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FAIR EMPLOYMENT AND HOUSING COUNCIL
PUBLIC HEARING: PROPOSED HOUSING REGULATIONS REGARDING
HARASSMENT; LIABILITY FOR HARASSMENT; RETALIATION; AND
SELECT DISABILITY SECTIONS, INCLUDING ASSISTIVE ANIMALS

CORRECTED FEBRUARY 10, 2017
REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
JANUARY 10, 2017

ATKINSON-BAKER, INC.
COURT REPORTERS
WWW.DEPO.COM
(800) 288-3376
REPORTED BY: JESSICA DAVIS, CSR 12646
FILE NO: AB00513

<p>1 2 3 4 FAIR EMPLOYMENT AND HOUSING COUNCIL 5 PUBLIC HEARING: PROPOSED HOUSING REGULATIONS REGARDING 6 HARASSMENT; LIABILITY FOR HARASSMENT; RETALIATION; AND 7 SELECT DISABILITY SECTIONS, INCLUDING ASSISTIVE ANIMALS 8 9 10 11 12 13 14 15 PROCEEDINGS TAKEN AT RONALD REAGAN 16 BUILDING, 300 SOUTH SPRING STREET, LOS 17 ANGELES, COMMENCING AT 11:43 A.M., TUESDAY, 18 JANUARY 10, 2017, BEFORE JESSICA DAVIS, CSR 19 12646. 20 21 22 23 24 25</p> <p style="text-align: right;">Page 2</p>	<p>1 LOS ANGELES, CALIFORNIA; TUESDAY, JANUARY 10, 2017 2 *** 3 4 MR. MANDELBAUM: WE ARE ON THE RECORD. IT IS 5 11:43 IN THE MORNING, TUESDAY, JANUARY 10TH. WE'RE HERE 6 AT THE RONALD REGAN STATE BUILDING LOCATED AT 300 SOUTH 7 SPRING STREET IN LOS ANGELES. MY NAME IS CHAYA 8 MANDELBAUM. JOINING ME TODAY ARE MEMBERS OF THE COUNCIL. 9 COUNCILMEMBER DALE BRODSKY, COUNCILMEMBER ANDREW 10 SCHNEIDERMAN, COUNCILMEMBER DARA SCHUR, AND COUNCILMEMBER 11 TIM IGLESIAS, AS WELL AS EX OFFICIO MEMBER AND DIRECTOR 12 OF THE DEPARTMENT, KEVIN KISH. EVEN THOUGH WE HAVE MADE 13 INITIAL INTRODUCTIONS, LET ME WELCOME YOU TO THIS FORMAL 14 HEARING. THE PURPOSE OF THE HEARING IS TO RECEIVE PUBLIC 15 COMMENT REGARDING THE ISSUANCE OF AMENDMENTS TO THE FAIR 16 EMPLOYMENT & HOUSING ACT REGULATIONS THAT FOR THE FIRST 17 TIME ADDRESS HOUSING AND THE HOUSING PROVISIONS. THE 18 HOUSING REGULATIONS CONCERN HARASSMENT, LIABILITY FOR 19 HARASSMENT, RETALIATION, AND SELECT DISABILITY SECTIONS 20 INCLUDING ASSISTIVE ANIMALS. THIS RULE CLARIFIES AND 21 MAKES SPECIFIC THE HOUSING RIGHTS AND RESPONSIBILITIES 22 THE FEHA SET FORTH IN GOVERNMENT CODE 12900, ET SEQ. AS 23 IT RELATES TO HOUSING THE FEHA PROHIBITS HARASSMENT 24 BECAUSE OF RACE, COLOR, RELIGION, SEX, GENDER, GENDER 25 IDENTITY, GENDER EXPRESSION, SEXUAL ORIENTATION, MARITAL</p> <p style="text-align: right;">Page 4</p>
<p>1 A P P E A R A N C E S : 2 3 FAIR EMPLOYMENT AND HOUSING COUNCIL: 4 CHAYA MANDELBAUM 5 DALE BRODSKY 6 TIM IGLESIAS 7 KEVIN KISH 8 ANDREW SCHNEIDERMAN 9 DARA SCHUR 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 3</p>	<p>1 STATUS, NATIONAL ORIGIN, ANCESTRY, FAMILIAL STATUS, 2 SOURCE OF INCOME, DISABILITY, AND GENETIC INFORMATION. 3 THE PROPOSED REGULATION SUCH RELATED TO APPEAR IN THE 4 CALIFORNIA CODE OF REGULATIONS TITLE TWO SECTIONS 11098.1 5 THROUGH 11098.6 AND ALSO 11098.23 THROUGH -30. COPIES OF 6 THE PROPOSED REGULATIONS -- RATHER THE PROPOSED 7 AMENDMENTS TO THE FEHA REGULATIONS ARE AVAILABLE RIGHT 8 OUTSIDE THE ROOM AND ARE ALSO REFLECTIVE IN THE MEETING 9 MATERIALS, ATTACHMENT D. THE NOTICE AND INITIAL 10 STATEMENT OF REASONS ARE REFLECTED IN ATTACHMENTS B AND C 11 RESPECTIVELY. THE TEXT OF THE COUNCIL'S PROPOSED 12 REGULATIONS ARE ALSO AVAILABLE ON ITS WEB PAGE. THE 13 COUNCIL HOLDING THIS HEARING IS PUBLIC RULING PROCESS. 14 WE NOTICED THE PUBLIC HEARING MORE THAN 45 DAYS AGO IN 15 THE CALIFORNIA REGULATORY NOTICE REGISTER PUBLISHED 16 NOVEMBER 11, 2016, AND ALSO VIA EMAIL, AND ADDITIONALLY 17 ON THE COUNCIL'S WEB PAGE. PURSUANT TO THAT NOTICE WE 18 ARE TAKING TESTIMONY ON THE PROPOSED REGULATIONS. WE 19 WILL ACCEPT WRITTEN COMMENTS TO THE PROPOSED REGULATIONS 20 UNTIL 5:00 P.M., JANUARY 10TH. YOU MAY EMAIL WRITTEN 21 COMMENTS TO THE COUNCIL AT FEHCOUNCIL@DFEH.CA.GOV. IF 22 YOU PREFER, YOU MAY STILL MAIL THEM TO THE COUNCIL CARE 23 OF BRIAN SPERBER AT THE DEPARTMENT OF LOS ANGELES OFFICE 24 LOCATED 320 WEST FOURTH STREET, 10TH FLOOR, LOS ANGELES, 25 CALIFORNIA 90013. IF YOU BROUGHT A WRITTEN COPY OF YOUR</p> <p style="text-align: right;">Page 5</p>

1 COMMENTS AND DO NOT PLAN TO SEPARATELY SUBMIT THEM,
2 PLEASE GIVE A COPY TO MR. SPERBER. IF YOU HAVE NOT
3 BROUGHT A WRITTEN COPY OF YOUR COMMENT, WE WOULD
4 APPRECIATE IT IF YOU WOULD PROVIDE THEM BY 5:00 P.M.
5 TODAY. ANYONE WHO TESTIFIES OR SUBMITS WRITTEN COMMENTS
6 WILL RECEIVE A COPY OF THE CHANGES OR AMENDMENTS. ALSO,
7 ANYONE WHO TESTIFIES OR SUBMITS WRITTEN COMMENTS WILL
8 HAVE A 15-DAY PERIOD WITHIN WHICH TO MAKE WRITTEN
9 COMMENTS, IF ANY FURTHER CHANGES OF THE PROPOSED
10 AMENDMENTS ARE MADE DURING THIS RULEMAKING PROCESS. THE
11 COUNCIL WILL CONSIDER EACH COMMENT MADE HERE TODAY AS
12 WELL AS ALL WRITTEN COMMENTS RECEIVED. COUNCIL WILL
13 RESPOND TO EACH COMMENT IN WRITING WHICH WILL BECOME PART
14 OF THE COUNCIL'S RULEMAKING RECORD. THE HEARING IS BEING
15 TRANSCRIBED BY A CERTIFIED COURT REPORTER AND TRANSCRIPT
16 OF THE HEARING WILL ALSO BE A PART OF THE COUNCIL'S
17 OFFICIAL RULEMAKING RECORD. BECAUSE THE HEARING IS BEING
18 TRANSCRIBED IT IS CRITICAL THAT ANYONE SPEAKING DO SO
19 CLEARLY AND THAT WE ALL TRY OUR BEST TO MAKE SURE THAT
20 ONLY ONE PERSON IS SPEAKING AT A TIME. YOU WILL NOT BE
21 SWORN IN WHEN YOU COME TO TESTIFY; HOWEVER, WE ASK THAT
22 YOU COME TO THE FRONT OF THE ROOM AND SPEAK INTO THE
23 MICROPHONE SO THAT THE COURT REPORTER CAN TAKE DOWN YOUR
24 STATEMENTS. PLEASE BEGIN BY STATING AND SPELLING YOUR
25 NAME AND STATING YOUR AFFILIATION. ALSO, IF YOU ARE

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1 COMMENTING ON A SPECIFIC REGULATION, PLEASE IDENTIFY THIS
2 SECTION AND SUBSECTION OF THE REGULATION SO THAT WE MAY
3 REFER TO IT AS WE SPEAK. WE WILL HEAR TESTIMONY UNTIL
4 ALL THOSE WISHING TO TESTIFY HAVE HAD AN OPPORTUNITY TO
5 DO SO. ANYONE HAVE ANY QUESTIONS? SEEING NONE WE ARE
6 READY TO BEGIN, SO, WHOEVER WOULD LIKE TO PROVIDE ANY
7 REMARKS ON THE REGULATIONS, NOW IS YOUR TIME.
8 MS. POWERS: GOOD MORNING, MEMBERS OF THE
9 COUNCIL AND MR. KISH. THANK YOU VERY MUCH FOR HOLDING
10 THESE HEARINGS. MY NAME IS JANET POWERS, J-A-N-E-T,
11 P-O-W-E-R-S. I HAVE SUBMITTED A WRITTEN INPUT TO
12 COUNCIL. I AM WITH THE LAW FIRM OF FIORE, RACOBS &
13 POWERS IN IRVINE, CALIFORNIA. MY LAW FIRM REPRESENTS
14 THOUSANDS OF COMMON INTEREST DEVELOPMENT COMMUNITY
15 ASSOCIATIONS THAT WE'LL AFFECTIONATELY REFER TO TODAY AS
16 HOMEOWNERS ASSOCIATIONS OR COMMUNITY ASSOCIATIONS. I AM
17 HERE ALSO TO PROVIDE INPUT ON BEHALF OF ROBERT REDICK
18 (PHONETIC) WHO WAS HERE EARLIER. HE IDENTIFIED HIMSELF
19 ON THE RECORD THIS MORNING AND HE HAD COME PREPARED TO
20 GIVE YOU HIS INPUT AS THE PRESIDENT OF THE VERY LARGE
21 2,700 HOME COMMUNITY LOCATED IN THE INLAND EMPIRE. HE IS
22 THE PRESIDENT AND HE IS ALSO A CERTIFIED COMMUNITY
23 ASSOCIATION MANAGER. REGRETTABLY HE HAD SOME PRIOR
24 COMMITMENT THAT DUE TO THE CHANGE OF THE TIME OF THE
25 PUBLIC HEARING HE COULD NOT STAY SO I HAVE EMAILED HIS

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1 INPUT AND REMARKS THAT HE WOULD HAVE MADE TO THE COUNCIL
2 TODAY TO MR. SPERGER SO HOPEFULLY YOU CAN TAKE THOSE INTO
3 CONSIDERATION. I'LL ALSO SHARE AN EXAMPLE IN A MINUTE
4 ABOUT SOME OF THE CONCERNS THAT HE CAME HERE TO TESTIFY
5 ABOUT. BEFORE I GET STARTED I -- I REALLY HAD COME TODAY
6 INTENDING TO GO A DIFFERENT DIRECTION THAN WHAT I'M GOING
7 TO END UP GOING BECAUSE I REALIZED IN A WAY I'M PREACHING
8 TO THE CHOIR, SO I DON'T NEED TO BELABOR EVERYTHING THAT
9 I'M SURE YOU'VE ALREADY RECEIVED FROM BOTH COMMUNITY
10 ASSOCIATIONS AS WELL AS THE INDUSTRY TRADE GROUPS THAT
11 REPRESENT COMMON INTEREST DEVELOPMENTS THROUGHOUT THE
12 STATE. WE ARE DIFFERENT. COMMUNITY ASSOCIATIONS ARE
13 VERY DIFFERENT THAN OTHER KINDS OF HOUSING PROVIDERS WHO
14 WILL BE ADDRESSING YOU THIS MORNING AND WE WANT YOU TO
15 UNDERSTAND THAT WE APPRECIATE THE TIME AND THE EFFORT
16 THAT EVERYONE HAS PUT IN. PARTICULARLY I WANT TO COMMEND
17 COUNCILMEMBER SCHUR. IT'S AN ABSOLUTELY ASTOUNDING
18 AMOUNT OF WORK THAT YOU HAVE PUT IN. YOUR ENCYCLOPEDIA
19 KNOWLEDGE OF THIS AREA IS SO IMPRESSIVE TO ME. AS I WAS
20 GOING THROUGH YOUR INPUT AND YOUR COMMENTS, I FRANKLY WAS
21 OVERWHELMED AND IT CAUSED ME TO GO BACK AND REREAD
22 VIRTUALLY EVERY ASPECT OF THE, BOTH, FEDERAL AND STATE
23 HOUSING LAW, SO KUDOS TO YOU, COUNCILMEMBER SCHUR. AND,
24 AGAIN, I WANTED TO COMMENT ON COUNCILMEMBER IGLESIA'S
25 PRESENTATION. I HEARD IT EARLIER THIS YEAR AND IT'S AN

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1 INCREDIBLE PRESENTATION AND I KNOW HOW MUCH TIME AND
2 EFFORT WENT INTO THAT. AS AN ATTORNEY REPRESENTING
3 ASSOCIATIONS EXCLUSIVELY, WE ARE ASKED ON A DAILY BASIS
4 TO PROVIDE COUNSELING AND INPUT WITH REGARD TO ASSISTIVE
5 ANIMALS. IT HAS BECOME ONE OF THE BIGGEST CHALLENGES FOR
6 COMMON INTEREST DEVELOPMENTS THAT WE HAVE HAD IN MANY,
7 MANY YEARS. IT'S -- IT'S VERY DIFFICULT TO TRY TO DRAW A
8 QUICK DISTINCTION BETWEEN COMMON INTEREST DEVELOPMENTS
9 AND OTHER TYPE OF HOUSING PROVIDERS, BUT ONE ASPECT I
10 HOPE YOU WILL KEEP IN MIND IN THIS PROCESS IS THAT THERE
11 IS A VERY DIFFERENT GOVERNMENT STRUCTURE FOR COMMUNITY
12 ASSOCIATIONS. THE HOMEOWNERS WHO LIVE IN THE PROJECT
13 ELECT VOLUNTEERS TO SERVE ON A BOARD OF DIRECTORS. MOST
14 OF THESE ENTITIES ARE INCORPORATED AND HAVE TO FOLLOW ALL
15 THE RULES OF -- THAT ARE PROVIDED FOR IN THE CALIFORNIA
16 CORPORATIONS CODE AS WELL AS FOLLOWING THE BIG PIECE OF
17 LEGISLATION IN CALIFORNIA, THE DAVIS-STIRLING COMMON
18 INTEREST DEVELOPMENT ACT. ALL COMMUNITY ASSOCIATIONS ARE
19 REGULATED BY THE DAVIS-STIRLING ACT. ONE NOTE -- I THINK
20 AT THE BEGINNING HERE -- IS THAT I THINK THERE IS A LOT
21 OF MYTH AND LEGEND AND MISINFORMATION OUT THERE ABOUT
22 COMMUNITY ASSOCIATIONS. ASSOCIATIONS ARE REQUIRED TO LET
23 EVERY OWNER HAVE ONE PET, A DOMESTIC ANIMAL. THIS IS
24 PROVIDED FOR IN THE DAVIS-STIRLING ACT. SO WE ARE NOT
25 HERE TO REVISIT THE ISSUE OF WHETHER OR NOT PEOPLE CAN

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1 HAVE A PET. WHAT WE ARE DEALING WITH AT COMMUNITY
2 ASSOCIATION LEVEL RIGHT NOW THAT IS OUR GREATEST
3 FRUSTRATION IS OUR COMMON ENEMY, THE FAKER. LET'S TALK
4 ABOUT THE SO-CALLED ELEPHANT IN THE ROOM HERE. I JUST
5 WANT TO GET OUT THERE THAT ASSOCIATIONS ARE READY,
6 WILLING, AND ABLE TO GO THROUGH THE PROCESS OF VERIFYING
7 A DISABILITY, GIVE AN ASSOCIATION RELIABLE VERIFICATION
8 THAT A PERSON IS DISABLED. WE DON'T WANT DETAILS. WE
9 DON'T NEED A DIAGNOSIS. WE JUST NEED VERIFICATION OF A
10 DISABILITY. THE NEXT THING THE ASSOCIATION NEEDS IS A
11 NEXUS BETWEEN THAT DISABILITY AND THE ASSISTIVE ANIMAL
12 THAT IS BEING REQUESTED. IS THERE SOME RELATIONSHIP
13 BETWEEN THE DISABILITY AND THE ANIMAL? END OF STORY.
14 END OF DISCUSSION FOR THE ASSOCIATION. KELLY RICHARDSON
15 WILL BE TALKING IN A MINUTE. I CAN ASSURE YOU THAT AS
16 LEGAL COUNSEL TO ALL OF THE ASSOCIATIONS THAT I
17 REPRESENT, THAT'S THE END OF THE DIALOGUE. WE ARE GOING
18 TO GRANT THE REASONABLE ACCOMMODATION. THE PERSON WHO IS
19 DISABLED WILL RECEIVE THEIR ASSISTIVE ANIMAL. THAT IS
20 SOLELY THE BEGINNING OF THE DISCUSSION, HOWEVER, BECAUSE
21 WHAT IS HAPPENING IS THE RAMPANT ABUSE. AND THAT IS THE
22 PROBLEM. WE HAVE PEOPLE WHO NOT ONLY WANT ONE ASSISTIVE
23 ANIMAL. WE ARE NOT TALKING ABOUT DOMESTIC DOGS AND CATS
24 AND BIRDS AND FISH OR ANYTHING LIKE THAT. WE ARE SEEING
25 A PROLIFERATION OF REQUESTS FOR EXOTICS. THE MOST COMMON

