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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

8 Attorneys for Plaintiffs Timothy, Anita, and Ana Delgadillo

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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **San Jose Division**

el PVT

14 TIMOTHY DELGADILLO, ANITA
15 DELGADILLO, and ANA DELGADILLO

16 Plaintiffs,

17 v.

18 DEAN and MAI DAILY

19 Defendants.

Case No. 09 04999

PVT

COMPLAINT FOR INJUNCTIVE,
DECLARATORY, AND MONETARY
RELIEF; DEMAND FOR JURY TRIAL

22 **I. INTRODUCTION**

23 In this matter, Defendant landlords Dean and Mai Daily refused to rent a safe and
24 affordable three-bedroom house to Plaintiffs—the Delgadillo family—because Timothy
25 Delgadillo is morbidly obese. The Dailys' illegal refusal to rent based on Mr. Delgadillo's
26 disability caused the Delgadillos and their child to live in their car temporarily and then to live in
27 inferior housing.

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II. JURISDICTION

1. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1331 because that the claims alleged herein arise under the laws of the United States. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 to hear and determine Plaintiffs' state law claims because those claims are related to Plaintiffs' federal law claims and arise out of a common nucleus of related facts. Plaintiffs' state law claims are related to Plaintiffs' federal law claims such that those claims form part of the same case or controversy under Article III of the United States Constitution.

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III. INTRADISTRICT ASSIGNMENT

2. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(b)(2) in that the unlawful conduct that gives rise to these claims occurred within the Northern District of California.

3. Intradistrict assignment in San Jose is proper since the unlawful conduct that gives rise to these claims occurred in Santa Clara County.

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IV. PARTIES

4. Plaintiff TIMOTHY DELGADILLO is a 49-year-old person with a disability. He is morbidly obese. He suffers from congenital heart failure and recently underwent a tracheotomy procedure. It is difficult for him to walk up and down stairs, or ambulate for long periods of time. He is otherwise eligible and able to live in housing and did not require any accommodations to live in the house.

5. Plaintiff ANA DELGADILLO is a 46-year-old person with a disability. She is diabetic and completely blind. Mrs. Delgadillo is married to Timothy Delgadillo.

6. Plaintiff ANITA DELGADILLO is an 18-year-old person. She is the child of Timothy and Ana Delgadillo.

7. At all times relevant herein, Defendants DEAN DAILY and MAI DAILY owned and operated the home at 73 Hayes Avenue in San Jose, California.

8. At all relevant times, Defendants were engaged in the business of renting housing to members of the public.

1 9. Upon information and belief, Defendant DEAN DAILY is a real estate salesperson,
2 licensed by the California Department of Real Estate under license number 01731476.

3 10. Upon information and belief, Defendant DEAN DAILY is a member of the Santa
4 Clara County Association of Realtors.

5 11. At all times relevant herein, Defendants were the agents, servants, and employees of
6 each other; each Defendant was acting within the scope of such agency or employment in doing
7 the things herein alleged; or the alleged acts or omissions of each Defendant as agent were
8 subsequently ratified and adopted by each other.

9 **V. FACTS**

10 **A. THE DELGADILLO FAMILY**

11 12. Plaintiffs Timothy, Ana, and Anita Delgadillo applied for a Housing Choice (also
12 known as Section 8) Voucher in March of 2006. Housing Choice is a federal housing program
13 that provides housing assistance to low-income renters and homeowners. The assistance comes
14 in the form of rental subsidies, limiting the monthly rent payment of the assistance recipient.
15 The program is administered by the Housing Authority of Santa Clara County, and is available
16 only to very low-income households, such as the Delgadillos.

17 13. More than two years later, on March 17, 2008, they finally received a voucher.
18 During the winter of 2006, they lost their housing and became homeless, and stayed with family
19 members and friends. Each time that the Delgadillo family transitioned from one place to
20 another, from a family member's house to a friend's house, they lived in their car. At the time
21 they were illegally refused housing by the Defendants, the family was living in their car, and in
22 their car they remained until they found alternative housing.

23 14. After receiving the voucher, the Delgadillo family began looking for a home. Due to
24 the high demand of landlords who accept Housing Choice Vouchers, the search proved to be
25 very difficult. Each week, the Delgadillos would get the newly updated list of available
26 properties from the Housing Authority and try to find housing.

27 15. On Thursday, July 3, 2008, the Delgadillo family went to the Housing Authority to
28 get the most recent list, which was available each Thursday. The home at 73 Hayes Avenue in
San Jose, California, was listed and the Plaintiffs drove immediately to the house.

