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City of Berkeley
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Berkeley, CA 94704

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RE: Allegations Of Long Term Misconduct At City Of Berkeley Housing Authority

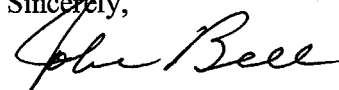
Ladies and Gentlemen:

Please review the attached 5 page notice alleging unlawful operation of Berkeley Housing Authority (BHA). Ms. Tia Ingram, the Director of BHA, has experience with this case and should have a complete historical file of my complaints.

As explained in attached allegations, HUD HQS regulations require BHA to "immediately" remove the endangered mother and child from dangerous sub-standard housing and to place them in safe and descent housing. If BHA denies having that lawfully required duty, I will provide citations from HQS that indicate BHA is responsible. Ms. Ingram already has them.

The highest priority is to **immediately** remove the mother and child from danger. Any other discussion can wait. The best contact for me is to email jmacbell@earthlink.net because my travel schedule greatly interrupts USPS mail delivery.

Sincerely,



John Bell

Attachments: 5 pages

Allegations Of Long Term Misconduct At City Of Berkeley Housing Authority (BHA)

This advocate believes the following allegations are true based on two years experience in advocating for the disabled indigent mother and her daughter mentioned herein. This advocate repeatedly gave written notice to City of Berkeley (City) and BHA officials concerning these allegations, but those on notice failed to correct or mitigate any misconduct. BHA was continually aware of unlawful and dangerous substandard living conditions imposed on the mother and child every day. BHA always had a lawfully imposed duty to immediately abate the harm, and always had sufficient control to promptly do so. Instead, BHA exacerbated the harm for over two years by making it virtually impossible for the mother and child to escape the dangerous living conditions. Substantial evidence supporting these allegations should be on file under this advocate's name at BHA and other City offices mentioned herein. This advocate will produce copies of any documentation that was not properly recorded at BHA or City offices.

The following statutory scheme imposes public duty and responsibility on the City and BHA:

BHA is a public housing authority (PHA) and is required to conduct business in accord with California Health and Safety Code, "Housing Authorities Law" 34200, et seq. Under Section 34201 the legislature declares that "unsafe dwelling accommodations cause an increase in and spread of disease and crime and **constitute a menace to the health, safety, morals, and welfare of the residents of the State and impair economic values; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state concern; . . . and the necessity in the public interest for the provisions of this chapter is declared as a matter of legislative determination."**

Section 34311(a) & (e) indicate: "A PHA may sue and be sued . . . [and may] . . . Make . . . regulations, **not inconsistent with this chapter**, to carry into effect the powers and **purposes** of the authority."

Section 34321 indicates: "It is declared to be **the policy of the State** that each authority **shall** manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates **consistent with its providing decent, safe, and sanitary dwelling accommodations . . .**"

Section 34326 indicates: "All housing projects are subject to the planning, zoning, sanitary, and building laws, **ordinances, and regulations** applicable to the locality in which the housing project is situated."

Section 34331 indicates: ". . . an authority **shall not** . . .

. . .
(c) Require that a tenant, in a lease or rental agreement, waive his rights under Section 1942 of the Civil Code, **or any other rights** as a tenant he might have **under California or federal law**.

(d) Disclaim liability for injury as a result of its **negligence** or failure to repair, **in any rental agreement** or lease."

Section 34332 indicates: "An authority **shall** . . .

...
(c) Make available public documents and records of the authority for inspection,

...
(3) [disclose] grievance procedures . . ."

Section 34333 indicates: "**Any attempted waiver** in any lease or rental agreement entered into by the authority of any of the rights granted tenants as against the authority by Sections 34331 and 34332 **shall be void as against public policy**."

Section 17920.3 indicates: "Any building . . . in which there exists any of the following listed conditions to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof shall be deemed and hereby **is declared to be a substandard building**:"

...
(a) Inadequate sanitation shall include, but not be limited to, the following:

...
(11) Dampness of habitable rooms.

...
(c) **Any nuisance**.

...
(g) Faulty weather protection . . ."

California Civil Code Section 3479 indicates: "**Anything** which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, **so as to interfere with the comfortable enjoyment of life or property . . . is a nuisance**."

Under Housing Authorities Law the City appears to be vicariously responsible for authorizing BHA operations (Sec. 34244) and is responsible for removing BHA officials for "inefficiency, neglect of duty, or misconduct" (Sec. 34282). Failure to discharge an unruly agent may operate to ratify the agent's misconduct.