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1 THESE DAYS WE ARE GETTING IS FOR ASSISTIVE POULTRY --
2 TURKEY, DUCKS, CHICKENS. AND IN QUANTITIES. IT ISN'T
3 GOING TO BE JUST ONE DUCK THAT WILL BE SUFFICIENT TO
4 ACCOMMODATE THE DISABILITY. IT'S VIRTUALLY A FLOCK. IN
5 ADDITION, WE ARE FACED CONSTANTLY -- AND WHAT MR. REDICK
6 WAS GOING TO TELL YOU AS THE PRESIDENT OF HIS
7 ASSOCIATION -- THEY HAVE A REQUEST FOR A REASONABLE
8 ACCOMMODATION FOR A PERSON WHO WANTS TO TAKE THEIR BOA
9 CONSTRICTOR INTO THE COMMUNITY CLUBHOUSE SAUNA. THEY'RE
10 GOING THROUGH THE VERIFICATION PROCESS. I AM SURE THAT
11 THEY WILL RETAIN RELIABLE VERIFICATION OF THE DISABILITY
12 AND SOMEONE WILL TELL THEM THAT BOA CONSTRICTOR IN
13 PARTICULAR ACCOMMODATES THAT PERSON'S DISABILITY. BUT
14 YOU CAN ONLY IMAGINE THE DISMAY WHEN THE DOOR TO THE
15 SAUNA IN THE CLUBHOUSE IS OPENED AND THERE IS A PERSON
16 WITH A BOA CONSTRICTOR. SO, THESE CHALLENGES, THEY SOUND
17 RATHER SILLY AS I SIT HERE AND GIVE YOU THESE EXAMPLES.
18 THIS IS WHAT WE'RE BEING FACED WITH DAILY IN TERMS OF THE
19 CHALLENGES. WE NEED AND WE WANT VERY SPECIFIC, DETAILED
20 REGULATIONS. THE MORE INFORMATION, THE MORE EXAMPLES,
21 THE MORE HELP YOU CAN GIVE COMMUNITY ASSOCIATIONS TO DEAL
22 WITH THE REQUEST PROCESS, THE VERIFICATION PROCESS, AND
23 EVEN THE INTERACTIVE PROCESS -- WE -- WE SOMETIMES ARE
24 FACED WITH REQUESTS FOR FIVE, SIX, SEVEN, EIGHT ASSISTIVE
25 ANIMALS TO REASONABLY ACCOMMODATE A DISABILITY. WE WILL

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1 RECEIVE THE REQUEST AND MANY TIMES THERE WILL BE
2 MULTIPLE, RELIABLE VERIFICATIONS OF A DISABILITY THAT
3 REQUIRE MORE THAN ONE ANIMAL, WHICH IS FINE EXCEPT THAT
4 THE SIZE OF SOME OF THE CONDOMINIUM UNITS OR DIFFERENT
5 HOUSING OPPORTUNITIES THAT ARE IN ASSOCIATIONS ARE VERY
6 SMALL. I MEAN, WE MAY HAVE UNITS THAT ARE 100-SQUARE
7 FEET IN THE SECOND STORY IN A WALK-UP TYPE OF SITUATION
8 WITHOUT AN ELEVATOR. SO WE FACE DIFFERENT CHALLENGES AND
9 WE WANT TO WORK WITH THE DFEH AND THE COUNCIL TO COME UP
10 WITH THE BEST POSSIBLE REGULATION TO ASSIST THE
11 ASSOCIATION. THE MORE EXAMPLES AND THE MORE SPECIFICITY
12 THAT WILL PARTICULARLY TAKE INTO CONSIDERATION COMMON
13 INTEREST DEVELOPMENTS, THE BETTER FOR US. WE ARE THEN
14 ABLE TO POINT OUR VOLUNTEER DIRECTORS AND THEIR COMMUNITY
15 MANAGERS TO SOMETHING IN THE SET OF REGULATIONS THAT
16 HELPS THEM ACTUALLY WORK THROUGH THE PROCESS. YOU HAVE
17 BEEN SENT INFORMATION, I KNOW, ABOUT THE DEMOGRAPHICS OF
18 ASSOCIATIONS; BUT AT LEAST 25 PERCENT OF ASSOCIATIONS
19 STATEWIDE ARE SELF-MANAGED, MEANING THEY HAVE NO HIRED
20 PROFESSIONAL PERSON TO GIVE THEM HELP WITH THE DAY-TO-DAY
21 OPERATIONS OF THEIR COMMUNITY AND THEY ARE RUN TRULY BY
22 VOLUNTEER HOMEOWNERS. YOU PURCHASE A UNIT OR A HOME IN
23 THE PROJECT AND LUCKY YOU YOU ARE ELECTED BY YOUR
24 NEIGHBORS TO BE ON THE BOARD OF DIRECTORS. THERE IS NO
25 BOARD OF DIRECTOR SCHOOL. THERE IS NO -- SOME HOMEOWNERS

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1 TAKE ADVANTAGE OF THE EDUCATION OFFERED BY SUCH INDUSTRY
2 TRADE GROUPS AT COMMUNITY ASSOCIATIONS INSTITUTE WHERE
3 THEY CAN COME AND LEARN ABOUT EVERYTHING FROM FAIR
4 HOUSING TO HOW TO READ A BALANCE SHEET, HOW TO MAINTAIN
5 REAL PROPERTY. THESE ARE THE CHALLENGES FOR THE
6 VOLUNTEERS WHO CHOOSE TO SERVE THEIR COMMUNITY. AND I
7 WOULD SAY THE VAST MAJORITY OF THEM ARE NOT
8 ILL-INTENTIONED. THEY ARE JUST COMPLETELY IGNORANT AND
9 THEY DO NEED -- AND WE ARE TRYING AS AN INDUSTRY TO
10 EDUCATE THEM WITH REGARD TO THEIR DUTIES IN ALL ASPECTS
11 OF GOVERNANCE AND OPERATION, INCLUDING FAIR HOUSING.
12 MOST OF THEM CANNOT AFFORD LEGAL COUNSEL. MOST OF THEM
13 CANNOT AFFORD TO GO AND ENGAGE IN A VERY LONG, PROTRACTED
14 LEGAL BATTLE, NOR DO THEY WANT TO. THEY WANT TO HELP
15 THEIR NEIGHBORS AND REASONABLY ACCOMMODATE A DISABILITY.
16 IT'S JUST WITHOUT A HOW-TO MANUAL OR AT LEAST MORE HELP
17 THAN WHAT WE HAVE CURRENTLY, THEY'RE JUST UNABLE TO
18 FULFILL ANY TYPE OF LEGAL DUTY. SO WHATEVER THE COUNCIL
19 CAN DO TO ADOPT REASONABLE RULES AND REGULATIONS THAT
20 TELL ASSOCIATIONS HOW TO RECEIVE A REQUEST, HOW TO
21 PROCESS THAT REQUEST, AND THE DEGREE TO WHICH THEY CAN
22 AND SHOULD INTERACT -- I MEAN, OFTEN THEY'RE A LITTLE
23 AFRAID TO SIT DOWN IN THE ROOM AND HAVE THOSE KINDS OF
24 DISCUSSIONS BECAUSE THEY REALLY DON'T KNOW WHAT THE LAWS
25 IN THIS AREA ARE. SO I AM HERE TODAY TO ENCOURAGE YOU

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1 THAT WE'VE COME A LONG WAY. WE HAVE COME A LONG WAY
2 SINCE ASSOCIATIONS HAD NO IDEA WHAT ASSISTANCE ANIMAL IS.
3 I THINK MOST OF THEM TODAY DO, BUT NOW WE'RE DOWN TO THE
4 NITTY GRITTY OF TRYING TO GET OUR ARMS AROUND WHAT IS
5 REALLY A VERY DIFFICULT PROBLEM FOR PARTICULARLY
6 LAYPEOPLE, VOLUNTEERS, TO UNDERSTAND. THEY DON'T WANT TO
7 CROSS LINES. THEY JUST DON'T KNOW WHAT THE LINES ARE.
8 AND WE WANT TO HELP YOU, TOO. AS AN INDUSTRY WE PROVIDE
9 EDUCATION. WE PROVIDE A LOT OF BACKGROUND AND WE HAVE A
10 LOT OF RESOURCES THAT ARE DISPOSABLE AND WE ARE HAPPY TO
11 EDUCATE COUNCIL AND YOUR STAFF AND ANYONE ELSE WITH
12 REGARD TO HOW COMMUNITY ASSOCIATIONS FUNCTION AND THE
13 DISTINCTIONS BETWEEN US AND OTHER TYPES OF HOUSING
14 PROVIDERS. WE RECENTLY HAD AN OPPORTUNITY AT A LAW
15 SEMINAR OUT IN PALM DESERT TO HAVE GREGORY MANN, ONE OF
16 YOUR SENIOR COUNCIL, COME OUT TO TALK TO EVERYONE ON THE
17 TOPIC OF ASSISTANCE ANIMALS. HE WAS PARTICULARLY WELL
18 RECEIVED BECAUSE, BEING A FORMER PRESIDENT OF HIS CONDO
19 ASSOCIATION BOARD, HE COULD ABSOLUTELY RELATE TO THE
20 AUDIENCE THERE AND VICE VERSA. SO THERE WAS A LOT OF
21 REALLY GOOD COMMUNICATION AND HE WAS KIND ENOUGH TO STAY
22 FOR LUNCH. WE DID NOT BRIBE A PUBLIC OFFICIAL. LUNCH
23 WAS FREE. HE SAT AND HE COMMUNICATED WITH ABOUT 15
24 LAWYERS FOR TWO HOURS AND REALLY GAVE US A LOT OF INSIGHT
25 INTO HOW THE DEPARTMENT -- THE LEGAL DEPARTMENT WORKS AT

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1 THE DFEH. AND I THINK IT'S THIS KIND OF COMMUNICATION
2 THAT WILL SERVE AS WELL GOING FORWARD. WE NEED A
3 DIALOGUE. WE WANT A DIALOGUE. WE NEED TO UNDERSTAND
4 YOUR PERSPECTIVE. AND WE HOPE YOU WILL COME TO
5 UNDERSTAND THE AVERAGE, REASONABLY PRUDENT BOARD MEMBER
6 SITTING ON A BOARD'S PERSPECTIVE AS WELL. I THINK BY
7 WORKING TOGETHER WE CAN ACHIEVE REALLY INCREDIBLE THINGS
8 WITH THE PROPOSED REGULATIONS AND I'M HERE TO TELL YOU
9 THAT COMMUNITY ASSOCIATIONS ARE UP FOR THE TASK AND WE
10 WANT TO PARTNER WITH YOU. BUT IF WE DO NOT RECOGNIZE
11 THAT WE'RE DEALING PRIMARILY WITH VERY WELL-INTENTIONED
12 BOARD MEMBERS WHO NEED GUIDANCE, THEN WE'RE -- WE'RE
13 REALLY IGNORING THE REALITY AND WE SHOULDN'T DO THAT.
14 THIS IS AN INCREDIBLE OPPORTUNITY FOR ALL OF US TO CREATE
15 GREAT REGULATIONS THAT WE WILL BE VERY HAPPY TO WORK WITH
16 IN YEARS TO COME. THANK YOU VERY MUCH.
17 MR. MANDELBAUM: THANK YOU, MS. POWERS. ONE
18 GENERAL SUGGESTION I HAVE -- AND I APPRECIATE THE
19 INVITATION FOR A COLLABORATIVE RELATIONSHIP AND THAT'S
20 WHAT WE HOPE FOR TOO. ONE OVERRIDING THOUGHT THAT MAY BE
21 ADDRESSED IN YOUR WRITTEN COMMENTS THIS ROUND AND NO
22 DOUBT ADDITIONAL ROUNDS, PARTICULARLY ON THE TOPIC OF
23 ACCOMMODATION OF ASSISTIVE ANIMALS IS SOME KIND -- ON A
24 GRANULAR LEVEL DISCUSSIONS ABOUT WHAT IS WITHIN OUR
25 PURVIEW AND WHAT ISN'T. I'VE HEARD -- THESE ISSUES HAVE

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1 BEEN RAISED TO US BEFORE AND WE'RE COGNIZANT OF THEM.
2 SOMETIMES I FEEL LIKE, AT LEAST IN THE ORAL REMARKS THAT
3 WE'VE RECEIVED, SOME ASPECTS OF -- OF ELIMINATING THE
4 ELEMENT OF FRAUD IN THIS ISSUE IS BEYOND THE PURVIEW OF
5 CIVIL RIGHTS REGULATIONS. FOR INSTANCE, LIKE LICENSURE
6 OF ANIMALS AND THINGS. SO SOME DEDICATED ATTENTION TO
7 WHAT SLICE OF WHAT MAY BE A BIGGER PROBLEM IS APPROPRIATE
8 FOR THESE ANTIDISCRIMINATION REGULATIONS WOULD BE MUCH
9 APPRECIATED.
10 MS. POWERS: I APPRECIATE THAT INPUT. I THINK
11 WE ARE ALL TRYING TO DRAW A DISTINCTION HERE BETWEEN
12 ASSISTIVE ANIMALS AND SERVICE ANIMALS AND OTHER TYPES OF
13 REASONABLE ACCOMMODATIONS AND REALLY JUST DEAL WITH THE
14 VERY SMALL SLICE THAT WE ARE REVIEWING TODAY. I DO THINK
15 THAT IT IS IMPORTANT FOR EVERYONE TO UNDERSTAND THE
16 LIMITATIONS THAT THE DFEH WORKS UNDER, BOTH WITH REGARD
17 TO NOT ONLY THE REGULATORY STRUCTURE HERE IN CALIFORNIA,
18 BUT WE ALL HAVE TO ALSO BE LOOKING AT THE FEDERAL
19 GOVERNMENT'S POINT OF VIEW ON THIS THROUGH HUD AND THE
20 DEPARTMENT OF JUSTICE. I THINK KELLY AND I CERTAINLY CAN
21 SPEAK TO THE FACT THAT WHILE WE AS PRACTICING LAWYERS --
22 I HAVE BEEN PRACTICING THIS AREA OF LAW FOR OVER 30
23 YEARS. I THINK WE GET IT. NOW, THE TRICKLING DOWN TO
24 EVERYONE OF WHAT YOUR GIVEN AUTHORITY IS AND WHAT IS YOUR
25 JOB TO NOT ONLY WRITE, BUT THEN ENFORCE, I THINK THAT

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1 MIGHT TAKE SOME WORK. THAT IS NOT AN INTUITIVE THING BY
2 ANY MEANS, BUT I THINK IT IS OUR JOB ALSO TO TAKE BACK TO
3 OUR INDUSTRY AND EDUCATE THEM AS TO WHAT YOU CAN AND
4 CANNOT DO IN THE RULEMAKING PROCESS AND IN THE
5 ENFORCEMENT PROCESS, AS WELL. BECAUSE, AS WE CONSTANTLY
6 TELL OUR CLIENTS -- OR AT LEAST I DO -- DON'T ADOPT A
7 RULE YOU DON'T INTEND TO ENFORCE BECAUSE THERE IS REALLY
8 NOTHING WORSE. IF YOU DON'T UNDERSTAND THE RULE THAT YOU
9 ARE ADOPTING OR IF IT ISN'T BEING ADOPTED FOR A
10 PARTICULAR REASON, LET'S NOT GO THERE EITHER. SO WE WILL
11 TAKE BACK YOUR CONCERN THAT YOU ARE NOT THE MASTER OF
12 YOUR OWN DESTINY WHEN IT COMES TO NECESSARILY DEFINING A
13 LOT OF THE FAIR HOUSING LAWS. THANK YOU.
14 MR. RICHARDSON: GOOD MORNING, DIRECTOR KISH AND
15 COUNCILMEMBERS. THANKS FOR THE OPPORTUNITY TO SPEAK
16 TODAY. I AM REMINDED OF WHEN COUNCILMEMBERS ANDREW AND
17 SHANAY (PHONETIC) TOOK ON THE CRAZY, GARGANTUAN TASK OF
18 TRYING TO CREATE AN OMNIBUS HOUSING REGULATIONS DRAFT AS
19 WE ALL TRIED TO GET OUR ARMS AROUND THAT. REALLY
20 DIFFICULT TASK. AND I APPRECIATE THE WAY OF TRYING TO
21 CARVE OUT SPECIFIC TOPICS. AND LET'S TACKLE THESE
22 MONSTERS ONE AT A TIME. BUT, EVEN CARVING THEM OUT ONE
23 AT A TIME, THEY ARE VERY, VERY DIFFICULT TO -- TO REALLY
24 CREATE REGULATIONS WHICH WILL HELP. I AM KELLY
25 RICHARDSON. I'M SORRY, I FORGOT. I AM KELLY RICHARDSON,

