide a consistent message to those making  
21 reasonable accommodation requests. Def. Opp’n at 22.

22 Finally, Plaintiffs overextend the deposition testimony at issue. Plaintiffs, for instance,  
23 state that during HACSC Executive Director Katherine Harasz’s (“Harasz”) deposition, Harasz  
24 “was able to take basic information reciting the family composition and documented disability and  
25 determine that there [was] no nexus . . . [and that] the other family members c[ould] rearrange to  
26 accommodate the family member with the disability.” Pls. Mot. at 16–17. However, a closer  
27

1 examination of Harasz’s testimony reveals that Harasz appears to have been referring to an  
 2 October 29, 2013 email that Harasz’s colleague, Aleli Sangalang, sent to Jesse Webster  
 3 (“Webster”), a HUD official. ECF No. 81-2 at 142–43. In this email, Sangalang sought  
 4 Webster’s advice on whether certain reasonable accommodation requests should be granted or  
 5 denied. ECF No. 81-15. Each of the examples listed in the email appears to refer to an actual  
 6 request. Under these circumstances, a jury could find that Defendants engaged in the requisite  
 7 individualized, case-by-case analysis.

8 Defendants have also submitted deposition transcripts where HACSC employees  
 9 emphasized that HACSC does not “have a policy that denies reasonable accommodations for  
 10 additional bedrooms if not every member of the family has a disability,” ECF No. 85-1 (Exh. B at  
 11 35). Several employees referred to the DANCE Procedure, which HACSC employee Dora  
 12 Foppiano described as follows:

13 DANCE is, first of all, determining if the person has a disability; whether or not—  
 14 how the disability is related to the accommodation that they requested or whether  
 15 or not there is a nexus; if there is a need; if there is any cost involved; and whether  
 or not it fundamentally changes the nature of our program.

16 ECF No. 85-1 (Exh. E) at 22–23.

17 In light of the above evidence, a genuine dispute of material fact exists concerning whether  
 18 Defendants implemented a blanket reasonable accommodation policy. Accordingly, Plaintiffs’  
 19 motion for summary judgment as to whether Defendants actually implemented a blanket  
 20 reasonable accommodation policy is DENIED. Defendants’ motion for summary judgment as to  
 21 this same issue is also DENIED.

### 22 **C. Defendants are Subject to State and Federal Antidiscrimination Laws**

23 The Court turns finally to whether various state and federal antidiscrimination laws apply  
 24 to Defendants. As noted above, Defendants made these same arguments in their motion to  
 25 dismiss. The Court found them to be without merit at that time, and these arguments remain  
 26 without merit.

1           **1. FHAA**

2           In moving to dismiss the original complaint, Defendants asserted that “the FHAA does not  
3 apply to them because ‘Defendants are not offering dwellings for rent, but [are] instead allocating  
4 federal money to [Huynh].’” MTD Order at 7 (quoting Mot. to Dismiss at 6). “Defendants  
5 focus[ed] on the definition and use of the term ‘dwelling’ in the FHAA, arguing that they do not  
6 own any dwellings at issue.” *Id.* In making this argument, Defendants relied upon two cases:  
7 *Growth Horizons, Inc. v. Delaware County*, 983 F.2d 1277 (3d Cir. 1993), and *Michigan*  
8 *Protection and Advocacy Service, Inc. v. Babin*, 18 F.3d 337 (6th Cir. 1994).

9           However, as the Court explained, “neither case reaches as far as Defendants propose.”  
10 MTD Order at 7. Indeed, “the facts in *Growth Horizon[s]* bear little resemblance to [the] denial of  
11 a Section 8 voucher.” *Id.* at 8. In *Growth Horizons*, the Third Circuit was concerned with  
12 whether and to what extent a PHA could exercise discretion in buying or leasing housing from a  
13 third-party developer. There are no such third-party developers in the instant case. Instead, in the  
14 instant case, Defendants provide housing vouchers directly to Plaintiffs, and Plaintiffs allege that  
15 Defendants violated the FHAA by denying, through a blanket policy, Plaintiffs’ requests for a  
16 larger housing subsidy. In addition, *Growth Horizons* “dealt only with § 3604(f)(1) [of the  
17 FHAA], which prohibits actions that ‘otherwise make unavailable or deny’ housing.” *Id.*  
18 However, Plaintiffs here have also pleaded “violations of § 3604(f)(2) [of the FHAA], which  
19 prohibits discrimination ‘in the provision of services or facilities in connection with such  
20 dwelling.’” *Id.* “Defendants have not explained why administration of housing vouchers cannot  
21 qualify as ‘provision of services . . . in connection with’ a dwelling.” *Id.*