BHA receives federal funds from the Section 8 (S-8) housing assistance program administered by the U. S. Department of Housing & Urban Development (HUD). BHA uses that federal money to pay around 70% of the disabled indigent mother's rent for a private apartment. Federal law requires BHA to use that money for safe and descent housing specified under HUD Housing Quality Standards (HQS). BHA certifies enforcement of HQS by merely accepting the federal funds. Thus, if BHA receives federal money to enforce HQS, but then refuses to actually do so, then BHA might be in criminal violation of the Federal False Claims Act in taking federal payments for doing work that it does not actually perform. The HUD Office of Inspector General does not tolerate HQS violations and regularly forces many PHAs to pay back many Millions for their failures to properly enforce HQS. In the disabled mother's case alone, two years of refusing to enforce HQS might have cheated U.S. taxpayers for around \$50,000.

HQS regulations require all PHAs to "immediately" take action to relocate endangered tenants to safe housing. But BHA repeatedly refused to do so. This advocate repeatedly requested BHA to

immediately terminate the rental agreement as required under HQS, so the indigent mother and child could move to safety as soon as possible. Under California tenant law they also had a right to promptly terminate the rental agreement in order to escape the dangerous living conditions.

This advocate repeatedly made it clear that the indigent mother needed to exercise her lawful termination rights because she did not have sufficient funds to move by any other method. No safe housing landlord would likely hold an unsecured apartment for 30 days while the mother completed a 30-day notice routine at the unsafe building. She could not afford to risk giving a 30-day notice and then have the safe apartment be rented to someone else before she could actually execute the move. She didn't have the \$2,500 for first month's rent and deposit to hold a safe apartment for 30 days. BHA clearly had the power and duty to immediately terminate the rental agreement, and clearly understood that refusing to do so forced the disabled mother and child to stay in dangerous living conditions against their will. The BHA misconduct effectively operated to threaten, intimidate and coerce the disabled mother, forcing her and the child to stay in unsafe conditions against their will because they believed BHA would terminate S-8 assistance and leave them homeless if they tried to exercise their lawful termination rights.

BHA's arbitrary and unreasonable action seems to violate federal HQS regulations and California tenant rights law, and it seems clearly prohibited under Section 34331 where it indicates "an authority **shall not** . . . [r]equire that a tenant, in a lease or rental agreement, waive his rights under Section 1942 of the Civil Code, **or any other rights as a tenant he might have under California or federal law.** Section 34333 seems to further prohibit BHA from imposing any involuntary waiver where it indicates: "**any attempted waiver** . . . of any of the rights granted tenants as against the authority by Sections 34331 and 34332 **shall be void as against public policy.**

This advocate filed a complaint with the City police essentially alleging that BHA constructively imposed unlawful "False Imprisonment" on the disabled mother where BHA threatened to terminate her S-8 assistance and make her homeless if she tried to exercise her lawful termination rights. But City police essentially proclaimed that BHA's conduct was legal. The police were informed that BHA refused lawful duty to investigate and record constant HQS nuisance violations at the apartment building, thereby creating a false public record that no HQS violations exist. This advocate requested City police to at least keep an open file of constant nuisance complaints against the dangerous property in order to make a legitimate record of the rampant nuisance conditions, but they refused to do so. This was around the time media reported the police chief assigned 10 overtime officers to find his son's cell phone, and then claimed to treat all public complaints with equal importance.

Other City offices also refused to abate or mitigate the serial nuisance problems. Rent control indicated they would not act in a S-8 rent case, even though the City web site indicates everyone is protected by rent control, and disabled persons are entitled to all City protection programs. Noise control did not abate or mitigate the constant noise nuisance at the property. The Mayor and City Counsel members did not respond to BHA misconduct complaints. Some officials denied any City responsibility for BHA operations. In apparent violation of Section 34332(c), BHA refused to respond to requests under California Public Records Act to disclose the agency attorney or the officials ultimately responsible for BHA operations. The collective conduct of City and BHA officials in refusing any relief or mitigation or enforcement of rights effectively created a powerful mental perception of threat, intimidation and coercion, causing the disabled

mother to believe that BHA could unlawfully terminate her S-8 assistance and no city official would do anything to protect her rights. Unless the City can show it denies all disabled tenant rights in a similar manner, this would seem to indicate a case of flagrant discrimination.

After being denied reasonable cooperation or disclosure for years, this advocate finally had to research state law himself and recently discovered the Housing Authorities Law, which appears to make the City vicariously liable for BHA misconduct. That prompted these allegations.

It appears the disabled mother can't sue BHA for refusing to enforce her HQS rights because federal law prohibits an S-8 tenant from suing a PHA to enforce HQS. However, the courts seem to recognize that S-8 tenants actually have HQS rights even though they can't sue a PHA to enforce them. Case law further suggests a low-income tenant does not waive her basic state or federal rights when she receives S-8 assistance. Instead, she actually gains S-8 rights in addition to her other civil rights. Thus, the City and BHA were wrong to interfere with the disabled mother's rent control rights, and California tenant rights, and disability rights.