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1 ATTORNEY PRACTICING IN SOUTHERN CALIFORNIA. AS
2 MS. POWERS, I REPRESENT HUNDREDS -- I PROBABLY
3 REPRESENTED THOUSANDS -- BUT I REPRESENT HUNDREDS
4 PRESENTLY COMMON INTEREST DEVELOPMENTS RANGING FROM TWO
5 AND THREE HOMES IN SIZE UP TO OVER 4,000 HOMES IN SIZE.
6 CALIFORNIA IS VERY DIVERSE IN THE COMMON INTEREST HOUSING
7 COMMUNITY. OCCASIONALLY IN MY NEWSPAPER COLUMN I TRY TO
8 HIGHLIGHT FAIR HOUSING ISSUES, YOU MAY HAVE SEEN FROM
9 TIME TO TIME, IN SOUTHERN CALIFORNIA. AND I AM ALSO A
10 PROUD MEMBER OF THE CALIFORNIA ASSOCIATION OF REALTORS
11 AND I ATTEND THE HOUSING COMMITTEE. I AM NOT THIS YEAR A
12 VOTING MEMBER OF THE HOUSING COMMITTEES, BUT I ATTEND
13 THOSE RELIGIOUSLY THREE TIMES A YEAR AND APPRECIATE THEIR
14 VERY HARD WORK IN THIS AREA. I THINK AS A PREPARATORY
15 MATTER ONE OF THE THINGS WE NEED TO KEEP IN MIND WHEN
16 TALKING ABOUT THESE REGULATIONS IS WE ARE NOT SIMPLY
17 TALKING ABOUT ENFORCEMENT ACTIONS BY THE DEPARTMENT. WE
18 ARE TALKING ABOUT ENFORCEMENT ACTIONS BY THE FEDERAL
19 GOVERNMENT, BY THE STATE GOVERNMENT, BY LOCAL HOUSING
20 COUNSELS, AND -- THROUGHOUT THE STATE AND BY PRIVATE
21 CITIZENS WHO HIRE ATTORNEYS WHO SUE FOR ATTORNEY'S FEES
22 IN ENFORCEMENT ACTIONS. THAT DOES CHANGE THE COMPLEXION
23 OF THIS A LITTLE BIT. WE ARE NOT SIMPLY TALKING ABOUT
24 WHAT CASES DIRECTOR KISH AND HIS STAFF MAY TAKE ON, BUT
25 WE DO HAVE TO KEEP IN MIND THE GIGANTIC RIPPLE EFFECT OF

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1 PRIVATE LITIGATION IF WE DO NOT TRY TO ELIMINATE AS MANY
2 UNINTENDED CONSEQUENCES AS POSSIBLE. BELIEVE YOU ME AS A
3 REAL ESTATE ATTORNEY -- AND I AM SO MUCH YOUNGER THAN MY
4 COLLEAGUE, MS. POWERS. I HAVE BEEN PRACTICING OVER 30
5 YEARS ALSO, BUT, YOU KNOW, WHEN I WAS ADMITTED THEY DID
6 TAKE ELEMENTARY SCHOOL STUDENTS SO THAT'S WHY I AM STILL
7 SO YOUNG. BUT IN MY YEARS OF HANDLING THESE MATTERS,
8 FAIR HOUSING MATTERS, THANK GOD MOST OF THE ISSUES I HAVE
9 BEEN ABLE TO RESOLVE BEFORE THEY HIT THE COURTS. BUT
10 MANY OF THE ISSUES DO HIT THE COURTS BECAUSE OF A VARIETY
11 OF MISUNDERSTANDINGS, MISCONCEPTIONS, AND INAPPROPRIATE
12 EXPECTATIONS. SOMETIMES ON BOTH SIDES OF THE TABLE. I
13 ABSOLUTELY CONCUR WITH MY COLLEAGUE, MS. POWERS, THAT OUR
14 CLIENTS WANT TO DO IT RIGHT. THEY SIMPLY WANT TO KNOW
15 WHERE ARE THE LINES DRAWN. AND YOU MAY RECALL A COUPLE
16 OF YEARS AGO WHEN I TESTIFIED, I THINK, IN OAKLAND BEFORE
17 YOU, THAT WAS ONE OF THE FIRST THINGS I SAID. IN THE
18 REAL ESTATE LAW COMMUNITY WE ARE DYING FOR GUIDANCE. I
19 NOTE WITH INTEREST -- AND I'LL COMMENT ON IT LATER AS
20 WELL -- THAT EVEN IN THESE DRAFT REGULATIONS I CAN SEE
21 BIG CHUNKS THAT WERE TAKEN ALMOST VERBATIM FROM THE
22 OCTOBER 15 HUD REGULATION. SIMILARLY THERE IS LANGUAGE
23 IN THE DISABILITY ACCOMMODATION THAT COMES LIFTED FROM
24 THE JOINT DEPARTMENT OF JUSTICE HUD INTERPRETIVE GUIDE
25 WHICH OF COURSE IS NOT ITSELF A REGULATION. THAT IS HOW

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1 FAR WE HAVE TO SCRAPE FOR GUIDANCE TO TELL OUR CLIENTS
2 HOW TO DO IT RIGHT. WE WANT THE CITIZENS THAT NEED THESE
3 ACCOMMODATIONS TO ALSO KNOW WHAT IS AND IS NOT EXPECTED
4 FROM THEM. AND THAT VERY MUCH IS AN ISSUE HERE. I WOULD
5 SUBMIT THAT IN TERMS OF JUST GENERAL PREPARATORY MARKS,
6 FOLLOWING THE FEDERAL REGULATIONS, FOLLOWING THE
7 INTERPRETIVE JOINT GUIDELINES IS NOT SUFFICIENT.
8 CALIFORNIA LAW IS EXTREMELY ROBUST IN REAL ESTATE AREA.
9 WE HAVE MUCH GREATER SPECIFICITY IN OUR LAWS IN REAL
10 ESTATE AND PARTICULARLY IN COMMON INTEREST DEVELOPMENT
11 LAW. AND THAT MEANS THAT THERE ARE SOME MISTAKES. THERE
12 ARE SOME THINGS THAT HUD HAS SAID IN THE OCTOBER 14
13 REGULATION THAT SIMPLY DO NOT APPLY TO OUR STATE LAW AND
14 ARE GOING TO CREATE PROBLEMS IF WE SIMPLY -- AND I DON'T
15 MEAN TO SAY BLINDLY -- BUT IF WE SIMPLY FOLLOW THE LEAD
16 OF HUD IN OUR STATE. CALIFORNIA LAW IS VERY DIFFERENT.
17 SO WHAT I'D LIKE TO DO IS START WITH THE 11098.4 AS WE
18 TALK ABOUT THE SEXUAL HARASSMENT ISSUES APPLIED TO
19 HOUSING PROVIDERS. SOME OF YOU COUNCILMEMBERS MAY RECALL
20 MY URGING YOU IN RESPONSE TO THE VERY FIRST DRAFT OF
21 THESE REGULATIONS YEARS AGO THAT WE HAVE TO EXERCISE
22 EXTREME CAUTION IN APPLYING AN EMPLOYMENT RATIONALE TO
23 HOUSING SCENARIO SEXUAL HARASSMENT ISSUES. FOR EXAMPLE,
24 WE ALL KNOW THAT AN EMPLOYER HAS AN OBLIGATION TO PROTECT
25 THE EMPLOYEES FROM POSSIBLE ENVIRONMENT ON ADVANCES AND

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1 ALSO FROM INAPPROPRIATE CONDUCT FROM THIRD PARTIES. I
2 REMEMBER A NUMBER OF YEARS AGO WHEN MY RECEPTIONIST
3 COMPLAINED, HAVING TO TELL UPS TO ASSIGN SOMEBODY ELSE TO
4 THE ACCOUNT. WHY? WAS I CONFIDENT THAT THE UPS PERSON
5 WAS INAPPROPRIATE? NOT AT ALL. BUT I HAD A COMPLAINT.
6 I HAD NO EVIDENCE TO THE CONTRARY AND I HAD TO RESPOND
7 APPROPRIATELY. AND I FELT UNFORTUNATE FOR THAT DRIVER.
8 HE WAS OFF OUR ACCOUNT. BUT IN HOUSING IT'S COMPLETELY
9 DIFFERENT. IF I AM THE MANAGER OF A 500-APARTMENT
10 BUILDING AND I HAVE SOMEBODY ON THE SECOND FLOOR COMPLAIN
11 TO ME ABOUT SOMETHING THAT SOMEBODY ON THE FOURTH FLOOR
12 SAID TO THEM AT THE POOL LAST WEEK, THAT ISN'T A BREACH
13 OF THE LEASE. WHAT CAN I AS A LANDLORD DO? I CAN'T MAKE
14 THAT TENANT GO AWAY. I AM VERY LIMITED. UNLIKE THE
15 EMPLOYER CONTEXT, I AM EXTREMELY LIMITED TO WHAT I CAN DO
16 TO REMEDY THAT MISCONDUCT. THAT IS ONE OF THE FIRST
17 REALLY BRIGHT LINE, UNDERPINNING, FOUNDATIONAL ISSUES
18 THAT, I THINK, WE HAVE TO BE ALERT TO PUTTING A SQUARE
19 PEG IN A ROUND HOLE. AND I RESPECTFULLY SUBMIT THAT IS
20 EXACTLY WHAT FOLLOWING THE HUD REGULATION WOULD DO IN
21 CALIFORNIA. NOW, DO WE IGNORE IT? NO. BUT I THINK
22 THERE ARE SOME THINGS WE CAN DO TO ADD FURTHER CLARITY
23 AND DEFINITION TO WHAT HUD STARTED THAT CAN CLOSE THE
24 DOORS ON SOME OF THE PROBLEMS. FOR EXAMPLE, IN
25 SECTION -- PROPOSED SECTION 11098.4, SUBPART A, SUBPART

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1 ONE, SUBPART CAPITAL LETTER C, AS IN CHARLIE, THE CURRENT
2 DRAFT REFERENCES AS ONE OF THE PROHIBITED CONDUCT
3 FAILING TO FULFILL A DUTY TO TAKE PROMPT ACTION TO
4 CORRECT AND A DISCRIMINATORY HOUSING PRACTICE BY A THIRD
5 PARTY WHERE THE PERSON KNEW OR SHOULD HAVE KNOWN OF A
6 DISCRIMINATORY CONDUCT. THERE IS SOMETHING VERY
7 IMPORTANT MISSING THERE. AND THIS IS SOMETHING THAT
8 SPECIFICALLY IS INCLUDED IN THE HUD REGULATION. AND I
9 WAS TROUBLED TO SEE IT WAS OMITTED FROM THE DRAFT
10 REGULATION. AND THAT IS THE LANGUAGE FROM HUD REG
11 SUBPART 100.7, PAREN, LITTLE A, PAREN, ONE, PAREN, SMALL
12 ROMAN NUMERAL III. AND THE LANGUAGE IN THE HUD REG ADDS
13 IF THE PROVIDER KNEW OR SHOULD HAVE KNOWN OF THE
14 DISCRIMINATORY CONDUCT, HAS THE POWER TO CORRECT IT AND
15 FAILED TO DO SO. NOW, THAT'S EXTRAORDINARILY CRITICAL IN
16 THE HOUSING CONTEXT. BECAUSE WHETHER I'M THE MANAGER OF
17 THE 500-APARTMENT BUILDING OR WHETHER I AM THE BOARD OF
18 DIRECTOR OR THE PROPERTY MANAGER, ASSOCIATION MANAGER, OF
19 A 500-CONDOMINIUM COMPLEX, I MAY NOT HAVE THE ABILITY AND
20 THE POWER TO DO ANYTHING ABOUT SOMEBODY'S MISBEHAVIOR IN
21 THAT COMMUNITY. BELIEVE YOU ME, IN MY HOA LAW PRACTICE
22 MANY TIMES I WISH THAT MY CLIENTS HAD THE ABILITY TO DO
23 SOMETHING MORE TO A MEMBER OF A COMMUNITY THAN SIMPLY SAY
24 "PLEASE STOP THAT." BUT THAT'S EXACTLY THE PROBLEM WE
25 HAVE HERE. WE DON'T HAVE THE ABILITY TO SAY TO THE OWNER

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1 OF CONDO 102, "WE THINK YOU SAID SOMETHING INAPPROPRIATE
2 TO CONDO 106. YOU MUST LEAVE THE ASSOCIATION." WE CAN'T
3 DO THAT. SO I WOULD -- I WOULD BEG THE COUNCIL TO
4 CONSIDER FOLLOWING THE HUD REG AND MAKE SURE IT'S NOT
5 JUST -- THAT THE HOUSING PROVIDER HAS KNOWLEDGE OF THE
6 CONDUCT, BUT ALSO HAS THE POWER TO CORRECT IT AND FAILED
7 TO DO SO. THE NEXT LANGUAGE IN THE DRAFT, THE PHRASE
8 "OBLIGATION" -- I'M QUOTING NOW -- "OBLIGATION TO THE
9 AGGRIEVED PERSON CREATED BY CONTRACT OR LEASE," PAREN,
10 "INCLUDING BYLAWS OR OTHER RULES OF A HOMEOWNER
11 ASSOCIATION, CONDOMINIUM, OR COOPERATIVE," CLOSE PAREN,
12 "OR BY FEDERAL CALIFORNIA OR LOCAL LAW." RESPECTFULLY I
13 THINK THIS IS AN EXAMPLE OF WHERE THE FEDERAL REGULATION
14 CANNOT BE APPLIED IN THE STATE OF CALIFORNIA FOR SEVERAL
15 REASONS. FIRST, THE TERM "HOMEOWNER ASSOCIATION" IS NOT
16 RECOGNIZED IN THE CALIFORNIA CIVIL CODE. THE TERM IN THE
17 CALIFORNIA CIVIL CODE, WHETHER WE ARE TALKING ABOUT THE
18 DAVIS-STIRLING COMMON INTEREST DEVELOPMENT ACT OR THE
19 NONRESIDENTIAL COMMON INTEREST DEVELOPMENT ACT WHICH
20 FOLLOWS IT IS "COMMON INTEREST DEVELOPMENT." AND THERE
21 ARE FOUR KINDS, FOUR VARIETIES, OF COMMON INTEREST
22 DEVELOPMENTS IN CALIFORNIA, NOT SIMPLY CONDOMINIUMS,
23 COOPERATIVES, AND HOMEOWNER ASSOCIATIONS. BUT WE ARE
24 OMITTING THE PLANNED DEVELOPMENT. PLANNED DEVELOPMENTS
25 IN CALIFORNIA MAY BE AS SMALL AS FIVE HOMES OR AS LARGE

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1 AS 5,000 HOMES OR EVEN LARGER IN MASTER PLAN COMMUNITIES
2 WITH MASTER ASSOCIATIONS. SO, AGAIN, I DON'T MEAN TO
3 NIT-PICK, BUT I THINK IF WE ARE GOING TO DO THE
4 REGULATION WE NEED TO MAKE SURE IT MATCHES CURRENT
5 CALIFORNIA LAW. THE WORST THING WE CAN THINK OF IS
6 SOMEBODY IN A COMMUNITY APARTMENT, WHICH IS ONE OF THE
7 FOUR VARIETIES, ARGUING THAT "THE REGULATION DOESN'T
8 APPLY TO ME BECAUSE I WASN'T LISTED HERE." THAT WOULD BE
9 OBVIOUSLY VERY UNFORTUNATE. SO THERE ARE FOUR VARIETIES
10 OF COMMON INTEREST DEVELOPMENTS. THOSE FOUR VARIETIES
11 SHOULD BE MENTIONED HERE, NOT SIMPLY THE TERM "HOMEOWNERS
12 ASSOCIATION." ONE OF THE OTHER INTERESTING --
13 MS. SCHUR: SO IT'S CONDOMINIUMS, COOPERATIVES,
14 PLANNED DEVELOPMENTS, AND COMMUNITY APARTMENTS?
15 MR. RICHARDSON: CORRECT.
16 MS. SCHUR: WHAT IS THE CITE?
17 MR. RICHARDSON: STARTS ABOUT CIVIL CODE SECTION
18 4100.
19 MS. SCHUR: THANK YOU.
20 MR. RICHARDSON: IN FULL DISCLOSURE, THE CIVIL
21 CODE -- AND I THINK BUSINESS AND PROFESSIONS -- IF YOU
22 GOOGLE OR IF YOU DO A SEARCH OF THE LIST OF WEBSITE FOR
23 THE PHRASE "HOMEOWNER ASSOCIATION," YOU WILL ACTUALLY
24 FIND IT REFERENCED OUTSIDE THE DAVIS-STIRLING ACT A
25 COUPLE OF TIMES. BUT THOSE ARE TYPOGRAPHICAL ERRORS AND