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16. Mr. Delgadillo remained in the car, while Ana and Anita went inside. It was a three-bedroom one-story single-family home, located within walking distance to Anita's school. They agreed that it would be a perfect home for them.

17. Mrs. Delgadillo told Mr. and Mrs. Daily of the family's desire to rent the property. Tim Delgadillo completed the rental application, which stated that Mr. Delgadillo, Mrs. Delgadillo and their daughter would be the three residents. Anita brought the application in, and Mrs. Daily then told Mrs. Delgadillo that she and her husband would rent to the family, not to worry, and patted her on the shoulder.

18. Elaine Haro and Connie Torres live next door to 73 Hayes Street in San Jose, California. After the open house on July 3, 2008, Connie and Elaine spoke with Mr. and Mrs. Daily. Connie and Elaine asked to whom they were going to rent, and May Daily said that they wanted to rent to a blind lady who had applied.

19. On Friday, July 4, 2008, Mr. Daily called the Delgadillo family and informed Ana that the house would be rented to the family. Mr. Delgadillo then spoke to Mr. Delgadillo agreed to meet the following day for Mr. Delgadillo to deliver a deposit to Mr. Daily.

20. On Saturday, July 5, 2008, the Delgadillo family arrived at 73 Hayes Street. It was at this time that the Dailys first met Mr. Delgadillo. Mr. Delgadillo is visibly obese and at that time weighed approximately 600 pounds. He also uses a walker and is unable to stand for long periods of time, and exhibits profuse sweating and shortness of breath.

21. Upon meeting Mr. Delgadillo, Mr. Daily asked him questions, such as whether he needed special equipment, asking how he took a shower, and asking, "[o]h, you're disabled, too?" Mr. Daily stated that Mr. Delgadillo was too heavy for the bathroom, and that he needed "certain things" for the house.

22. At no time did Mr. Delgadillo or his wife or child ever request any accommodation for Mr. Delgadillo's disability (or for Mrs. Delgadillo's). At no time did Mr. Delgadillo indicate to the Dailys that he would have trouble using the basic amenities that he wished to use in the house, including the bathroom.

1 23. Mr. Delgadillo attempted to give the deposit money to Mr. Daily, but Mr. Daily
2 refused to accept the money, stating that he wanted to check with the Housing Authority for any
3 special requirements because of Mr. Delgadillo's disability. Mr. Daily told Mr. Delgadillo that
4 he would call him on Monday, July 7, 2008, to let him know what he found out from the
5 Housing Authority. Mr. Daily never called.

6 24. Elaine Haro and Connie Torres heard the conversation between Tim and Mr. Daily.
7 They heard Mr. Daily make repeated discriminatory statements described above, and heard his
8 refusal to take the deposit.

9 25. Over the next few days, Mr. Delgadillo tried repeatedly to contact Defendants.
10 Finally, on Wednesday, July 9, 2008, Mr. Daily answered the phone and told Mrs. Delgadillo
11 that he would not rent to them. When pressed for a reason, Mr. Daily told the Plaintiffs that he'd
12 "rather not say why." He also emailed Mr. Delgadillo and told him that they had rented the
13 house to someone else.

14 26. After this experience, the Delgadillo family was devastated. Even months later,
15 recalling the incident is incredibly painful and distressing. Mrs. Delgadillo who had been so
16 relieved to find housing, particularly a place so perfect for her family, was traumatized. She felt
17 degraded by the experience because she felt she had failed her daughter. Anita, who had cried in
18 joy in finding the house, became numb and detached, and very depressed. Her grades suffered in
19 school and she did not graduate on time. Mr. Delgadillo was extremely upset, embarrassed, and
20 humiliated, because they were denied a housing opportunity because of his disability.

21 27. As a real estate sales person and a member of the Santa Clara County Association of
22 Realtors, Defendant Dean Daily is a REALTOR[®], and has agreed to strictly follow a code of
23 ethics, which includes an agreement to not discriminate on the basis of a protected category,
24 including disability.

25 B. INJURIES

26 28. Because of Defendants' illegal refusal to rent to the Delgadillo family, the family
27 was homeless for the entire month of July, living in their car. As a result, both Mr. and Mrs.
28 Delgadillo's medical conditions worsened. Mr. Delgadillo went to the hospital on 26th of July by

1 ambulance for developing pneumonia and was in hospital for 2 weeks. Mrs. Delgadillo was
2 unable to maintain safe sugar levels.