22           On *Babin*, the Court characterized Defendants’ reliance on the case as “misplaced.” *Id.* at  
23 9. “*Babin* rejected the claim that buying a house constitutes discrimination merely because it  
24 prevents use of that house for the disabled.” *Id.* “That situation,” the Court emphasized, “bears *no*  
25 resemblance to HACSC’s administration of Section 8 housing vouchers.” *Id.* (emphasis added).  
26 Moreover, certain passages in *Babin* “actually suggest[] that government agencies (such as  
27

1 HACSC) might fall within the ambit of the FHAA if they interfere with availability of housing for  
2 the disabled, despite not owning housing.” *Id.* at 10.

3 Accordingly, instead of relying upon *Growth Horizons* and *Babin*, the Court found more  
4 persuasive the FHAA’s text, which appears to directly “contradict Defendants’ position.” *Id.* at 7.  
5 The Court also discussed the Ninth Circuit’s decision in *Burgess v. Alameda Housing Authority*,  
6 98 F. App’x 603 (9th Cir. 2004), where the Ninth Circuit “allowed a Section 8 voucher recipient  
7 to proceed on her FHAA claims that the Alameda Housing Authority unlawfully refused to  
8 approve her second voucher extension because of a disability.” MTD Order at 10. Finally, the  
9 Court cited cases where “a local government’s use of zoning ordinances . . . [were found to be]  
10 subject to the FHAA” as an illustration of the FHAA’s broad reach. *Id.*

11 In the instant motions, Defendants once again argue that “there is no evidence that  
12 Defendants ever provided any ‘dwelling’ to Plaintiffs or indirectly made any ‘dwelling’  
13 unavailable.” Def. Mot. at 18. These arguments fail on several grounds. First, Defendants’  
14 position is premised upon the holdings of three cases: *Growth Horizons*, *Babin*, and a third case,  
15 *Taylor v. The Housing Authority of New Haven*, 267 F.R.D. 36 (D. Conn. 2010). As the Court has  
16 explained, both *Growth Horizons* and *Babin* are distinguishable. Furthermore, *Taylor* lends no  
17 weight to Defendants’ argument. In *Taylor*, the district court noted “that no court [appears to have  
18 directly] addressed the question of whether the Fair Housing Act or its Amendments apply to the  
19 conduct of a public housing authority acting *not* as a dwelling owner (i.e., in the context of low  
20 income public housing), but instead as a provider of funds for use in renting privately-owned  
21 dwellings (i.e., in the context of administering a Section 8 Program).” 267 F.R.D. at 48.  
22 Nonetheless, the *Taylor* court, citing the Ninth Circuit’s *Burgess* decision, acknowledged that  
23 “[s]ome courts have [gone ahead and] addressed the merits of such claims.” *Id.* Consistent with  
24 these decisions, the *Taylor* court would “assume the applicability of . . . the FHAA” because the  
25 FHAA “states an extremely broad governmental policy—to provide, within constitutional  
26 limitations, for fair housing throughout the United States—that would be furthered by preventing  
27

1 public housing authorities administering Section 8 voucher programs from discriminating on the  
 2 basis of disability.” *Id.* at 49 (internal quotation marks and citation omitted). Thus, in accord with  
 3 this Court, *Taylor* found that entities such as HACSC could be held liable under the FHAA. *Id.*

4 Second, under the law of the case doctrine, “a court is generally precluded from  
 5 reconsidering an issue that has already been decided by the same court.” *United States v.*  
 6 *Alexander*, 106 F.3d 874, 876 (9th Cir. 1997). A court may depart from the law of the case where  
 7 “1) the first decision was clearly erroneous; 2) an intervening change in the law has occurred; 3)  
 8 the evidence on remand is substantially different; 4) other changed circumstances exist; or 5) a  
 9 manifest injustice would otherwise result.” *Id.* “Failure to apply the doctrine of the law of the  
 10 case absent one of the[se] requisite conditions constitutes an abuse of discretion.” *Id.*