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1 ONE OF THESE DAYS I'M GOING TO GET AROUND WRITING THE
2 HOUSING COMMITTEE AND SAY "WE NEED TO FIX THAT." THE
3 NEXT ISSUE IS THE CONCEPT OF VICARIOUS LIABILITY. THE
4 NEXT ISSUE IS IN SUBPART B, STILL IN 11098.4. AND THAT
5 IS THE SECTION OF THE DRAFT WHICH DISCUSSES VICARIOUS
6 LIABILITY. AND WHAT IS -- THIS IS ANOTHER AREA WHERE
7 APPLICATION OF AN EMPLOYMENT-TYPE CONCEPT THAT WORKS FINE
8 IN THE EMPLOYMENT ARENA WILL NOT WORK IN THE HOUSING
9 CONTEXT. FOR EXAMPLE, AS WE KNOW, IN THE EMPLOYMENT
10 ARENA SEXUAL HARASSMENT DISCRIMINATION REQUIRES A REPORT
11 TO THE SUPERVISOR UNLESS THE SUPERVISOR IS THE HARASSER.
12 AND I KNOW I HAVE SEVERAL EMPLOYMENT EXPERTS ON THE
13 PANEL. I HOPE I GOT THAT RIGHT. BUT DOES -- DOES -- IN
14 THE HOUSING ARENA IF WE'RE NOT GOING TO REQUIRE KNOWLEDGE
15 OF THE CONDUCT FIRST, THEN ARE WE MAKING HOUSING
16 PROVIDERS ACTUALLY MORE LIABLE THAN EMPLOYERS? AND KEEP
17 IN MIND WHEN YOU ARE IN THE COMMON INTEREST DEVELOPMENT
18 ARENA, THE HOUSING PROVIDER ISN'T SIMPLY THE MANAGER, BUT
19 THE BOARD OF DIRECTOR, THE GOVERNING BODY OF THAT
20 ASSOCIATION. I KNOW IN CURRENT FAIR HOUSING LAW MY
21 INDIVIDUAL BOARD MEMBERS ARE EXPOSED TO RISK IF THEY MAKE
22 BAD DECISIONS IN DISCRIMINATING AGAINST RESIDENTS IN THE
23 COMMUNITY THEY GOVERN. ARE WE GOING TO SAY THAT THAT
24 BOARD OF DIRECTORS -- THOSE FIVE OR SEVEN OR NINE PEOPLE
25 THAT SERVE WITHOUT COMPENSATION -- WE ARE GOING TO HOLD

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1 THEM PERSONALLY LIABLE FOR SOMETHING THAT HAPPENED IN THE
2 COMMUNITY OF WHICH THEY ARE NOT PERSONALLY AWARE. THAT
3 SEEMS TO BE DRAMATICALLY UNJUST. AGAIN, IT WORKS IN THE
4 EMPLOYMENT CONTEXT FOR SOME OTHER POLICY REASON. IT DOES
5 NOT WORK IN THE HOUSING CONTEXT. THE -- THE PROBLEM OF
6 UNINTENDED CONSEQUENCES REGARDING SEXUAL HARASSMENT
7 WITHIN HOUSING PROJECTS, PARTICULARLY COMMON INTEREST
8 DEVELOPMENTS, BECOMES EVEN MORE DIFFICULT WHEN WE ARE
9 TALKING ABOUT TENANT VERSUS TENANT. NOW, AGAIN, IN THE
10 EMPLOYMENT CONTEXT IF A VENDOR, A NEIGHBORING TENANT IN
11 MY BUILDING, GIVES ONE OF MY EMPLOYEES INAPPROPRIATE
12 CONDUCT, THERE ARE WAYS TO HANDLE THAT. I CAN TAKE
13 ACTION TO PROTECT MY EMPLOYEE AND I DO EVERYTHING I CAN.
14 BUT IF I AM A VOLUNTEERED DIRECTOR, WHAT EXACTLY AM I
15 GOING TO DO IF THERE IS A TENANT WHO IS RUDE TO ANOTHER
16 TENANT? THAT CREATES AN EXTRAORDINARILY DIFFICULT
17 CONUNDRUM -- A, I MAY NOT KNOW ABOUT IT; B, IF I DO,
18 BETWEEN THE TWO TENANTS WHO AM I GOING TO BELIEVE? ONE
19 OF THE MOST DIFFICULT THINGS WE STRUGGLE WITHIN PRACTICE
20 THESE DAYS IS THE INCREASED REVIEW OF THE BOARD AS MOM
21 AND DAD AND JUDGE AND JURY AND EXECUTION, THAT THE BOARD
22 OF DIRECTORS ARE SUPPOSED TO HANDLE ALL MY PROBLEMS,
23 INCLUDING MY DISPUTE WITH THE NEIGHBOR. AND WHEN THE
24 BOARD OF DIRECTORS IS PRESENTED WITH A COMPLAINT FROM
25 HOMEOWNER A WHO SAYS HOMEOWNER B IS SLAMMING THE DOOR TOO

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1 LOUD AND HOMEOWNER B AND SAYS HOMEOWNER A IS PLAYING THE
2 MUSIC TOO LOUD AND NOBODY IN THE COMMUNITY HAS ANY
3 INDEPENDENT EVIDENCE EXCEPT THOSE TWO HOMEOWNERS, THOSE
4 TWO RESIDENTS, CAN'T STAND EACH OTHER, WHAT EXACTLY DOES
5 THE BOARD OF DIRECTORS DO? UNDER CURRENT LAW WHAT I TELL
6 THE BOARD OF DIRECTORS IS "IF WE CAN'T TELL WHAT IS GOING
7 ON, IT'S NOT OUR JOB TO FIGURE OUT BETWEEN THOSE TWO WHO
8 IS WRONG AND WHO IS RIGHT." SO UNLESS IT'S AFFECTING
9 OTHER FOLKS IN THE COMMUNITY OR UNTIL WE HAVE
10 CORROBORATIVE INFORMATION, WHAT EXACTLY DO WE DO? IF WE
11 WERE TO ADOPT IT TODAY -- IF I AM A MANAGER OR A MEMBER
12 OF THE VOLUNTEER BOARD OF COMMON INTEREST DEVELOPMENT AND
13 HOMEOWNER A SAYS I WAS AT THE POOL AND RESIDENT B LOOKED
14 AT ME IN A VERY LEWD MANNER AND WOULDN'T TAKE THEIR EYES
15 OFF ME FOR -- IT MUST HAVE BEEN FIVE MINUTES. NOW, IF
16 NOBODY ELSE SAW THAT INCIDENT, IF THERE WAS NO
17 CORROBORATING -- NO CORROBORATION WHATSOEVER AND THE
18 FIRST -- THE -- RESIDENT B DENIES THE INCIDENT EVER
19 HAPPENED, WHAT AM I SUPPOSED TO DO? DO I GO AHEAD AND
20 PENALIZE IN ABUNDANCE OF CAUTION BECAUSE I'M AFRAID I'M
21 GOING TO GET SUED? I MEAN, THIS IS THE ULTIMATE
22 EXTENSION OF THE TENANT-VERSUS-TENANT ISSUE. AND I
23 SUBMIT IT IS NOT JUST COMMON INTEREST DEVELOPMENTS. I AM
24 NOT SAYING WE SHOULD DO NOTHING AS FAR AS HOUSING
25 PROJECTS, BUT I AM SUGGESTING WE BE EXTREMELY CAUTIOUS.

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1 AND WE MAY ACTUALLY WANT TO TAKE A SIGNIFICANT STEP
2 BACKWARD AND START EXPLORING THESE ISSUES AND SEE WHERE
3 WE MIGHT ADD FURTHER CLARITY WITHOUT RENEGING, BUT ADD
4 FURTHER CLARITY. NOW, ONE OF THE ISSUES IS DO WE HAVE TO
5 INCLUDE THE VOLUNTEER DIRECTORS? IS THAT -- ARE THOSE
6 THE PEOPLE WE ARE TARGETING? OR ARE WE TARGETING A
7 MANAGER WHO HAS ARGUABLY CONTROL OF SOME DEGREE OF THE
8 COMMUNITY WHO IS HAVING INTERACTION WITH THE RESIDENTS ON
9 A REGULAR BASIS? ARE WE TRYING TO SAY WE DON'T WANT THE
10 COMMON INTEREST DEVELOPMENT MANAGER ACTING
11 INAPPROPRIATELY WITH RESIDENTS, MAKING INAPPROPRIATE
12 REMARKS OR SUGGESTIONS OR INVITATIONS? WELL, CERTAINLY
13 NOBODY WOULD DEFEND THAT. BUT WITHOUT FURTHER CLARITY
14 RIGHT NOW IT WOULD SEEM TO ME THAT THE REGULATION WOULD
15 INCLUDE THE VOLUNTEER DIRECTORS AS PART OF THE HOUSING
16 PROVIDER.
17 MS. SCHUR: SO LET ME ASK YOU A QUESTION --
18 COUPLE OF QUESTIONS.
19 MR. RICHARDSON: YES.
20 MS. SCHUR: I AM LOOKING AT THE VICARIOUS
21 LIABILITY STATUTE AS IT'S PROPOSED -- THE PROPOSED DRAFT
22 AND IT TALKS ABOUT THE PERSON'S AGENTS OR EMPLOYEES, SO
23 I'M NOT SURE WHERE YOU ARE EXTENDING IT TO
24 TENANT-VERSUS-TENANT CONDUCT. IT DOESN'T SEEM TO ME THAT
25 THIS COVERS TENANT-VERSUS-TENANT CONDUCT. IT COVERS

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1 AGENTS OR EMPLOYEES OF THE BOARD THAT HAS THE LEGAL
2 OBLIGATION TO MANAGE AND OPERATE THE PROPERTY. SO I AM
3 NOT UNDERSTANDING THE LEAP YOU ARE MAKING BECAUSE I AGREE
4 WITH YOU TENANT-VERSUS-TENANT CONDUCT IS A COMPLETELY
5 DIFFERENT CREATURE. SO HELP ME UNDERSTAND HOW YOU ARE
6 TYING THEM TOGETHER.
7 MR. RICHARDSON: SURE. HOUSING URBAN
8 DEVELOPMENT HAS TIED IT IN THEIR OFFICIAL COMMENTS. I
9 KEEP CALLING IT THE OCTOBER 14 REGULATION. THIS WAS THE
10 EFFECTIVE DATE. I AM SORRY I DON'T HAVE IT MEMORIZED.
11 READING THROUGH THE OFFICIAL COMMENTARY OF HUD, THEY
12 ADDRESSED THE CONCERN OF -- COMMENTED THAT THIS
13 REGULATION WILL APPLY TO TENANT-VERSUS-TENANT ABUSE
14 SITUATION. AND THEY'RE NOT CONCERNED ABOUT IT. IT IS
15 ALREADY THERE, IF WE ARE FOLLOWING WHAT HUD IS DOING. IF
16 WE ARE NOT GOING TO FOLLOW HUD'S LEAD ON THIS AND WE ARE
17 GOING TO MAKE SURE WE DON'T INCLUDE TENANT-VERSUS-TENANT
18 OR RESIDENT-VERSUS-RESIDENT CONDUCT, THEN LET'S SAY SO IN
19 THE REGULATION. BECAUSE JUST AS WE HAVE A QUANTUM --
20 REALLY A DIFFERENT PARADIGM IN THE HOUSING SCENARIO FROM
21 THE EMPLOYMENT SCENARIO, WE ALSO HAVE ANOTHER PARADIGM
22 BETWEEN THE RENTAL HOUSING SCENARIO WHICH MAY BE THE
23 MIDDLE-AGED COUPLE WHO HAS ONE HOUSE THEY'RE RENTING OUT,
24 UP TO A 1,000-UNIT COMPLEX. BUT WE HAVE COMPLETELY A
25 SECOND PARADIGM HOUSING WITH COMMON INTEREST DEVELOPMENT

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1 BECAUSE THEY ARE RUN COMPLETELY DIFFERENT.
2 MS. SCHUR: I THINK THE DERIVATION FOR THE
3 TENANT VERSUS TENANT REALLY IS IN C -- A1C OF 11098.4.
4 IN YOUR COMMENTS -- MY QUESTION IS, IN YOUR COMMENTS DO
5 YOU HAVE ANY PROPOSALS FOR WHAT WOULD CONSTITUTE
6 APPROPRIATE, PREVENTIVE, AND CORRECTIVE ACTIONS THAT --
7 HOWEVER WE END UP DEFINING "OWNER" OR, YOU KNOW,
8 "RESPONSIBLE PARTY"?
9 MR. RICHARDSON: WELL, THIS WAS RAISED -- THIS
10 WAS RAISED IN THE COMMENTS TO HUD AS WELL. AND IN THE
11 COMMON INTEREST DEVELOPMENT WORLD ONE OF THE ISSUES THAT
12 WAS RAISED WAS WHAT EXACTLY CAN A COMMON INTEREST
13 DEVELOPMENT DO IN RESIDENT-VERSUS-RESIDENT OR
14 THIRD-PARTY-VERSUS-RESIDENT SITUATION. THEY MAY HAVE NO
15 TOOLS IN THEIR DISPOSAL. AND HUD -- I DON'T MEAN TO SAY
16 THIS IN AN INSULTING WAY -- BUT IT SEEMED TO ME SORT OF
17 BLINDLY WAVED THE HAND AND SAID, "WELL, ASSOCIATIONS HAVE
18 RULES AND GOVERNING DOCUMENTS, THERE IS PROBABLY
19 SOMETHING THEY CAN DO." NOT AN EXACT QUOTE, BUT THAT'S
20 THE IMPRESSION THEY GAVE ME.
21 MS. SCHUR: WELL, I WAS WONDERING IF YOU HAVE
22 ANY SUGGESTIONS FOR WHAT WOULD CONSTITUTE CORRECTIVE OR
23 PREVENTIVE ACTION THAT COULD BE TAKEN ONCE THE INDIVIDUAL
24 KNEW OR SHOULD HAVE KNOWN THAT THERE WAS A -- THAT A
25 THIRD PARTY WAS PERPETRATING SOMETHING.

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1 MR. RICHARDSON: WELL, IF CAN I TAKE A STEP
2 BACK, RESPECTFULLY, I WOULD SUBMIT THAT IF WE'RE
3 TRYING -- IN THE HOUSING CONTEXT IF WE'RE GOING RESIDENT
4 VERSUS RESIDENT OR THIRD PARTY VERSUS RESIDENT THAT THE
5 ASSOCIATION HAS NO CONTROL OVER, I THINK WE'VE GONE TOO
6 FAR.
7 MS. SCHUR: SO BASICALLY YOU DON'T EVEN WANT TO
8 GET TO THAT POINT WHERE THERE IS ANY LIABILITY FOR THAT
9 THIRD PARTY'S ACTIONS OR CONDUCT?
10 MR. RICHARDSON: I THINK IT'S SO DIFFICULT TO
11 FIRST DEFINE HOW EXACTLY THE VOLUNTEERS OR MANAGERS --
12 AGAIN, VICARIOUS LIABILITY WITHOUT KNOWLEDGE. WE CAN
13 ARGUE THAT POINT, I SUPPOSE. BUT THE PROBLEM IS TAKING
14 THE FIRST -- THE ABILITY TO EVEN KNOW ABOUT THE CONDUCT,
15 TO REACT RESPONSIBLY TO IT. WE MAY NOT HAVE AN
16 INTERACTIVE PROCESS AVAILABLE TO US IF IT'S A THIRD PARTY
17 OUTSIDE THE CONTROL OF THE ASSOCIATION. WHAT IF THE
18 OTHER HOMEOWNER SAYS, "THIS IS AN INSULT. I SAID HELLO
19 TO THE PERSON AT THE POOL." SO THEY REFUSE TO
20 PARTICIPATE IN OUR EFFORT TO FIGURE OUT WHAT HAPPENED
21 HERE. THAT'S WHAT I'M SAYING. AND THAT'S BEFORE WE GET
22 TO THE PROBLEM OF -- IN THE COMMON INTEREST DEVELOPMENT
23 WORLD THE DAVIS-STIRLING ACT SAYS YOU CAN ENFORCE WHAT
24 YOU HAVE IN WRITING. AND I DON'T KNOW A SINGLE
25 ASSOCIATION RIGHT NOW THAT HAS IN ITS RULES AND

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1 REGULATIONS "YOU WILL NOT DO ALL THE TYPES OF
2 INAPPROPRIATE" -- AND OBVIOUSLY NOBODY WOULD DEFEND THE
3 CONDUCT THAT THE REGULATION IS TRYING TO PROHIBIT. WHAT
4 I'M CONCERNED ABOUT AGAIN, FOLKS, IS WE'RE NOT SIMPLY
5 TALKING ABOUT THE CASES THAT DIRECTOR KISH WOULD TAKE ON.
6 WE'RE TALKING ABOUT THE LAWYER IN VAN NUYS WHO TENANT IN
7 THE SECOND FLOOR SAYS, "I THINK I HAVE A CASE BECAUSE
8 SMITH ON THE THIRD FLOOR LEERED AT ME AND THE BOARD OF
9 DIRECTORS DIDN'T DO A DARN THING ABOUT IT."
10 MS. SCHUR: MAYBE I'M READING THIS A LITTLE BIT
11 DIFFERENTLY THAN YOU ARE. THIS SAYS THERE IS ONLY
12 LIABILITY IF THERE IS A DUTY. IF THERE IS NOTHING --
13 THERE'S TWO POINTS -- QUESTIONS I HAVE. ONE IS, IF THERE
14 IS NOTHING IN THE BYLAWS THAT IMPOSES A DUTY OR IN
15 ANOTHER CONTRACTUAL -- OR DOCUMENT TO CONTROL
16 TENANT-VERSUS-TENANT BEHAVIOR, THEN THERE IS NO LIABILITY
17 AS THIS IS WRITTEN.
18 MR. RICHARDSON: I RESPECTFULLY DISAGREE, AS I
19 ALREADY POINTED OUT. SECTION 11098.4A1C DELETES THE
20 PHRASE THAT HUD REGULATION HAS WHICH SAYS "AND HAD THE
21 ABILITY TO CORRECT OR PREVENT THE CONDUCT." IF WE ADD
22 THAT AND SAY, OKAY, IF YOU -- LANDLORD, IF YOU COMMON
23 INTEREST DEVELOPMENT BOARD OR MANAGER, IF THERE IS
24 NOTHING YOU CAN GO EITHER BECAUSE THE GOVERNING DOCUMENTS
25 DON'T GIVE YOU THE LEVERAGE OR FOR WHATEVER REASON, THEN