3 29. The Delgadillo family was forced to move into inferior housing, in a more dangerous
4 neighborhood, and in a different school district. Twice since they have lived in their new
5 neighborhood, someone has tried to enter the back gate. Also, there was a stabbing a couple of
6 blocks away shortly after the Delgadillo family moved.

7 30. Anita Delgadillo had to be given rides to and from school rather than walking,
8 thereby limiting her ability to participate in social and scholastic activities.

9 31. The property into which the Delgadillos moved is a townhouse on two levels. Mr.
10 Delgadillo is forced to ambulate on his hands and knees to access the entire house due to his
11 mobility issues.

12 32. By reason of Defendants' unlawful acts and practices, Plaintiffs have suffered mental
13 anguish, and emotional distress, and the attendant physical injuries and conditions, as well as
14 violation of their civil rights. Accordingly, Plaintiffs are entitled to compensatory damages.

15 33. Defendants acted intentionally, maliciously, wantonly, recklessly, and in bad faith as
16 described herein. Accordingly, Plaintiffs are entitled to punitive damages.

17 34. Unless enjoined, Defendants will continue to engage in the unlawful acts and
18 discrimination described above. Plaintiffs have no adequate remedy at law. Plaintiffs are now
19 suffering and will continue to suffer irreparable injury from Defendants' acts and their
20 discrimination against disabled persons unless relief is provided by this Court. Accordingly,
21 Plaintiffs are entitled to injunctive relief.

22 **VI. CLAIMS**

23 **A. FIRST CLAIM**

24 ***Violation of the Federal Fair Housing Amendments Act***

25 35. Plaintiffs reallege and incorporate by reference each and every allegation contained in
26 Paragraphs 1 through 34 above.

27 36. Defendant injured Plaintiffs in violation of the Fair Housing Amendments Act by:

28 A. Discriminating or otherwise making unavailable dwellings because of

1 handicap, in violation of 42 United States Code § 3604(f)(1);

2 B. Making statements of discrimination, limitation, or preference regarding
3 handicap, in violation of 42 United States Code § 3604(c); and

4 37. As a proximate cause of Defendants' conduct, Plaintiffs have been damaged, as set
5 forth above. Plaintiffs have suffered and continue to suffer damages, as alleged herein.

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7 **B. SECOND CLAIM**

8 *Violation of the California Fair Employment and Housing Act*

9 38. Plaintiffs reallege and incorporate herein by reference each and every allegation
10 contained in Paragraphs 1 through 37 above.

11 39. Defendants have injured Plaintiffs in violation of the California Fair Employment and
12 Housing Act by:

13 A. Discriminating or otherwise making unavailable dwellings because of
14 disability, in violation of California Government Code §§ 12955(a), 12955(k); and

15 B. Making statements of discrimination, limitation, or preference based on
16 disability, in violation of California Government Code § 12955(c).

17 40. As a proximate result of Defendants' conduct, Plaintiffs have been damaged as set
18 forth above. Plaintiffs have suffered and continue to suffer damages, as alleged herein.

19 **C. THIRD CLAIM**

20 *Violation of the California Unruh Civil Rights Act*

21 41. Plaintiffs reallege and incorporates herein by reference each and every allegation
22 contained in Paragraphs 1 through 40 above.

23 42. In doing the things herein alleged, Defendants have violated the Plaintiffs' right to
24 fair housing under the Unruh Civil Rights Act (Cal. Civil Code § 51 et seq.), in that Defendants
25 discriminated against Plaintiffs based on their disabilities in the operation of the property, a
26 business establishment.

27 43. The conduct of Defendants alleged herein constitutes a denial of full and equal access
28 to housing accommodations to Plaintiffs within the meaning of California Civil Code § 51 et seq.

44. As a proximate cause of Defendants' conduct, Plaintiffs have been damaged, as set

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forth above. Plaintiffs have suffered and continue to suffer damages, as alleged herein.

D. FOURTH CLAIM

Violation of § 54.1 of the California Civil Code

45. Plaintiffs reallege and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 44 above.

46. Defendants injured the Plaintiffs by denying full and equal access to housing accommodations, in violation of California Civil Code § 54.1(b)(1); and

47. As a proximate cause of Defendants' conduct, Plaintiffs have been damaged, as set forth above. Plaintiffs have suffered and continue to suffer damages, as alleged herein.

48. Pursuant to California Civil Code § 54.1, Plaintiffs are entitled to statutory damages, among other remedies, of up to three times their actual damages as determined by a trier of fact.