11 None of these exceptions apply in the instant case. First, the Court’s Motion to Dismiss  
 12 Order was not clearly erroneous. Second, there have been no intervening changes in the law:  
 13 *Growth Horizons*, *Babin*, and *Taylor* were all out of circuit cases that were decided in 1993, 1997,  
 14 and 2010, respectively. Third, the instant case has not been remanded. Fourth, there has been no  
 15 change in factual circumstances. Defendants did not then and do not now challenge the following  
 16 factual allegations: that Plaintiffs received a subsidy standard based on their bedroom allocation,  
 17 that Plaintiffs made a reasonable accommodation request on the basis of their disabilities, and that  
 18 Plaintiffs’ requests were denied. Finally, the Court finds that manifest injustice would not result.

19 Defendants nonetheless claim that the law of the case does not apply “because the legal  
 20 standards governing motions to dismiss and motions for summary judgment are entirely distinct.”  
 21 Def. Reply at 10. Although Defendants are correct that the “law of the case” doctrine does not, in  
 22 many circumstances, “preclude a district court from granting summary judgment based on  
 23 evidence after denying a motion to dismiss based only on the plaintiff’s allegations,” *Maraschiello*  
 24 *v. City of Buffalo Police Dep’t*, 709 F.3d 87, 97 (2d Cir. 2013), this general rule does not apply  
 25 here. As other courts have noted, the law of the case “addresses *legal issues* decided by a court.”  
 26 *Rebel Oil Co., Inc. v. Atl. Richfield Co.*, 957 F. Supp. 1184, 1195 (D. Nev. 1997). If no factual  
 27



1 issues have changed between the initial decision and the instant motion, “the law of the case is still  
2 applicable.” *Bollinger v. Oregon*, 172 F. App’x 770, 771 (9th Cir. 2006).

3 Here, whether or not Defendants offer dwellings for rent is a legal issue that turns upon the  
4 interpretation of the FHAA. Moreover, Defendants have never before and do not now dispute the  
5 basic framework of the Section 8 program. Given the parties’ agreement over how the Section 8  
6 Program works, Defendants have provided no reason why the law of the case doctrine should not  
7 apply on an issue of legal interpretation.

8 As a final point, Defendants have at no time since the Court’s Motion to Dismiss Order  
9 filed a motion for leave to file a motion for reconsideration pursuant to Civil Local Rule 7-9. Such  
10 a motion would have been the proper procedural vehicle for Defendants to seek review of the legal  
11 conclusions set forth in the Court’s Motion to Dismiss Order. Instead of filing such a motion,  
12 Defendants allowed Plaintiffs to file the FAC and the SAC, with both complaints based on the  
13 same core legal theories set forth in the original complaint.

14 In sum, Defendants’ arguments as to the FHAA were unavailing when Defendants’ moved  
15 to dismiss the original complaint, and they remain unavailing today.

## 16 2. FEHA

17 As to Plaintiffs’ FEHA claim, Defendants contend that “Plaintiffs’ claim . . . fails due to  
18 Plaintiffs’ inability to demonstrate that Defendants qualify as [property] ‘owners’ sufficient to  
19 impute liability pursuant to Section 12955(a)” of the FEHA. Defendants raised this same  
20 contention in moving to dismiss the original complaint, *see* Mot. to Dismiss at 9 (“This claim fails  
21 because Plaintiff has not alleged . . . that Defendants are ‘owners of any housing  
22 accommodation.’”), which the Court considered and rejected, MTD Order at 11–12.