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1 OBVIOUSLY WE ARE NOT GOING TO FORCE YOU TO DO SOMETHING
2 YOU CAN'T DO. AND WE ARE NOT GOING TO DRAG YOU INTO
3 COURT FOR ATTORNEY'S FEES BECAUSE YOU DIDN'T KICK THE
4 HOMEOWNER WHO OWNED THE CONDOMINIUM IN THE THIRD FLOOR --
5 YOU DIDN'T KICK HIM OUT OF THE PROJECT BECAUSE HE LOOKED
6 AT THE GUY ON THE SECOND FLOOR. THAT'S WHERE I'M
7 STRUGGLING. WE ARE TRYING TO DRAW A LINE THAT CAN'T BE
8 DRAWN.
9 MR. KISH: IS THE PROBLEM SOLVED BY ADDING THAT
10 LANGUAGE IN?
11 MR. RICHARDSON: I THINK IT HELPS DRAMATICALLY
12 BECAUSE IT HELPS THE ASSOCIATION KNOW IF WE LOOK AT
13 THIS AND SAY, OKAY, THERE IS NOTHING WE CAN DO. THE
14 REGULATION SAYS IF THERE IS ANYTHING WE CAN DO WE HAVE TO
15 USE THE TOOLS AT OUR DISPOSAL. AND, FRANKLY AND BLUNTLY,
16 IN THE COMMON INTEREST DEVELOPMENT WORLD THE MOST AN
17 ASSOCIATION SOMETHING LIKE THIS CAN DO IS WHAT THEY DO
18 WHEN A BOARD MEMBER IS RUDE IN BOARD MEETINGS. THEY
19 HAVE A MOTION TO CENSURE, WHICH MEANS NO, NO, NO. IT'S
20 REALLY JUST SORT OF TRYING TO EMBARRASS THE PERSON AND
21 SEE IF THEY'LL SHAPE UP.
22 MR. KISH: I DO THINK THAT OUR JOB MOSTLY IS TO
23 LISTEN TODAY, BUT I WANT TO OFFER JUST A COUPLE OF
24 COMMENTS ON WHAT YOU'VE SAID ALREADY. ONE IS -- AND I
25 THINK YOU KNOW THIS AND IT IS ALL OF OUR JOBS JOINTLY --

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1 WHATEVER THE COUNCIL DOES IN THESE REGULATIONS, WE ARE
2 NOT GOING TO STOP LAWSUITS. THAT IS JUST THE REALITY. I
3 THINK WE HAVE TO ACKNOWLEDGE IT. ONE OTHER REALITY IS
4 THERE IS, IN ESSENCE, A SUPER COMMENTER AND THAT IS HUD
5 ITSELF. AND HUD HAS COMMENTED ON THESE AND THEY WILL
6 CONTINUE TO COMMENT UPON THE DRAFT AS IT MOVES THROUGH
7 THE RULEMAKING PROCESS. AND YOU WILL HAVE A CHANCE TO
8 SEE WHAT THEIR COMMENTS ARE BECAUSE THIS IS PART OF THE
9 RULEMAKING PACKAGE. IF WE ARE TO DEVIATE FROM WHAT HUD
10 HAS ALREADY DONE, WE HAVE DO CONVINCING THEM THAT IT'S
11 OKAY. SO THE MORE FIREPOWER YOU CAN BRING TO THAT, IF --
12 IF THERE IS SOMETHING THAT YOU THINK CALIFORNIA LAW
13 REALLY NEEDS TO DEVIATE FROM WHAT HUD HAS DONE, WE CAN
14 TRY TO CONVINCING THEM. BUT, IF WE CAN'T, OUR HANDS ARE
15 TIED. THIRD, IF THERE ARE SPECIFIC THINGS -- BECAUSE OF
16 THAT FACT, IF THERE ARE THINGS IN THE FEDERAL REGULATIONS
17 OR IN FEDERAL GUIDANCE THAT YOU THINK WOULD BE USEFUL TO
18 ADD -- AS YOU'VE JUST MENTIONED ONE REGULATION SHOULD BE
19 ADDED -- THAT IS, I THINK, REALLY HELPFUL TO US BECAUSE
20 IT'S ALREADY THERE. AND, IF IT ISN'T HERE, THEN THAT IS
21 SOMETHING WE CAN DEBATE AND ADD IN, IF APPROPRIATE. AND
22 THEN, FINALLY, I JUST WANT TO SAY THIS AS -- FROM THE
23 DEPARTMENT'S PERSPECTIVE I THINK THERE IS A LIMITED VALUE
24 TO THE AVERAGE PERSON AND READING REGULATIONS OF ANY
25 KIND. I THINK THAT IS WHAT YOUR JOBS ARE TO SOME EXTENT.

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1 I'M REALLY COMMITTED FROM THE DEPARTMENT'S PERSPECTIVE TO
2 PROVIDING SOME PLAIN ENGLISH GUIDANCE ON THESE ISSUES
3 THAT I THINK WOULD BE REALLY HELPFUL TO FOLKS IN THE
4 SITUATIONS THAT YOU ARE DESCRIBING. THE REALITY IS WE
5 CAN'T REALLY DO THAT UNTIL WE GET THROUGH THE REGULATIONS
6 SO THAT WE DON'T RUN INTO A PROBLEM. SO I WANT YOU TO
7 KNOW, JUST SORT OF AN OVERALL PERSPECTIVE OR APPROACH,
8 THAT I WOULD LIKE TO DO THAT. AND I DO SEE A LOT OF
9 POTENTIAL FOR THAT THAT MIGHT BE MORE USEFUL THAN SOME OF
10 US, THE REGULATIONS WE ARE DISCUSSING. I JUST WANTED TO
11 MAKE THAT POINT.
12 MR. RICHARDSON: I DO APPRECIATE THAT VERY MUCH
13 AND I UNDERLINE PRETTY MUCH EVERYTHING YOU SAID. BUT I
14 DO THINK THAT ONE OF THE STRUGGLES WE HAVE WITH THE HUD
15 REGULATION AS ADOPTED IS IT REALLY SEEMS TAILORED TO THE
16 RENTAL HOUSING CONTEXT AND IT REALLY WASN'T THOUGHT
17 THROUGH THE IMPLICATIONS OF DEALING WITH A VOLUNTEER
18 BOARD OF DIRECTORS WHO IS ALSO GOVERNING A HOUSING
19 PROVIDER. SO I THINK THERE ARE SOME THINGS THAT
20 RESPECTFULLY WE COULD DO IN CALIFORNIA THAT AREN'T
21 REPUDIATING THE REGULATION PART FROM IT, BUT CLARIFYING
22 WHEN WE SAY HOUSING PROVIDER IN THE CONTEXT OF A COMMON
23 INTEREST DEVELOPMENT. FOR EXAMPLE, I AM ASSUMING THAT
24 WHAT WE'RE REALLY -- THE BIGGEST PRIORITY IS TARGETING
25 MISCONDUCT BY THE MANAGING AGENT OF A COMMON INTEREST

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1 DEVELOPMENT. WE DON'T WANT THAT. ONE OF THE QUESTIONS
2 IN THE HUD COMMENTS WAS, "WELL, ARE WE TRYING TO PROTECT
3 THE MANAGING AGENTS FROM THIRD PARTIES?" AND THEY SAID,
4 "NO, NO, ACTUALLY WE ARE NOT." THERE ARE EMPLOYMENT LAWS
5 THAT PROTECT THE MANAGING AGENT IN THAT CONTEXT. I THINK
6 ONE OF THE THINGS WE MIGHT WANT TO ADDRESS IS DO WE
7 REALLY NEED TO APPLY THIS TO THE VOLUNTEER BOARD OF
8 DIRECTORS? NOT ALL DISCRIMINATION. OKAY. IF AN
9 ASSOCIATION ADOPTS A REGULATION SAYING NO CHILDREN CAN
10 PLAY IN THE COMMON AREAS -- LIKE A CLIENT OF MINE DID
11 THREE YEARS AGO WITHOUT TELLING ME. YEAH, I FOUND OUT
12 BECAUSE IT WAS ATTACHED AS AN EXHIBIT TO A COMPLAINT IN
13 THE SUMMONS. THAT'S HOW I FOUND OUT. GOOD JOB, GUYS.
14 SO, YEAH, THAT CERTAINLY HAPPENS. I AM NOT ADVOCATING
15 THAT VOLUNTEER DIRECTORS HAVE A FREE PASS FROM EVERYTHING
16 THEY DO, BUT WHAT I AM SUGGESTING IS WE ARE REALLY
17 TARGETING THE MANAGERS HERE IN THIS AREA. MAYBE --
18 MAYBE -- EITHER WE DEFINE THE CORPORATION AS THE PERSON
19 OR THE MANAGER -- MANAGING AGENT AS THE PERSON AND MAYBE
20 WE CLARIFY THAT WE DON'T NEED TO APPLY TO JOHN AND JANE,
21 THE VOLUNTEERS WHO ARE SERVING WITHOUT COMPENSATION WHO
22 AREN'T TECHNICALLY, INDIVIDUALLY MAKING DECISIONS ANYWAY.
23 THEY'RE MAKING CORPORATE DECISIONS. BUT IN FAIR HOUSING
24 CONTEXT, WHEN THEY MAKE A MISTAKE, USUALLY THE DEFENDANTS
25 ARE THE MANAGER OR MANAGING COMPANY, THE CORPORATION, AND

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1 THEN THE FIVE BOARD MEMBERS.
2 MS. SCHUR: THAT'S ONE OF THE THINGS I WANTED TO
3 CLARIFY BECAUSE YOU KEEP REFERRING TO THE VOLUNTEERS, BUT
4 THE INDIVIDUAL -- THE DECISIONS ARE MADE BY THIS
5 CORPORATE BOARD OF DIRECTORS WHICH CONSISTS OF
6 VOLUNTEERS, BUT IT'S THE CORPORATE BOARD THAT IS THE
7 DEFENDANT AND ON THE HOOK. THE ENTITY IN THIS CASE, NOT
8 THE INDIVIDUALS. CORRECT?
9 MR. RICHARDSON: RESPECTFULLY SUGGESTING THEN
10 LET'S SAY THAT. SAY WE DON'T MEAN TO INCLUDE THE
11 INDIVIDUAL VOLUNTEER IN THE DEFINITION OF PERSON. IF THE
12 CORPORATION IS GOING TO BE HELD ACCOUNTABLE FOR THE BAD
13 DECISION IT MAKES ALONG WITH ITS MANAGER, THEN LET'S SAY
14 SO.
15 MS. SCHUR: BUT ISN'T THAT TRUE AS A MATTER OF
16 LAW WHEN THE CORPORATE BOARD ACTS THE INDIVIDUALS ARE
17 ONLY LIABLE AS --
18 MR. RICHARDSON: I CAN TELL YOU THAT WHEN THE
19 LAWSUIT HAPPENS ALL FIVE DIRECTORS WILL BE ON THAT
20 COMPLAINT ALONG WITH THE CORPORATION.
21 MS. SCHUR: THAT DOESN'T MEAN THEY'RE ON THE
22 HOOK, THE FACT THAT SOMEONE NAMES THEM.
23 MR. RICHARDSON: THAT REMAINS TO BE SEEN.
24 HOWEVER, MY POINT IS WE CAN TAKE TEAR OF THAT NOW WITHOUT
25 BACKING OFF ON ANY OF WHAT THE REGULATION IS DESIGNED TO

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10 (Pages 34 to 37)

1 DO.
2 MS. SCHUR: I'M TRYING TO UNDERSTAND WHETHER THE
3 LAW ALREADY SAYS THAT SOMEWHERE, SORT OF WHERE AND HOW.
4 I GUESS THAT IS WHAT I'M TRYING TO UNDERSTAND. WE DON'T
5 NEED TO RECREATE THE WHOLE CORPORATE LEGAL STRUCTURE THAT
6 IS IN THE OTHER STATUTES. IT'S WHAT I'M TRYING TO
7 UNDERSTAND.
8 MR. RICHARDSON: AND DIRECTORS HAVE CERTAIN
9 VOLUNTEERING ENTITIES FROM A COUPLE OF DIFFERENT SOURCES.
10 BUT MY POINT IS HERE WE HAVE AN OPPORTUNITY TO
11 SPECIFICALLY SAY WHO OR WHAT WE ARE TARGETING TO BE
12 RESPONSIBLE FOR THE CONDUCT. I'M JUST SUGGESTING THAT WE
13 DO THAT, THAT WE DON'T RELY ON IMPLICATIONS FROM OTHER
14 AREAS OF LAWS THAT MAY OR MAY NOT BE DEBATED. ONE OF THE
15 SECTIONS OF THE REGULATION THAT I WAS TRYING TO FIGURE
16 OUT HOW I WOULD HANDLE IS 11098.5A2, THE HOSTILE
17 ENVIRONMENT HARASSMENT. NOW, IN EMPLOYMENT CONTEXT THAT
18 OFTEN IS A VERY DIFFICULT BEAST TO TACKLE BECAUSE IT CAN
19 TAKE SO MANY FORMS. IS THAT INTENDED TO APPLY TO COMMON
20 INTEREST DEVELOPMENTS? THAT ACTUALLY MAY CONTRADICT
21 LANGUAGE IN THE DAVIS-STIRLING ACT. NOW, ONE OF THE
22 OTHER SECTIONS IS B1. ONE PROHIBITIVE CONDUCT IS VERBAL
23 HARASSMENT, DEROGATORY COMMENTS OR SLURS RELATED TO
24 MEMBERSHIP IN A PROTECTED BASIS. THIS WAS ONE OF THE
25 SCENARIOS THAT GAVE ME A LITTLE BIT OF SLEEPLESS NIGHTS

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1 TRYING TO FIGURE OUT HOW EXACTLY WOULD I HANDLE THAT AS
2 THE ASSOCIATION'S ATTORNEY. BECAUSE IF I HAD FIVE
3 DOLLARS FOR EVERY TIME I HEARD A RESIDENT IN A COMMON
4 INTEREST COMMUNITY SAY SOMETHING HORRIBLE DIRECTLY TO
5 SOMEBODY ELSE'S FACE, I WOULDN'T BE IN FRONT OF YOU
6 BECAUSE I WOULD BE RETIRED IN FRANCE. HOW EXACTLY DOES
7 THE BOARD DECIDE IF SOMEBODY REALLY SAID SOMETHING
8 HORRIBLE TO SOMEBODY ELSE? THIS PERSON SAYS I DID IT.
9 THIS PERSON SAYS NO. IS THERE A SAFE HARBOR IF THE
10 ASSOCIATION CANNOT CONFIRM THAT THE PROHIBITED CONDUCT
11 OCCURRED? I DIDN'T SEE THAT HERE. NOW, MAYBE THAT'S
12 IMPLIED, BUT I DON'T SEE IT. AND THAT'S AN ISSUE. THE
13 OTHER ONE, PART TWO, THE SECOND PROHIBITED CONDUCT IS,
14 QUOTE, "VISUAL FORMS OF HARASSMENT; E.G., DEROGATORY
15 POSTERS, CARTOONS, DRAWINGS, WRITINGS, OR OTHER DOCUMENTS
16 RELATED TO MEMBERSHIP IN A PROTECTED BASIS." CIVIL CODE
17 SECTION 4710 PROTECTS THE RIGHT OF THE COMMON INTEREST
18 DEVELOPMENT RESIDENT TO DISPLAY ANY NONCOMMERCIAL FREE
19 SPEECH IN THEIR SEPARATE INTEREST OR IN THEIR
20 EXCLUSIVE-USE COMMON AREA. AS LONG AS IT'S NONCOMMERCIAL
21 SPEECH AND AS LONG AS IT'S A THREE-FOOT-BY-THREE-FOOT
22 SIGN OR THREE-FOOT-BY-FIVE-FOOT BANNER AND IT'S MADE OF
23 NORMAL PRINTED MATERIAL, THERE IS NOTHING THAT THE
24 ASSOCIATION CAN DO. THAT'S IN THE CODE RIGHT NOW. SO IF
25 I SAY -- IN MY FRONT WINDOW I POST A SIGN SAYING "MY

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1 NEIGHBOR KELLY RICHARDSON IS HOT" -- JUST LET ME GO WITH
2 THAT FOR A MOMENT -- AND I'M OFFENDED BY THAT, CIVIL CODE
3 4170 DOESN'T ALLOW THE ASSOCIATION TO TAKE DOWN THAT
4 NONCOMMERCIAL SPEECH. NOW, IS THERE SOME OTHER TORT THAT
5 MIGHT APPLY TO THAT? PROBABLY NOT. IS THAT HOSTILE
6 ENVIRONMENT? IT'S SPECIFICALLY DEFINED AS SUCH IN THE
7 PROPOSED REGULATION. AGAIN, THIS IS A CONCRETE EXAMPLE
8 TRYING TO APPLY THINGS IN THE EMPLOYMENT CONTEXT VERY
9 WELL, WE MOVE INTO THE REAL ESTATE CONTEXT AND NOW WE
10 HAVE A DIRECT CLASH WITH AN EXISTING STATUTE. NOW, WE
11 TALKED EARLIER ABOUT WHAT POWER DO ASSOCIATIONS HAVE TO
12 ENFORCE CONDUCT WHICH IS PROHIBITED AS
13 HOSTILE-ENVIRONMENT TYPE OF CONDUCT, BUT CIVIL CODE 4350
14 SAYS THAT A COMMON INTEREST DEVELOPMENT CAN ONLY ENFORCE
15 RULES WHICH ARE WRITTEN. SO, IF WE PASS THIS REGULATION,
16 WE CAN'T SAY TO ALL THE ASSOCIATIONS "OH, WELL, THIS
17 AUTOMATICALLY IS A RULE NOW FOR YOU. " WELL, REALLY?
18 BECAUSE DAVIS-STIRLING SAYS UNLESS IT'S IN THE WRITTEN
19 RULES AND DISTRIBUTED TO THE ALL THE MEMBERS, IT'S NOT
20 SOMETHING THEY CAN ENFORCE. NOW, AGAIN, THAT MAY GO BACK
21 TO THE FIRST THING WE ALL DISCUSSED WHICH IS MAYBE JUST
22 ADD IN THE PROVISO THAT THE ASSOCIATION HAS THE ABILITY
23 TO PRESCRIBE OR TO BEHAVE -- STOP THE CONDUCT.
24 MR. KISH: ACTUALLY, WHAT WOULD BE VERY HELPFUL
25 AS YOU GO THROUGH YOUR COMMENTS, IF YOU THINK THAT IT