E. FIFTH CLAIM

Negligence

49. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in Paragraphs 1 through 48 above.

50. Defendants had a duty to train themselves and their agents to operate their rental properties in a manner that was free from unlawful discrimination.

51. Defendants violated that duty by negligently failing to train their employees and each other regarding the requirements of federal and state fair housing laws and negligently supervising and training their employees and themselves regarding compliance with federal and state fair housing laws.

52. As a legal result of Defendants' negligent conduct, Plaintiffs have suffered mental anguish, emotional distress, and the attendant bodily injuries and conditions.

F. SIXTH CLAIM

Negligent Infliction of Emotional Distress

53. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in Paragraphs 1 through 52 above.

54. Defendants had a duty to train themselves and their agents to operate their rental

1 properties in a manner that was free from unlawful discrimination.

2 55. Defendants were negligent in fulfilling that duty.

3 56. As result of that negligence, Plaintiffs suffered severe emotional
4 distress.

5 **VII. RELIEF**

6 WHEREFORE, Plaintiffs prays for the following relief:

7 57. That the Court assume supplemental jurisdiction over all state law claims, pursuant to
8 28 United States Code § 1367;

9 58. That the Court enjoin all unlawful practices complained about herein and impose
10 affirmative injunctive relief requiring Defendants, their agents, their employees, their assignees,
11 and all persons acting in concert or participating with them, to take affirmative action to provide
12 equal housing opportunities to all tenants regardless of disability, including providing training
13 regarding fair housing laws for all employees and agents, and to enjoin Defendants from refusing
14 to rent because of disability.

15 59. That the Court declare that Defendants have violated the provisions of applicable
16 federal and state fair housing laws;

17 60. That the Court award compensatory and punitive damages to Plaintiffs according to
18 proof;

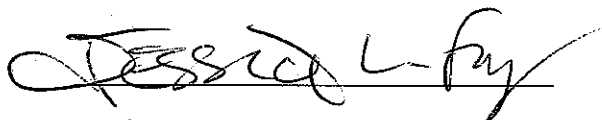
19 61. That the Court award up to three times the amount of actual damages to Plaintiffs
20 against Defendants pursuant to California Civil Code § 54.1;

21 62. That the Court grant costs of suit, including reasonable attorney fees; and

22 63. That the Court grant all such other relief as the Court deems just.

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24 Dated: October 19, 2009

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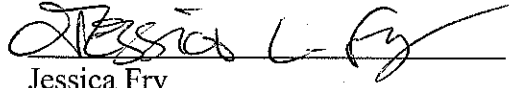
28 Jessica Fry
Attorney for Plaintiff

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs hereby request a trial by jury as to each and every claim for which they are so entitled.

Dated: October 19, 2009

**FAIR HOUSING LAW PROJECT
Law Foundation of Silicon Valley**



Jessica Fry
Attorney for Plaintiff

CIVIL COVER SHEET

JS 44 (Rev. 12/07) (cand rev 1-16-08)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS: Timothy Delgadillo, Anita Delgadillo, and Ana Delgadillo. DEFENDANTS: Dean Daily and Mai Daily. (b) County of Residence of First Listed Plaintiff Santa Clara (EXCEPT IN U.S. PLAINTIFF CASES). (c) Attorney's (Firm Name, Address, and Telephone Number): Law Foundation of Silicon Valley, 111 W. Saint John Street, Suite 315, San Jose, CA 95113, (408) 280-2458. Defendant address: Donald L. Smith, 4115 Madkh... Plaza Circle, Suite 100, Danville, CA 94506, (925) 820-0607. Includes 'E-filing' stamp and '09 04999 PVT' stamp.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only). III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant). Includes checkboxes for U.S. Government Plaintiff/Defendant, Federal Question, Diversity, and various citizenship options.

IV. NATURE OF SUIT (Place an "X" in One Box Only). Grid with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only). Includes checkboxes for Original Proceeding, Removed from State Court, Remanded from Appellate Court, Reinstated or Reopened, Transferred from another district, Multidistrict Litigation, Appeal to District Judge from Magistrate Judgment.

VI. CAUSE OF ACTION. Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 3604(f)(1). Brief description of cause: Illegal refusal to rent based on Plaintiff's disability.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ determined at trial. CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No.

VIII. RELATED CASE(S) IF ANY: PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY). [] SAN FRANCISCO/OAKLAND [X] SAN JOSE.

DATE: October 20, 2009. SIGNATURE OF ATTORNEY OF RECORD: [Handwritten Signature]