23 As the Court pointed out, the FEHA’s definition of “owner” includes “the lessee,  
24 sublessee, assignee, managing agent, real estate broker or salesperson, or any person having any  
25 legal or equitable right of ownership or possession or the right to rent or lease housing  
26 accommodations, *and includes the state and any of its political subdivisions and any agency*  
27

1 *thereof.*” *Id.* at 11 (quoting Cal. Gov’t Code § 12927(e)). Moreover, the Ninth Circuit has held on  
 2 numerous occasions that the “FEHA provides at least as much protection to the disabled as the  
 3 FHAA does.” *Id.* at 11; *see also Walker v. City of Lakewood*, 272 F.3d 1114, 1131 n.8 (9th Cir.  
 4 2001) (“[W]e apply the same standards to FHA[A] and FEHA claims.”).

5 In the instant motions, Defendants rely upon a single new case, *Inland Mediation Board v.*  
 6 *City of Pomona*, 158 F. Supp. 2d 1120 (C.D. Cal. 2001), which Defendants contend “makes clear  
 7 that, absent evidence demonstrating Defendants’ status as ‘owners’ within the context of the  
 8 FEHA, Plaintiffs cannot . . . demonstrate liability under this statute.” Def. Reply at 12.

9 Defendants’ reliance upon *Inland Mediation* is misplaced. The Section 8 program was not  
 10 at issue in *Inland Mediation*, and the *Inland Mediation* plaintiffs did not allege disability  
 11 discrimination. Instead, a group of landlords had joined together to form a neighborhood  
 12 association to select more “desirable tenants.” 158 F. Supp. 2d at 1129. At some point, a City  
 13 Council member began attending these meetings, and helped put the group in touch with city  
 14 officials and police officers. During various meetings, the group director advocated that landlords  
 15 “g[et] rid of all the Black[] [tenants]” because these tenants brought “problems relating to drugs”  
 16 and “crime.” *Id.* at 1132. Plaintiffs thereafter filed suit against the group director and the City  
 17 under the FHAA, the FEHA, and various other state and federal laws. As to the FEHA claims, the  
 18 City argued that it was not a housing “owner” and was “therefore not subject” to the FEHA. *Id.* at  
 19 1150. Plaintiffs agreed, and conceded that “they [were] not pursuing their [FEHA] claims . . .  
 20 against the City.” *Id.* Accordingly, the *Inland Mediation* court granted summary judgment for the  
 21 City on plaintiffs’ FEHA claim.

22 In *Inland Mediation*, the City did not provide housing vouchers to plaintiffs, and appeared  
 23 to only assist the group director from time to time on discrete initiatives. On the other hand, in the  
 24 instant case, HACSC determines the bedroom allocation for each Class Member, distributes  
 25 vouchers pursuant to this allocation, and reviews each Class Members’ reasonable accommodation  
 26 request. HACSC thus has a more direct role in determining the housing benefits accorded to Class  
 27

1 Members. The holding in *Inland Mediation* does not, therefore, compel the Court to depart from  
2 its decision in the Motion to Dismiss Order.

3 Moreover, the *Inland Mediation* court did not discuss § 12955.6 of the FEHA, which  
4 provides that “[n]othing in this part shall be construed to afford to the classes . . . fewer rights or  
5 remedies than the federal Fair Housing Amendments Act . . . and its implementing regulations.”  
6 Cal. Gov’t Code § 12955.6. In interpreting this section, the Ninth Circuit has held, on several  
7 occasions, that the “same standards” apply to FHAA and FEHA claims, and that a viable FHAA  
8 claim is also a viable FEHA claim. *Pac. Shores Properties, LLC v. City of Newport Beach*, 730  
9 F.3d 1142, 1156 n.14 (9th Cir. 2013); *Walker*, 272 F.3d at 1131 n.8. As the Court has explained,  
10 Defendants are subject to the FHAA. Accordingly, under § 12955.6 of the FEHA, Defendants are  
11 also subject to the FEHA.