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1 WOULD BE INVOLVED OR AT LEAST AMELIORATED BY THAT
2 LANGUAGE, IF YOU CAN JUST NOTE THAT.
3 MR. MANDELBAUM: ONE THING, KELLY, I DO WANT TO
4 RAISE IS I HOPE WE ARE GETTING WRITTEN COMMENTS FROM YOU
5 AS WELL. WE DEFINITELY APPRECIATE IT.
6 MR. RICHARDSON: YES. THIS IS THE SHORT
7 VERSION.
8 MR. MANDELBAUM: IF CAN YOU HIGHLIGHT, JUST
9 BECAUSE I THINK THERE ARE OTHER PEOPLE THAT WANT TO TALK
10 AND I AM NOT SURE -- WE CAN DO A POLL HOW MANY PEOPLE CAN
11 COME BACK AFTER LUNCH.
12 MR. RICHARDSON: THANK YOU. LET ME TRANSITION,
13 THEN, TO THE SECOND TOPIC TODAY, THE ASSISTIVE ANIMAL
14 SITUATION. IN THE LAST COUPLE OF YEARS I HAVE PERSONALLY
15 DEALT WITH THE FOLLOWING SITUATIONS. THE HOMEOWNER IN
16 THREE-STORY, APARTMENT-STYLE CONDOMINIUM BUILDING, WHO
17 HAS THREE LARGE DOGS. THE HOMEOWNER UNDERNEATH
18 COMPLAINED SAYING THE DOGS ARE NOT ONLY IN EXCESS OF THE
19 ASSOCIATION ALLOWED PET LIMIT, BUT THEY'RE EXTREMELY
20 NOISY AND BOTHERS ME. THE HOMEOWNER UPSTAIRS SAYS TO THE
21 HOMEOWNER DOWNSTAIRS AND TO THE MANAGER AND THE BOARD OF
22 DIRECTORS, "THESE ARE ALL MY COMFORT DOGS. THESE HAVE
23 BEEN PRESCRIBED FOR ME. YOU CAN'T DO ANYTHING. LEAVE ME
24 ALONE OR I'M GOING TO SUE YOU." SECOND STORY, NEWPORT
25 BEACH, THE HOMEOWNER ASSOCIATION ALLOWS TWO DOGS.

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1 HOMEOWNER HAS THREE DOGS. WHEN THE MANAGER APPROACHES
2 AND SAYS, "YOU ARE ONLY ALLOWED TWO, YOU HAVE THREE,"
3 MAGICALLY A LETTER APPEARS DATED A FEW WEEKS AFTER THAT
4 SAYING, "DOG NO. 3 IS AN ASSISTIVE ANIMAL.
5 MRS. SO-AND-SO NEEDS THAT TO HELP HER BE CALM." SO THE
6 DOG WAS CREATED AS SUCH. THE THIRD STORY WAS IN SANTA
7 MONICA OR BRENTWOOD, SMALLER, APARTMENT-TYPE CONDO
8 COMPLEX BANS LARGE ANIMALS OVER LIKE 20 OR 30 POUNDS.
9 AND THIS YOUNG MAN HAS A GERMAN SHEPHERD IN HIS
10 APARTMENT-STYLE CONDO. THE BOARD OF DIRECTORS APPROACHES
11 HIM AND SAYS, "WAIT A MINUTE, WE DON'T ALLOW GERMAN
12 SHEPHERDS HERE. WE HAVE A SMALLER DOGS." IMMEDIATELY HE
13 GOES TO A FRIEND OF HIS, OBTAINS A LETTER SAYING "HE
14 NEEDS THE GERMAN SHEPHERD FOR COMFORT" AND SO THE
15 ASSOCIATION'S HANDS ARE TIED UNDER THE CURRENT LAW. I
16 WAS IN THE CALIFORNIA ASSOCIATION REALTORS HOUSING
17 MEETING ABOUT A YEAR AGO. WE WERE DISCUSSING THE BILL
18 WHICH WAS, I THINK, THEN WITHDRAWN ON THIS TOPIC. AND A
19 REALTOR STOOD UP AND TALKED ABOUT A REAL STORY WHERE
20 SOMEBODY BROUGHT A SNAKE INTO A PUBLIC PLACE AND CLAIMED
21 IT WAS AN ACCOMMODATION, NECESSARY AS AN ASSISTIVE
22 ANIMAL. THE ASSISTIVE ANIMAL ISSUE IS AN AREA OF RAMPANT
23 ABUSE. I THINK IT'S DISRESPECTFUL TO THE PEOPLE THAT
24 NEED THESE. I THINK WE NEED TO GET OUR ARMS AROUND THIS
25 AND I THINK THE REGULATION DOESN'T GO FAR ENOUGH IN

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1 CERTAIN AREAS AND TOO FAR IN OTHERS. ONE OF THE THINGS I
2 WOULD URGE THE COUNCIL TO DO IS CONSULT -- BEFORE THE
3 REGULATION ON ASSISTIVE ANIMALS BECOMES LAW, CONSULT WITH
4 THE PSYCHIATRIC OR MENTAL HEALTH COMMUNITY. WHAT ARE THE
5 ANIMALS THAT ARE ALMOST UNIVERSALLY BEING APPROVED AS
6 ASSISTIVE ANIMALS? I THINK WE'RE GOING TO FIND THEY ARE
7 MAMMALS, 99 PERCENT CANINES, AND MAYBE A FEW CATS. AT
8 LEAST THAT'S BEEN MY EXPERIENCE. I THINK THERE IS A
9 DESPERATE NEED TO DEFINE A LITTLE BIT FURTHER WHAT WE
10 MEAN BY ASSISTIVE ANIMAL IN TERMS OF SPECIES. THAT IS
11 ONE AREA WE NEED HELP. THE OTHER THING IS GOING TO THE
12 REGULATION DRAFT 11098.26, REASONABLE ACCOMMODATIONS
13 SOMEWHERE IN THE REGULATION. I WOULD RESPECTFULLY
14 SUGGEST THAT BECAUSE WE CANNOT DEFINE ALL THE
15 CIRCUMSTANCES IN WHICH AN ASSISTIVE ANIMAL CAN BE
16 UNREASONABLE, I THINK ONE WAY IS THAT WE CAN SIMPLY SAY
17 "IF IT IS A NUISANCE, IT IS NOT A REASONABLE
18 ACCOMMODATION." AN ANIMAL MAY BE A NUISANCE GOING IN OR
19 IT MAY BECOME A NUISANCE WHILE IT'S IN THE HOUSING. THE
20 REGULATION DOESN'T SAY THAT. INSTEAD 11098.27 SAYS IF
21 THE ANIMAL IN QUESTION POSES A DIRECT THREAT TO THE
22 HEALTH AND SAFETY OF OTHERS AND IF THE ASSISTIVE ANIMAL
23 WOULD CAUSE, QUOTE, "SUBSTANTIAL PHYSICAL DAMAGE TO THE
24 PROPERTY OF OTHERS." THE PROBLEM HERE IS THAT DOESN'T
25 RECOGNIZE THE OTHER VARIOUS WAYS THAT AN ASSISTIVE

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1 ANIMAL, TYPICALLY TALKING ABOUT DOGS, THAT CAN BE A LEGAL
2 NUISANCE. FOR EXAMPLE, EVEN IF THE DOG IS NOT PHYSICALLY
3 MENACING OR BITING PEOPLE, WHAT IF IT'S BARKING ALL NIGHT
4 LONG? WHAT IF IT'S CHRONICALLY ALLOWED TO SOIL THE
5 CARPETING IN THE HALLWAY IN FRONT OF THE UNIT? WOULDNT
6 WE AGREE THAT AT THAT POINT THE ACCOMMODATIONS WOULD
7 BECOME UNREASONABLE? BUT UNDER THIS REGULATION, AS
8 CURRENTLY DRAFTED, WE DON'T HAVE THAT ABILITY. PERHAPS
9 THE -- MY FAVORITE PART OF THE DRAFT REGULATION IS
10 SUBPART G OF SUBPART 27 WHICH TALKS ABOUT THE QUALIFIED
11 HEALTH PROVIDERS MUST HAVE SPECIFIC KNOWLEDGE OF THE
12 PATIENT'S MEDICAL CONDITION AND, QUOTE, "NOT OPERATE
13 PRIMARILY TO PROVIDE CERTIFICATIONS FOR ASSISTIVE
14 ANIMALS." I REALLY APPLAUD THAT SECTION, ALONG WITH THE
15 INTERACTIVE PROCESS. I THINK THAT IS ONE OF THE BEST
16 THINGS THE DRAFT HAS GOING FOR IT. BUT GOING DOWN TO
17 REGULATION DRAFT 11098.30, PROOF OF DISABILITY, SUBPART
18 E3, UNDER THE FOLKS WHO CAN PROVIDE PROVEN DISABILITY.
19 THIS IS BASICALLY A YOU CUT AND PASTE FROM THE DOJ HUD
20 INTERPRETIVE GUIDE, QUOTE, "A PEER SUPPORT GROUP, A
21 NON-MEDICAL SERVICE AGENCY, SOCIAL WORKER, OR A RELIABLE
22 THIRD PARTY WHO IS IN A POSITION TO KNOW ABOUT THE
23 INDIVIDUAL'S DISABILITY." THAT IS SO BROAD. BECAUSE MY
24 NEXT DOOR NEIGHBOR COULD SAY, "I HAVE KNOWN THIS PERSON,
25 I KNOW THEY HAVE THIS DISABILITY. I MAY NOT BE A

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1 LICENSED PROFESSIONAL OR EXPERT IN THE FIELD, BUT I AM
2 CERTIFYING THAT THEY NEED THIS DISABILITY." AND I
3 UNDERSTAND THE INTENT BEHIND IT; BUT, AGAIN, THIS IS
4 GOING TO GO OUT TO ALL THE HOUSING PROVIDERS IN THE
5 STATE. AND IF A PEER SUPPORT GROUP -- IF MY THERAPY
6 GROUP -- A MEMBER OF MY THERAPY GROUP CAN WRITE A LETTER
7 CERTIFYING THAT I NEED AN ASSISTIVE ANIMAL OR I HAVE
8 ALLERGIES OR WHATEVER -- REMEMBER, THIS ISN'T NECESSARILY
9 JUST ABOUT DOGS. THAT'S MY PROBLEM, IS THAT THIS IS TOO
10 BROAD. THIS ISN'T IN THE REGULATION. THIS IS IN THE
11 INTERPRETIVE GUIDE. THAT'S WHERE THE LANGUAGE CAME FROM.
12 I GOOGLED IT TO MAKE SURE IT WAS RIGHT. I REALLY THINK
13 YOU CAN DELETE SUBPART E3 FROM THE REGULATION. YOU
14 WOULDN'T BE VIOLATING --
15 MR. KISH: IS THAT HELPFUL TO PEOPLE, FOR US TO
16 DELETE IT FROM THE CALIFORNIA REGULATIONS?
17 MR. RICHARDSON: AGAIN, I THINK, IF WE DON'T
18 DELETE IT, WE HAVE COMPLETELY DESTROYED THE SIGNIFICANCE
19 OF REQUIRING VERIFICATION OF A DISABILITY. IT MIGHT JUST
20 ALLOW PEOPLE TO SAY "I HAVE A DISABILITY." IF I CAN
21 GO -- IF SOMEBODY HAS KNOWN ME FOR A LONG TIME, A MEMBER
22 OF MY THERAPY GROUP -- I AM URGING THAT WE LOOK AT IT A
23 DIFFERENT WAY. IF I HAVE -- I DON'T THINK WE'RE SERVING
24 THE PEOPLE WITH THE DISABILITIES WHO WE SAY WE'RE SERVING
25 BY THIS STANDARD BECAUSE I NEED -- IF I HAVE EMOTIONAL

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1 DISABILITIES, I NEED TO GO TO SOMEBODY WHO IS QUALIFIED
2 TO DEAL WITH MY DISABILITIES AND GIVE ME WHAT IN THEIR
3 PROFESSIONAL OPINION I NEED. UNDER THE LAW RIGHT
4 NOW IT'S GOING TO GET EVEN BROADER UNDER THIS REGULATION.
5 IF I HAVE -- IF I HAVE ALLERGIES AND I WANT TO HAVE
6 HARDWOOD FLOORS AND, BY GOD, I HAPPEN TO HAVE ALREADY PUT
7 IT IN, THE BOARD OF DIRECTORS CONFRONTS ME, SAYS, "YOU
8 VIOLATED USE RESTRICTION." I SAY, "OH, I HAVE
9 ALLERGIES." THEN DO I GET A LETTER FROM AN ALLERGIST OR
10 MEDICAL PROFESSIONAL TO DIAGNOSE? NO. THE LETTER CAME
11 IN FROM A CHINESE HERBALIST SAYING THIS PERSON HAS
12 ALLERGIES. AN ORTHOPEDIC SURGEON COULD ATTEST TO MY
13 EMOTIONAL DISABILITIES. THAT MAKES NO SENSE AND IT
14 DOESN'T HELP THE PERSON WHO NEEDS THAT VERY HELP. SO
15 IRONICALLY WE'RE NOT ONLY DESTROYING THE IMPORTANCE OF
16 REQUIRING SOME REAL VERIFICATION, BUT WE ARE ALSO
17 ALLOWING PEOPLE THAT MAY REALLY NEED TO BE SHUNTED TO THE
18 PEOPLE -- MARRIAGE AND FAMILY COUNSELOR, PSYCHOLOGIST,
19 PSYCHIATRIST, THERAPIST -- THOSE ARE THE PEOPLE THEY NEED
20 TO TALK TO ABOUT WHAT THEY REALLY NEED FOR THEIR
21 EMOTIONAL DISABILITIES. I PROBABLY BEAT THE HORSE DEAD.
22 MR. KISH: YES.
23 MS. SCHUR: LET ME JUST POINT OUT AS SOMEONE WHO
24 WORKS VERY CLOSELY WITH THE DISABILITY COMMUNITY THAT
25 MANY OF THEM FIND THOSE SORTS OF SUPPORT THAT YOU ARE

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1 DENIGRATING TO BE MUCH MORE EFFECTIVE IN HELPING THEM
2 THAN THE TRADITIONAL MEDICAL ESTABLISHMENT, SO I DON'T
3 THINK WE CAN SPEAK FOR PEOPLE WITH DISABILITIES AS TO
4 WHICH SUPPORTS ARE MORE HELPFUL TO THEM IN ADDRESSING
5 THEIR NEEDS. MY OFFICE, FOR EXAMPLE, RUNS A VERY
6 SUCCESSFUL PEER-SUPPORT PROGRAM THAT DEALS WITH PEOPLE
7 WITH MENTAL HEALTH DISABILITIES. SO I THINK WE NEED TO
8 BE VERY CAREFUL ABOUT SAYING WHAT PEOPLE WITH HEALTH
9 DISABILITIES NEED OR DON'T NEED.
10 MR. RICHARDSON: I CERTAINLY DON'T MEAN FOR ONE
11 MOMENT TO DENIGRATE WHAT PEOPLE NEED. THAT'S MY POINT.
12 I WANT TO MAKE SURE THAT PEOPLE GET WHAT THEY NEED. IF I
13 GO TO MY BUDDY WHO IS AN ORTHOPEDIC SURGEON WHO DOES KNEE
14 REPLACEMENTS FOR MY VERIFICATION OF MY EMOTIONAL NEEDS
15 FOR A SUPPORT ANIMAL, I DON'T THINK THAT IS WHAT WE'RE
16 TALKING ABOUT. IT SEEMS TO ME WE NEED TO HAVE PEOPLE --
17 NOW I'M ASSUMING, BY THE WAY, COUNCIL, THAT THIS STANDARD
18 IS NOT JUST GOING TO BE APPLIED TO THE ASSISTIVE ANIMAL
19 ISSUE. I'M ASSUMING THIS IS GOING TO BE GIVEN A BROADER
20 APPLICATION, AS WELL.
21 MR. MANDELBAUM: WELL, I THINK THERE ARE TWO
22 LEVELS TO THIS. ONE IS THIS SORT OF PRAGMATIC POLICY
23 LEVEL THAT YOU ARE ADDRESSING AND THEN THE SECOND ONE --
24 APPEARS TO BE ADDRESSING -- WELL, ASSUMING FOR THE MOST
25 THAT THIS IS FEDERAL LAW, DO WE ADVANCE THE CLARITY OF

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1 LAW IN CALIFORNIA EVEN IF WE COULD GET IT BY HUD, SO TO
2 SPEAK, BY IGNORING THAT FACT? IN OTHER WORDS, IS THIS
3 SOMETHING BETTER ADDRESSED AT HUD IN THE FIRST INSTANCE
4 IF, IN FACT, THAT SPEAKS TO FEDERAL LAWS INTERPRETED BY
5 THE AGENCY CHARGED WITH INTERPRETING FEDERAL LAW IN THIS?
6 MR. RICHARDSON: I DO APPRECIATE THAT. THE
7 PROBLEM IS THAT WE'RE TALKING INTERPRETIVE GUIDE, WHICH
8 WE'VE ALL DESPERATELY CLUNG TO FOR YEARS, AND NOW WE'RE
9 GOING TO ELEVATE IT INTO OUR STATE REGULATIONS. BEFORE
10 WE DO THAT I THINK THAT THERE NEEDS TO BE SOME MORE
11 DIALOGUE BECAUSE IS THIS REALLY WHAT HUD MEANT TO SAY --
12 DOJ MEANT TO SAY? TO ME I DON'T CONSIDER INTERPRETIVE
13 GUIDE AS LAW. RIGHT? THE LAW IS THE REGULATION OF THE
14 STATUTE FOR THE CASELAW. AND, I'M SORRY, I HAVE A LAW
15 PROFESSOR RIGHT IN FRONT OF ME. DID I GET AT LEAST A B
16 ON THAT, PROFESSOR?
17 MR. IGLESIAS: YEAH.
18 MR. RICHARDSON: I VERY MUCH APPRECIATE THE
19 COUNCIL'S PATIENCE WITH ME. THIS IS SO SERIOUS AND WE
20 HAVE TO RUN THE THRESHOLD. IT'S A GREAT OPPORTUNITY FOR
21 OUR STATE. I JUST WANT TO MAKE SURE WE COME UP WITH
22 SOMETHING I CAN EXPLAIN TO MY CLIENTS THAT I CAN WRITE
23 ABOUT IN MY COLUMN AND PEOPLE DO IT RIGHT.
24 MR. MANDELBAUM: THANK YOU. IT'S GREAT TO HAVE
25 YOU BACK HERE.