While federal law might preclude a tenant lawsuit against BHA for HQS violations, it doesn't seem to preclude any lawsuit against City or BHA officials for interfering with a tenant's personal effort to exercise her own rights. BHA crossed the federal immunity line when it operated in effect to threaten that the disabled mother and child would lose their S-8 assistance and become homeless if they tried to personally exercise their own termination rights. BHA might get away with refusing its lawful duty to enforce HQS, but it has no authority to threaten retaliation against the disabled mother for trying to exercise her own rental termination rights.

It further appears the California Civil code prohibits interference with civil rights under Section 52.1, where it indicates:

"(a) If a person or persons, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state, the Attorney General, or any district attorney or city attorney may bring a civil action for injunctive and other appropriate equitable relief in the name of the people of the State of California, in order to protect the peaceable exercise or enjoyment of the right or rights secured. An action brought by the Attorney General, any district attorney, or any city attorney may also seek a civil penalty of twenty-five thousand dollars (\$25,000). If this civil penalty is requested, it shall be assessed individually against each person who is determined to have violated this section and the penalty shall be awarded to each individual whose rights under this section are determined to have been violated.

(b) Any individual whose exercise or enjoyment of rights secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of this state, has been interfered with, or attempted to be interfered with, as described in subdivision (a), may institute and prosecute in his or her own name and on his or her own behalf a civil action for damages, including, but not limited to, damages under Section 52, injunctive relief, and other appropriate equitable relief to protect the peaceable exercise or enjoyment of the right or rights secured."

As previously explained, the collective conduct of City and BHA officials caused the disabled mother to believe she had no hope of enforcing her rights, and that her S-8 assistance would be terminated, leaving her and the child homeless if she tried to exercise her rental termination

rights. That created overwhelming mental pressure of threat, intimidation and coercion to frighten her away from exercising her lawful rights. It also created a mental condition of False Imprisonment where she felt that she had to remain in life threatening living conditions because if she tried to leave BHA would terminate S-8 assistance to make her and her child homeless.

BHA exists only because the City authorizes it to operate. The City has sole responsibility for appointing BHA officials and removing them for improper conduct. The City posts BHA operations on its web site, causing the public to believe that BHA is a legitimate City operation serving the best public interest. The City web site indicates that BHA enforces HQS regulations. However the facts in this case suggest otherwise. It appears the City enables BHA to create a false image of HQS integrity by simply ignoring HQS complaints. Refusing to investigate and record HQS violations creates a false public perception that no violations exist. It also deceives HUD administrators when they are handing over taxpayer money based on BHA's certification of HQS enforcement. The City virtually enables fraud against taxpayers and violations of the Federal False Claims Act if it refuses oversight investigation of HQS complaints against BHA.

It does not cost BHA any more time or money to contract safe and descent housing than it does to contract dangerous nuisance housing. In fact dangerous nuisance buildings probably cost BHA and the City far more time and money in dealing with endless complaints, and many more inspection trips, and many more police responses to many more disturbances. That's exactly what the California legislature declared under Section 34201 cited above.

Over the past two years BHA refused any explanation to justify unlawfully forcing the disabled mother and child to stay in dangerous substandard living conditions. BHA refused to negotiate their release, and refused to answer reasonable questions, and refused to disclose BHA management structure, and refused to disclose any legal representative, and refused to address any state or federal laws that BHA violated to keep the disabled mother and child in the dangerous building. It appears BHA logic is reduced to simply showing everyone who the boss is, no matter how many laws BHA has to violate in order to do that.

BHA conspicuously posts threats to prosecute any tenant mistake, and invites the public to report suspicious tenants. But there is no equal effort to publicize tenant rights, or BHA and landlord duties and responsibilities, and no threats to prosecute their mistakes, and no invitation for tenants to report BHA or landlord abuse. The rules equally apply both ways, but BHA arbitrarily enforces them only one way, against tenants. BHA appears to grossly abuse government power in one-sided enforcement efforts involving threats, intimidation and coercion to oppress tenants and obstruct their lawful right to safe and descent housing.

Finally, according to Section 52.1 cited above, if no one else, the Berkeley City Attorney should be standing up for the disabled mother and child, and all other S-8 tenants, to protect them from BHA interference with their lawful housing rights.

This case might be a two-year pattern of unlawful discrimination against one disabled S-8 tenant, or it might be a two-year pattern of defrauding U.S. taxpayers by refusing to enforce HQS regulations. Either way, this conduct is wrong.

Drafted by John Bell; jmacbell@earthlink.net