### 12 3. CDPA

13 As to the CDPA, Defendants contend that “there is no evidence that Defendants qualify as  
14 persons renting, leasing or otherwise providing real property for compensation.” Def. Opp’n at  
15 16. Again, the Court rejected these arguments in the Motion to Dismiss Order. As the Court  
16 noted, “Defendants cite[d] no legal authority [in their motion to dismiss] holding that Public  
17 Housing Agencies that administer Section 8 vouchers are exempt from § 54.1(b)(3)(B), or from  
18 the CDPA more generally.” MTD Order at 13. Moreover, “Defendants [do] receive  
19 compensation (in the form of funding) from the federal government to provide housing vouchers  
20 to Huynh and other low-income residents.” *Id.*

21 In the instant motions, Defendants continue to provide no legal authority to support their  
22 position. In fact, Defendants have repeated verbatim the arguments Defendants previously made  
23 in their motion to dismiss. *Compare* Mot. to Dismiss at 11 (“Plaintiff has failed to allege that . . .  
24 Defendants qualify as persons renting, leasing, or otherwise providing real property for  
25 compensation.”) (internal quotation marks and alteration omitted), *with*, Def. Opp’n at 16  
26 (“[T]here is no evidence that Defendants qualify as persons renting, leasing or otherwise providing  
27

1 real property for compensation.”). As before, Defendants’ arguments regarding CDPA liability  
2 are unavailing.

#### 3 **4. Section 504**

4 Next, Defendants contend that Plaintiffs’ Section 504 claim fails because “Plaintiffs and  
5 the Class continue to receive housing subsidies in accordance with the Voucher Program, albeit  
6 reduced subsidies, just like every other Voucher Program participant.” *Id.* at 22; *see also id.*  
7 (“Plaintiffs and the Class remain participants of the Voucher Program, and . . . continue to  
8 maintain meaningful access to its benefits.”). Once again, Defendants raised—and the Court  
9 rejected—these arguments in adjudicating Defendants’ motion to dismiss.

10 Indeed, Defendants continue to rely upon *Alexander v. Choate*, 469 U.S. 287 (1985), and  
11 *Wright v. Giuliani*, 230 F.3d 543 (2d Cir. 2000), two cases which the Court discussed in the  
12 Motion to Dismiss Order. MTD Order at 15–17. As the Court remarked, “[i]n *Alexander* and  
13 *Wright*, the plaintiffs requested extra services that defendants did not provide to non-disabled  
14 people.” *Id.* at 16. In this case, however, Plaintiffs “request[] a modification of Defendants’  
15 voucher policy, as part of the existing Section 8 program, to accommodate [their] disabilit[ies].”  
16 *Id.* “To win on the merits of [Plaintiffs’] claim, [Plaintiffs] will need to show that [their] request is  
17 a reasonable modification of Defendants’ administration of the Section 8 program.” *Id.* Plaintiffs  
18 do not, in short, request the sort of extra services at issue in *Alexander* and *Wright*.

19 In lieu of repeating the Court’s reasoning from the Motion to Dismiss Order, the Court  
20 focuses instead on Defendants’ reliance upon *Taylor v. The Housing Authority of New Haven*, a  
21 case also discussed above. According to Defendants, “when defining the ‘benefits’ afforded by  
22 the Voucher Program,” the *Taylor* court “expressly excluded the ‘provision of housing.’” Def.  
23 Mot. at 18. That holding, Defendants argue, precludes Plaintiffs from seeking Section 504 relief.

24 Defendants have read *Taylor* out of context. The *Taylor* plaintiffs brought suit against the  
25 Housing Authority of New Haven (“HANH”) because HANH allegedly “fail[ed] to provide them  
26 ‘mobility counseling’ to assist them in searching for, finding, applying for, and moving into  
27

1 disabled-accessible housing” and “fail[ed] to furnish them with a list of available accessible units.”  
2 267 F.R.D. at 39. After a bench trial, the *Taylor* court concluded that plaintiffs had failed to  
3 demonstrate Section 504 liability. *Id.* Specifically, the district court stated “that the Section 8  
4 Program’s benefit consists of the voucher, housing assistance payments, and, upon request, lease  
5 negotiation.” *Id.* at 58. “[T]he program’s benefit does not include search assistance, [the  
6 provision of] housing, or a guarantee of suitable housing.” *Id.* The *Taylor* plaintiffs’ claims,  
7 however, related to “search assistance,” as plaintiffs asserted that HANH had failed to help them  
8 find disability-accessible housing. Such requests for relief, the district court reasoned, did not fall  
9 within the ambit of “benefits” encompassed by the Section 8 program. *See, e.g., id.* (“While  
10 HANH may help its Section 8 participants participate in the private housing market, the benefit—  
11 the very purpose—of the Section 8 Program is to provide recipients financial assistance necessary  
12 for them to participate in the private housing market.”).