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1 MS. SCHUR: AND I CERTAINLY APPRECIATE -- I'M
2 LEARNING A LOT ABOUT CONDOMINIUM AND OTHER KINDS OF LAW.
3 THANK YOU FOR THAT.
4 MR. KISH: THIS CERTAINLY WON'T MAKE IT INTO A
5 FINAL STATEMENT OF REASONS AND I'LL HAVE -- I THINK I
6 MIGHT SAY IT AT EVERY HEARING -- IF THERE IS SOMETHING
7 THAT HUD DOES THINK IS THE LAW, EVEN IF WE DISAGREE WITH
8 IT, THAT'S WHAT WE'VE GOT. SO THERE IS SOME ADVOCACY
9 THAT -- NOW IS THE TIME PROBABLY -- THAT YOU CAN DO AT
10 THE FEDERAL LEVEL. WE DON'T HAVE THE POWER TO DEVIATE
11 FROM THAT IN MORE RESTRICTIVE WAYS. AND I'M JUST GOING
12 TO CONTINUE BEATING THAT HORSE BECAUSE I THINK IT'S
13 IMPORTANT FOR FOLKS ON THE GROUND TO UNDERSTAND THAT, AS
14 WELL. WE ARE FACED WITH LIMITATIONS THAT ARE OUTSIDE OF
15 OUR OWN ABILITY TO REGULATE. WITH THAT SAID, THIS IS
16 OBVIOUSLY UNBELIEVABLY USEFUL, PARTICULARLY TO ME.
17 MR. MANDELBAUM: ONE QUICK TENTATIVE. IT'S ONE
18 O'CLOCK. I KNOW THERE ARE PEOPLE HERE TO TESTIFY AS PART
19 OF THE PUBLIC HEARING. I ALSO KNOW WE HAVE CONSTRAINTS
20 WITH OUR COURT REPORTER.
21 MS. PALUTKE: I'M HEIDI PALUTKE. H-E-I-D-I,
22 LAST NAME, P-A-L-U-T-K-E. I PROVIDED EXTENSIVE COMMENTS
23 AND ALSO PROPOSED REVISED TEXT BY EMAIL THIS MORNING, SO
24 I'M GOING TO PROVIDE THE READER'S DIGEST, CONDENSED
25 VERSION OF MY COMMENTS RIGHT NOW WHICH THANKFULLY IS FIVE

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1 PAGES INSTEAD OF 12. THE FIRST COMMENT IS ON SECTION
2 11098.4, LIABILITY FOR DISCRIMINATORY HOUSING PRACTICES.
3 IN THE FIRST PART, SUBSECTION A1C, REGARDING DIRECT
4 LIABILITY, THAT WAS DISCUSSED EARLIER TODAY. IT IMPOSES
5 LIABILITY ON A PERSON WHO FAILS TO FULFILL A DUTY TO TAKE
6 PROMPT ACTION TO CORRECT OR ADD DISCRIMINATORY PRACTICE
7 BY A THIRD PARTY. MY CONCERN HERE IS A LITTLE BIT
8 DIFFERENT THAN THE ONE RAISED EARLIER, ASSUMING THAT A
9 LANDLORD DOES HAVE A DUTY TO TAKE ACTION. FOR EXAMPLE,
10 IF THE TENANT-VERSUS-TENANT CONDUCT RISES TO THE POINT OF
11 VIOLATING SOMEONE'S QUIET ENJOYMENT, LANDLORD HAS A DUTY
12 TO DO SOMETHING ABOUT THAT. REALLY, THE ONLY CORRECTIVE
13 TOOL A LANDLORD HAS IS THE EVICTION PROCESS. AND IN MANY
14 INSTANCES, PARTICULARLY IF IT'S IN A RENT-CONTROLLED
15 COMMUNITY, THE COURT MAY REALLY HAVE A LOT OF SYMPATHY
16 FOR THE TENANT, NOT WANT TO EVICT AN ENTIRE FAMILY OVER
17 SOME OBNOXIOUS ACTIONS OF ONE PERSON IN THAT FAMILY. SO
18 THE LANDLORD'S EVICTION ACTION THEN FAILS. THE CONCERN
19 HERE IS THAT THE OWNER COULD STILL BE LIABLE BECAUSE IT'S
20 NOT CLEAR WHETHER THE LANDLORD HAS TO ACTUALLY SUCCEED AT
21 THAT PROMPT ACTION IN ORDER TO AVOID LIABILITY. THE
22 LANGUAGE TALKED ABOUT EARLIER ADDING "HAVING THE POWER TO
23 CORRECT IT AND FAILING TO DO SO," THAT WOULD HELP.
24 OBVIOUSLY IF THE COURT SAYS, NO, YOU CAN'T EVICT THAT
25 PERSON, THEN YOU DON'T HAVE THE POWER TO DO IT. THAT

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1 WOULD ADDRESS THAT. I HAVE SOME SLIGHTLY DIFFERENT
2 LANGUAGE IN MY PROPOSAL. EITHER OF THOSE WOULD FIX THAT
3 ISSUE. IN SUBSECTION A2 IT SAYS THAT PROMPT ACTION TO
4 END THE DISCRIMINATORY ACTION MAY NOT INCLUDE ANY ACTION
5 THAT PENALIZES OR HARMS THE PERSON, SUCH AS EVICTION.
6 HERE OUR CONCERN IS THAT HAVING THIS PROTECTION THE WAY
7 THAT IT'S STATED MAY DELAY OR PREVENT EVICTION OF THAT
8 PERSON WHO IS THE VICTIM OF DISCRIMINATION WHEN THERE ARE
9 PERFECTLY GOOD, UNRELATED REASONS TO EVICT THAT PERSON,
10 SUCH AS IF THEY HAVEN'T BEEN PAYING RENT. SO I HAVE
11 PROPOSED SOME LANGUAGE IN MY WRITTEN COMMENTS THAT WOULD
12 ADDRESS THAT VERY NARROW ISSUE WHERE THERE ARE OTHER
13 PROPER GROUNDS FOR EVICTION. MY NEXT COMMENT DEALS WITH
14 SECTION 1109.85 ON HARASSMENT. MY FIRST CONCERN IS WITH
15 SUBSECTION A WHICH STATES IN PART -- I THINK IT'S THE
16 SECOND SENTENCE -- HARASSMENT INCLUDES CONDUCT THAT
17 DEPRIVES OR INTERFERES WITH THE RIGHT TO LIVE IN A
18 DISCRIMINATION-FREE HOUSING ENVIRONMENT. IT'S NOT LIKELY
19 THE INTENT, BUT I READ THIS SECTION TO MEAN THAT ANY
20 ALLEGATION, HOUSING DISCRIMINATION, BECAUSE IT INTERFERES
21 WITH THE RIGHT TO LIVE IN A DISCRIMINATION-FREE HOUSING
22 ENVIRONMENT, WOULD THEN ALSO SERVE AS A CLAIM FOR
23 HARASSMENT. I DON'T THINK THAT IS REALLY THE INTENT, SO
24 SOME CLARIFICATION THERE WOULD BE HELPFUL.
25 MS. SCHUR: CAN YOU GIVE US SOME LANGUAGE WITH

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1 THAT?
2 MS. PALUTKE: YEAH.
3 MS. SCHUR: OKAY.
4 MS. PALUTKE: YEAH. ACTUALLY, THE SUGGESTION
5 THERE WAS JUST DELETING THAT SENTENCE BECAUSE THE FIRST
6 SENTENCE AND THE THIRD SENTENCE IN THAT PARAGRAPH
7 COVER -- PROVIDES A GOOD DEFINITION OF WHAT HARASSMENT IS
8 WITHOUT THAT SECOND SENTENCE BEING THERE. SO THAT WAS
9 WHAT THE SUGGESTION WAS. SUBPART B75 DEFINES HARASSMENT
10 AND HOUSING TO REVEAL PRIVATE INFORMATION ABOUT AN
11 INDIVIDUAL WITHOUT THEIR CONSENT TO A THIRD PARTY RELATED
12 TO MEMBERSHIP IN A PROTECTIVE CLASS. OUR CONCERN HERE IS
13 THAT SOMETIMES IT'S NECESSARY TO USE INFORMATION ABOUT
14 THE PERSON'S MEMBERSHIP IN A PROTECTED CLASS EITHER TO DO
15 SOMETHING THAT IS ESSENTIAL TO THE LANDLORD-TENANT
16 RELATIONSHIP OR TO ACTUALLY PROVIDE THE ACCOMMODATION
17 THAT THE TENANT IS ASKING FOR AND OFTEN CONSENT IS
18 UNREASONABLY WITHHELD. SOME EXAMPLES ARE FORMER HOUSING
19 PROVIDER NEEDS TO DISCUSS WITH THE CURRENT HOUSING
20 PROVIDER THE BEHAVIOR OF A TENANT'S PET THAT IS NOW BEING
21 PROPOSED TO BE AN ASSISTIVE ANIMAL. THAT TENANT MAY NOT
22 CONSENT TO THAT DISCUSSION HAPPENING BECAUSE THERE MAY
23 HAVE BEEN PROBLEMS WITH THAT PRIOR LANDLORD, BUT THAT IS
24 ESSENTIAL INFORMATION FOR THE HOUSING PROVIDER TO HAVE TO
25 DECIDE WHETHER THIS ASSISTIVE ANIMAL POSES A DIRECT

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1 THREAT OR NOT. THE HOUSING PROVIDER MAY NEED TO NOTIFY
2 AN EMPLOYEE DOING NECESSARY MAINTENANCE IN A BUILDING
3 THAT IS OFFICIALLY A NO-PETS BUILDING THAT WHEN THEY GO
4 INTO UNIT B THERE IS ACTUALLY A PIT BULL IN THERE BECAUSE
5 IT'S AN ASSISTIVE ANIMAL. THAT MAINTENANCE WORKER NEEDS
6 THAT INFORMATION WHETHER THE TENANT CONSENTS TO THAT
7 BEING PROVIDED OR NOT. AND THEN FINALLY HOUSING PROVIDER
8 MIGHT ALSO NEED TO DISCUSS A PARTICULAR DISABLED TENANT'S
9 NEEDS WHEN WORKING WITH A CONTRACTOR TO RE-STRIPE A
10 PARKING LOT OR ADJUST CURB CUTS. AND CONSENT IS OFTEN
11 UNREASONABLY WITHHELD, SO IT WOULD BE HELPFUL IF THERE
12 WERE SOME EXCEPTIONS WHERE IT'S REALLY ESSENTIAL FOR THE
13 LANDLORD TO SHARE THAT INFORMATION WITH SOMEONE. THE
14 NEXT COMMENT IS ON SECTION 11098.6 DEALING WITH
15 RETALIATION. THIS IS A SITUATION, I THINK, WHERE SOME
16 LAW FROM THE EMPLOYMENT CONTEXT IS BEING SHIFTED INTO THE
17 HOUSING CONTEXT AND IT'S NOT REALLY APPROPRIATE. THIS
18 SECTION GRASPS PARTS FROM THE HARRIS CASE INTO THE
19 HOUSING PART OF FEHA WHICH HAS A PROHIBITION AGAINST
20 EVICTION AND OTHER ACTIONS WHEN THE DOMINANT PURPOSE IS
21 RETALIATION AGAINST A PERSON WHO HAS EXERCISED CERTAIN
22 RIGHTS. HOWEVER, IN HARRIS THE CALIFORNIA SUPREME COURT
23 WAS INTERPRETING OF THE CAUSATION REQUIREMENT THAT
24 APPLIES IN THE EMPLOYMENT CONTEXT. IT WASN'T
25 INTERPRETING THE TYPE OF DOMINANT PURPOSE CAUSATION

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1 REQUIREMENT THAT APPLIES IN HOUSING. IN FACT, IT
2 SPECIFICALLY DISTINGUISHES THE LANGUAGE IT WAS LOOKING AT
3 IN EMPLOYMENT FROM THE TYPE OF REQUIREMENT THAT IS
4 RELEVANT HERE. I HAVE A QUOTE. I DON'T KNOW WHAT PAGE
5 OF THE CASE IT'S FROM. BUT THE QUOTE IS -- FROM
6 HARRIS -- IS SECTION 1290 -- 12940A DOES NOT SAY THAT
7 EMPLOYMENT ACTION MUST BE SOLELY BECAUSE, EXCLUSIVELY
8 BECAUSE OF, OR PREDOMINANTLY BECAUSE OF IMPROPER
9 DISCRIMINATION. SO WHAT THEY WERE INTERPRETING IN THAT
10 CASE WAS NOT A PREDOMINANTLY -- BECAUSE OF A REQUIREMENT
11 LIKE WHAT WE NEED TO LOOK AT HERE. IN THE HOUSING
12 PROVISIONS OF FEHA THE LEGISLATURE SPECIFICALLY CHOSE TO
13 REQUIRE THAT DISCRIMINATORY MOTIVE TO BE THE DOMINANT
14 PURPOSE TO PREDOMINATE. SO THAT SUGGESTS THAT THE
15 UNLAWFUL DISCRIMINATION HAS TO BE THE MOST IMPORTANT OR
16 CONTROLLING REASON. THIS IS A STRONGER CAUSATION
17 REQUIREMENT TO SHOW RETALIATION THAN IN THE EMPLOYMENT
18 CONTEXT. IT'S NOT JUST A SUBSTANTIAL OR A CONTRIBUTING
19 FACTOR LIKE WHAT IS HERE IN THE PROPOSED REGULATION. OUR
20 SUGGESTION TO ADDRESS THIS IS EITHER TO COME UP WITH A
21 DEFINITION FOR DOMINANT PURPOSE THAT REFLECTS THE
22 ORDINARY USAGE OF THOSE WORDS IN ENGLISH OR JUST TO
23 STRIKE THE DEFINITION THAT IMPROPERLY REFERS TO THE
24 LANGUAGE FROM HARRIS AND LEAVE IT TO THE COURTS IN THE
25 FUTURE TO DECIDE WHAT "DOMINANT PURPOSE" ACTUALLY MEANS.