13 Unlike the *Taylor* plaintiffs, Plaintiffs here do not ask for help searching for housing.  
14 Instead, Plaintiffs request that their subsidies be modified to accommodate their disabilities.  
15 Plaintiffs’ request thus relates directly to the amount of their “housing assistance payments,” a  
16 category the *Taylor* court listed as a “benefit” of the Section 8 program. *See id.* (“[T]he Section 8  
17 Program’s benefit consists of the voucher, housing assistance payments, and, upon request, lease  
18 negotiation.”).

19 In support of this particular interpretation, the *Taylor* court appeared to discuss a  
20 reasonable accommodation request for an extra bedroom as a “benefit” under the Section 8  
21 program. *Id.* at 63 (“Many disabled voucher-holders sought, as a reasonable accommodation, an  
22 allowance in their vouchers for an extra bedroom . . . The evidence shows that these requests were  
23 generally granted after HANH received verification from the participant’s physician of the  
24 participant’s medical need.”). Defendants’ handling of analogous reasonable accommodation  
25 requests is the exact point of contention in the instant case. Thus, if anything, *Taylor* weighs in  
26 favor of Plaintiffs, not Defendants.

1 Accordingly, Defendants' reliance upon *Taylor, Alexander, and Wright* is inapposite, and  
2 Defendants remain subject to Section 504 of the Rehabilitation Act.

### 3 5. ADA

4 Turning finally to Plaintiffs' ADA claim, Defendants state that "[I]ability under the ADA  
5 is contingent on the disabled plaintiff's ability to prove that he was either excluded from  
6 participation in or denied the benefits of a public entity's services, programs or activities, or was  
7 otherwise discriminated against by the public entity." Def. Reply at 14. According to Defendants,  
8 "Plaintiffs do not meet this requirement because they each participate in and [continue to] receive  
9 benefits from the [Section 8] Program." *Id.*

10 These arguments essentially repeat Defendants' Section 504 contentions, and were  
11 previously rejected by the Court. *See* MTD Order at 18. As the Court noted, "'Title II of the  
12 ADA must be interpreted in a manner consistent with Section 504' of the Rehabilitation Act." *Id.*  
13 (quoting *McGary v. City of Portland*, 386 F.3d at 1269 n.7); *see also Vinson v. Thomas*, 288 F.3d  
14 1145, 1152 n.7 (9th Cir. 2002) ("We examine cases construing claims under the ADA, as well as  
15 section 504 of the Rehabilitation Act, because there is no significant difference in the analysis of  
16 rights and obligations created by the two Acts."). In the instant motions, Defendants cite no case  
17 law that would compel a different result from the Motion to Dismiss Order. Thus, consistent with  
18 that Order, Defendants' ADA arguments remain unavailing.

19 Defendants' motion for summary judgment as to whether the FHAA, the FEHA, the  
20 CDPA, Section 504, and the ADA apply to them is therefore DENIED. As a concluding point, for  
21 all of these causes of action, Defendants have in the instant motions used the same language and  
22 the same case law to re-raise arguments that the Court has already rejected. Defendants failed to  
23 file a motion for reconsideration and a summary judgment motion is not the appropriate vehicle to  
24 re-raise rejected arguments. Going forward, the Court asks Defendants to be mindful of the  
25 limited resources of the Court and the parties.

### 26 V. CONCLUSION

1 For the foregoing reasons, Plaintiffs' motion for summary judgment is GRANTED in part  
2 and DENIED in part. Defendants' motion for summary judgment is DENIED. Specifically, the  
3 Court finds that, as alleged, Defendants' blanket reasonable accommodation policy violates the  
4 FHAA, the FEHA, the CDDA, Section 504, and the ADA. A dispute of material fact exists as to  
5 whether Defendants actually implemented the alleged blanket reasonable accommodation policy.

6 **IT IS SO ORDERED.**

7 Dated: May 12, 2016

*Lucy H. Koh*

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9 LUCY H. KOH  
10 United States District Judge

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