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1 THAT'S IN MY WRITTEN COMMENTS, THE SPECIFIC PROVISIONS
2 FOR THAT. ALSO GOVERNMENT CODE 12955F STATES IN RELATION
3 TO ALL OF THIS THAT NOTHING HEREIN IS INTENDED TO CAUSE
4 OR PERMIT THE DELAY OF AN UNLAWFUL DETAINER ACTION. THAT
5 IS PART OF THE LAW, BUT IT HASN'T BEEN INCORPORATED INTO
6 THE PROPOSED REGULATION, SO WE REQUEST THAT THAT BE
7 REFLECTED IN THE REGULATION ALSO. MOVING ON, FINALLY MTO
8 REASONABLE ACCOMMODATIONS. SECTION 11098.26, SUBPART B,
9 PROVIDES THE ONLY REASONS FOR WHICH A HOUSING PROVIDER
10 MAY DENY REQUESTED ACCOMMODATION AFTER ENGAGING IN THE
11 INTERACTIVE PROCESS. THE FIRST REASON IS THAT THE
12 APPLICANT OR RESIDENT IS NOT A PERSON WITH A DISABILITY.
13 IF THE PERSON IS NOT DISABLED; HOWEVER, THEN THERE IS NO
14 DUTY TO ENGAGE IN THE INTERACTIVE PROCESS. ONE OF THE
15 MAIN ISSUES THAT C.A. HAS WITH THE STRUCTURE OF
16 REGULATIONS RATHER THAN THE CONTENT IS THE USE OF THE
17 TERM "INTERACTIVE PROCESS." I'LL TALK ABOUT THAT MORE IN
18 A MINUTE, BUT BASICALLY WE VIEW THE REQUEST AND
19 VERIFICATION SEGMENT AS SOMETHING THAT OCCURS BEFORE THE
20 INTERACTIVE PROCESS. AND THE INTERACTIVE PROCESS IS WHAT
21 HAPPENS WHEN THE LANDLORD IS READY TO SAY, NO, WHAT
22 YOU'VE ASKED FOR IS NOT REASONABLE. YES, YOU ARE
23 DISABLED, YES, YOU NEED THIS ACCOMMODATION, BUT FOR ONE
24 OF THE REASONS PROVIDED BY LAW IT'S NOT REASONABLE.
25 THAT'S WHEN THE INTERACTIVE PROCESS STARTS BECAUSE THE

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1 POINT OF THE INTERACTIVE PROCESS IS TO COME UP WITH
2 ALTERNATIVES. I THINK WE ALL AGREE ABOUT WHAT THE
3 PURPOSE IS. IT'S MORE -- OUR CONCERN IS MORE ABOUT --
4 THE WORDS ARE USED DIFFERENTLY THAN IN THE HUD DOJ
5 GUIDANCE AND AMONG PRACTITIONERS IN THIS AREA. SO WHAT I
6 DID IN THE PROVISIONS THAT I HAVE PROVIDED IS DIVIDE THE
7 LATER SECTION ON THE INTERACTIVE PROCESS INTO TWO PARTS.
8 ONE DEALING WITH A REQUEST OF VERIFICATION AND THEN
9 ANOTHER PART DEALING WITH THE INTERACTIVE PROCESS. I'VE
10 ALSO PROPOSED REVISIONS TO THIS EARLIER SECTION 11098.26
11 UNDER REASONABLE ACCOMMODATIONS SO THAT THOSE TWO THINGS
12 MATCH. ESSENTIALLY THERE WOULD BE THREE REASONS FOR
13 DENYING REASONABLE ACCOMMODATION. THE FIRST WOULD BE THE
14 APPLICANT OR RESIDENT HAS FAILED TO PROVIDE VERIFICATION
15 OF DISABILITY THAT IS NOT OBVIOUS WITHIN A REASONABLE
16 TIME AFTER REQUEST BY THE HOUSING PROVIDER. THE SECOND
17 REASON FOR DENIAL WOULD BE APPLICANT OR RESIDENT HAS
18 FAILED TO PROVIDE VERIFICATION OF THE NEED FOR THE
19 ACCOMMODATION THAT IS NOT OBVIOUS WITHIN A REASONABLE
20 TIME AFTER REQUEST BY THE HOUSING PROVIDER. AND THEN THE
21 LAST REASON WOULD BE THE ORIGINAL ACCOMMODATION REQUESTED
22 IS NOT REASONABLE AND THE INTERACTIVE PROCESS AS DEFINED
23 IN SECTION -- BLAH, BLAH, BLAH -- HAS FAILED TO RESULT IN
24 AN ALTERNATE REASONABLE ACCOMMODATION. THE NEXT COMMENT
25 IS ON SECTION 11098.27 DEALING WITH ASSISTIVE ANIMALS.

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1 THE FIRST CONCERN IS WITH THE PROPOSED LANGUAGE AND
2 SUBPART A WHICH REQUIRES THAT AN ANIMAL THAT IS KNOWN TO
3 BE A DIRECT THREAT MUST STILL BE ALLOWED IF THE THREAT
4 CAN BE REDUCED OR ELIMINATED. OUR CONCERN IS THAT
5 REDUCED IS NOT REALLY ENOUGH BECAUSE IT DOESN'T SAY HOW
6 MUCH IT NEEDS TO BE REDUCED. SO OUR SUGGESTION INSTEAD
7 WOULD BE TO SAY THAT THE THREAT HAS TO BE ELIMINATED OR
8 SUFFICIENTLY MITIGATED. THE SECOND COMMENT IS ON SUBPART
9 A3 WHICH PROVIDES THAT THE DETERMINATION OF A DIRECT
10 THREAT MUST BE BASED ON INDIVIDUALIZED ASSESSMENT OF
11 OBJECTIVE EVIDENCE. WE REQUEST HERE THAT THE COUNCIL
12 PROVIDE EXAMPLES OF WHAT WOULD BE SUFFICIENT EVIDENCE OR
13 WHAT WOULDN'T, WHAT KIND OF THINGS CAN LANDLORDS LOOK TO.
14 YOU KNOW, BAD REFERENCES FOR THE DOG FROM A PRIOR
15 LANDLORD, REFERENCES FROM A VETERINARIAN. AND DOES THE
16 LANDLORD REALLY HAVE A RIGHT TO ASK FOR THAT INFORMATION
17 OR IS THE ANIMAL ASSUMED TO NOT POSE A DIRECT THREAT
18 UNTIL SOMETHING HAPPENS? CAN A LANDLORD AFFIRMATIVELY
19 SEEK THIS INFORMATION? AND THEN, YOU KNOW, DENY IF -- IF
20 IT'S NOT A PROVIDED. THE NEXT CONCERN IS WITH SUBPART B
21 WHICH MAKES THE DISABLED PERSON LIABLE FOR DAMAGE BEYOND
22 REASONABLE WEAR AND TEAR CAUSED BY THE ANIMAL TO THE
23 DWELLING UNIT OR COMMON AREAS. THERE ARE TWO SUGGESTIONS
24 HERE. ONE IS THAT, RATHER THAN "REASONABLE WEAR AND
25 TEAR," IT SHOULD REFER TO "ORDINARY WEAR AND TEAR."

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1 THAT'S THE LANGUAGE IN THE CIVIL CODE RELATING TO THE
2 DISPOSITION OF THE TENANT'S SECURITY DEPOSIT. THERE ARE
3 ENOUGH ARGUMENTS ABOUT WHAT IS ORDINARY WEAR AND TEAR
4 WITHOUT BRINGING A WHOLE OTHER WORD INTO IT. ALTHOUGH
5 "REASONABLE" MIGHT BE A BETTER WORD, WE ARE ALREADY STUCK
6 WITH "ORDINARY." AND THEN THE SECOND SUGGESTION IS THAT
7 THE SCOPE OF THE AREA WHERE THE ANIMAL MIGHT CAUSE DAMAGE
8 REFER TO THE PREMISES RATHER THAN THE DWELLING UNIT OR
9 COMMON AREAS. THAT ANIMAL MIGHT GO INTO SOMEONE ELSE'S
10 APARTMENT AND CAUSE DAMAGE. IT MIGHT GO INTO AREAS OF
11 THE PROPERTY THAT ARE NOT COMMON AREAS THAT ARE
12 SUPPOSEDLY ONLY ACCESSIBLE TO MAINTENANCE WORKERS. COULD
13 BE A STORAGE CLOSET. THERE SHOULD BE LIABILITY FOR ANY
14 DAMAGE THAT THE ANIMAL DOES ON THE PROPERTY NOT LIMITED
15 TO THESE AREAS. THEN IN SUBPART D, THE POSITION OF
16 REASONABLE CONDITIONS ON THE CONDUCT OF THAT ANIMAL AND
17 THEIR OWNER. IT WOULD BE HELPFUL FOR THE COUNCIL TO
18 DESCRIBE HOW THE OWNER CAN IMPOSE AND ENFORCE THOSE
19 RULES. C.A. HAS A FORM THAT IS USED, AN ADDENDUM. A LOT
20 OF OUR MEMBERS HAVE THEIR OWN FORMS LIKE THAT THAT THEY
21 ATTACH TO THE LEASE SO THAT THEY BE ENFORCEABLE AS PART
22 OF THAT CONTRACT. THE PROBLEM IS THAT OFTEN THE TENANTS
23 WILL REFUSE TO SIGN THE DOCUMENT THAT OUTLINES THE
24 RESPONSIBILITIES WITH RESPECT TO THE ANIMAL. SO OUR
25 QUESTION IS, WELL, IF THE RULES ARE REASONABLE, CAN THEY

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1 BE ENFORCED EVEN IF THE TENANT HASN'T SIGNED IT? CAN THE
2 ACCOMMODATION BE CONDITIONED ON COMPLIANCE WITH THE
3 REASONABLE RULE? AS LONG AS THEY HAVE THEIR DOG, THEY
4 HAVE TO FOLLOW THEM WHETHER THEY, YOU KNOW, PUT THEIR
5 INITIALS ON IT OR NOT. AND MY WRITTEN COMMENTS DO HAVE
6 SOME PROPOSED LANGUAGE FOR THAT. ANOTHER BIG ISSUE FOR A
7 LOT OF THE ATTORNEYS THAT I'VE TALKED TO IN PREPARING
8 THESE COMMENTS IS IN SUBPART E. WE ARE ASSUMING THAT
9 MEANS SOCIAL GUESTS AND INVITEES OF THE TENANT, NOT OF
10 THE HOUSING PROVIDER. AND C.A. REQUESTS THAT THE COUNCIL
11 EXPLAIN ITS AUTHORITY TO REQUIRE HOUSING PROVIDERS TO
12 PROVIDE REASONABLE ACCOMMODATION FOR PERSONS WITH WHOM IT
13 HAS NO RELATIONSHIP AND FOR WHOM IT DOESN'T PROVIDE OR
14 OFFER ANY HOUSING SERVICES. THIS IS AN ISSUE THAT COMES
15 UP A LOT. YOU KNOW, THE TENANT'S FRIENDS COME OVER AND
16 THEY HAVE A DOG AND IT'S A NO-PET BUILDING, ASSUMING THAT
17 AN ACCOMMODATION IS REQUIRED TO THESE THIRD PARTIES. THE
18 REAL QUESTION IS, HOW DO YOU DO IT? YOU KNOW, WHERE THE
19 PERSON SHOWS UP AT THE DOOR AND THEY HAVE A DOG AND YOU
20 DON'T KNOW WHO THEY ARE AND THEY'RE VISITING YOUR TENANT.
21 HOW CAN YOU CONDITION THAT PERSON COMING ONTO YOUR
22 PROPERTY ON PRIOR VERIFICATION OF THEIR DISABILITY AND
23 THEIR NEED TO HAVE THE ANIMAL AT YOUR PROPERTY AS OPPOSED
24 TO JUST THE ONE WHERE THEY LIVE? AND HOW DO YOU GET THEM
25 TO AGREE TO YOUR PROPERTY'S ASSISTIVE ANIMAL RULES?

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1 THAT'S REALLY A MORE PRACTICAL CONSIDERATION ABOUT HOW
2 YOU ACTUALLY DO THIS. SUBPART G WAS TALKED ABOUT
3 ALREADY, ABOUT REQUIRING THE QUALIFIED HEALTHCARE
4 PROVIDER TO HAVE SPECIFIC KNOWLEDGE OF THE PATIENT'S
5 MEDICAL CONDITION BASED ON ASSESSMENT AND NOT OPERATE
6 PRIMARILY TO PROVIDE CERTIFICATIONS FOR ASSISTIVE
7 ANIMALS. THIS SECTION IS EXTREMELY HELPFUL TO OUR
8 MEMBERS. WE GET A LOT OF CALLS FROM MEMBERS ON OUR HELP
9 LINE ABOUT TENANTS WHO HAVE A CERTIFICATION FROM THE
10 INTERNET. AND WE REQUEST THAT THIS SECTION ALSO BE
11 INCORPORATED INTO THE LATER, BROADER SECTION ON PROOF OF
12 DISABILITY SO THAT IT APPLIES TO ALL REQUESTS FOR
13 ACCOMMODATIONS, NOT JUST THOSE FOR ANIMALS. I THINK THE
14 BIGGEST OTHER AREA OF ABUSE WITH THOSE INTERNET
15 CERTIFICATES IS PROBABLY IN THE MEDICAL MARIJUANA
16 CONTEXT. I WAS AT A FAIR HOUSING CONFERENCE A FEW YEARS
17 AGO BEFORE CALIFORNIA LEGALIZED MARIJUANA AND THERE WERE
18 PEOPLE TALKING ABOUT BUILDINGS WHERE THEY WORK WITH THE
19 TENANTS WHERE ALL OF THE TENANTS HAD AN ASSISTIVE ANIMAL
20 AND THEY ALL HAD A MEDICAL MARIJUANA PRESCRIPTION AND ALL
21 OF THOSE WERE FROM THE SAME PROVIDER. SO THAT IS
22 PROBABLY SOMETHING WE WANT TO AVOID. I CAN SEE -- I
23 HAVEN'T HEARD IT BE AN ISSUE, BUT THE OTHER MOST COMMON
24 REQUEST FOR AN ACCOMMODATION THAT WE'RE SEEING IS, YOU
25 KNOW, FOR THE LIVE-IN CAREGIVERS. AND I CAN SEE HOW

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1 THERE CAN BE ABUSE OF CERTIFICATION OF THAT TOO. THE
2 NEXT SECTION IS THE ONE DEALING WITH UNDUE HARDSHIP,
3 11098.28, AND WHAT MAKES AN ACCOMMODATION UNREASONABLE.
4 THE CONCERN HERE IS THE USE OF DIFFERENT TERMINOLOGY THAN
5 THE HUD DOJ STATEMENT. HUD TALKS ABOUT AN UNDUE
6 FINANCIAL OR ADMINISTRATIVE BURDEN OR FUNDAMENTAL
7 ALTERATION OF THE HOUSING PROGRAM. BY CONTRAST THE
8 PROPOSED REGULATION REFERS TO UNDUE HARDSHIP. MAYBE THAT
9 COMES FROM THE EMPLOYMENT CONTEXT. AND THEN THE
10 DEFINITION USES SOME, BUT NOT EXACTLY THE SAME WORDS AS
11 HOW HUD TALKS ABOUT THESE UNDUE BURDENS. WHAT IT DOES IS
12 REALLY LUMP TOGETHER THOSE THREE DISTINCT GROUNDS FOR
13 DENIAL OF ACCOMMODATIONS. IT IS UNCLEAR WHETHER SOME OF
14 THE SIMILAR TERMINOLOGY IS INTENDED TO MEAN THE SAME
15 THING, SO I PROVIDED REVISED TEXT USING HUD'S TERMINOLOGY
16 AND THAT SETS IT UP SO THAT DEFINITIONS AND EXAMPLES CAN
17 BE PROVIDED FOR EACH OF THE REASONS FOR DENIAL. IT'S
18 ALSO MY UNDERSTANDING THAT THE HUD OCCUPANCY HANDBOOK
19 PROVIDES A NUMBER OF EXAMPLES AND GUIDANCE ON DETERMINING
20 WHEN UNDUE FINANCIAL AND ADMINISTRATIVE BURDENS EXIST, SO
21 THAT MIGHT BE A GOOD PLACE TO LOOK, ALSO. THERE ARE ALSO
22 OTHER GROUNDS FOR DENIAL OF ACCOMMODATION. FOR EXAMPLE,
23 THE DISCUSSION OF DIRECT THREAT UNDER ASSISTIVE ANIMAL.
24 SO IT SHOULD BE CLEAR IN THIS SECTION THAT THERE CAN BE
25 OTHER REASONS WHY SOMETHING IS NOT REASONABLE. DIRECT

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1 THREAT, FOR EXAMPLE, DOESN'T APPLY ONLY TO ANIMALS IN THE
2 HUD DOJ STATEMENT. ONE OF THE EXAMPLES THEY GIVE IS
3 ABOUT A TENANT BRANDISHING A BAT AND THAT BEING A
4 VIOLATION OF THE PROPERTY'S NO-THREATS POLICY. AND IN
5 THAT INSTANCE THE TENANT IS GIVEN A CHANCE TO GO BACK ON
6 THEIR MEDICATION AND STOP WAVING THE BAT AROUND, BUT IT
7 JUST SHOWS THAT DIRECT THREAT IS NOT JUST AN ISSUE FOR
8 ANIMALS. THE NEXT COMMENTS ARE ON SELECT SECTIONS,
9 11098.29, DEALING WITH THE INTERACTIVE PROCESS. I TALKED
10 ALREADY ABOUT OUR MAIN ISSUE WITH THE USE OF THIS TERM
11 AND THE NEED TO SEPARATE THE PROCESS OF DETERMINING THE
12 DISABILITY OF THE NEED FOR ACCOMMODATION FROM THE
13 INTERACTIVE PROCESS WHICH IS ABOUT COMING UP WITH
14 ALTERNATIVES IF THE HOUSING PROVIDER'S INITIAL
15 INCLINATION IS TO SAY NO BECAUSE IT'S NOT REASONABLE. WE
16 DO AGREE WITH THE COUNCIL'S PROVISIONS SUBPART D THAT ALL
17 PARTIES HAVE TO MAKE REASONABLE EFFORTS TO PARTICIPATE IN
18 GOOD FAITH. IT WOULD BE HELPFUL IF THE REGULATION WOULD
19 STATE WHEN HOUSING PROVIDER'S DUTY TO ENGAGE IN THE
20 INTERACTIVE PROCESS ENDS DUE TO THE APPLICANT'S OR
21 RESIDENT'S NONPARTICIPATION AND WHEN EARLIER IN THE
22 CONTEXT OF VERIFICATION AN OWNER CAN DENY THE REQUEST DUE
23 TO NONCOMMUNICATION OR EXTREME DELAY IN PROVIDING
24 SUFFICIENT VERIFICATION BY THE APPLICANT OR RESIDENT,
25 PARTICULARLY IF WE'RE TALKING ABOUT SOMEBODY APPLYING FOR

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1 HOUSING AND THEY HAVEN'T MOVED IN YET. THIS CAN BE A BIG
2 ISSUE. SO WHAT'S IN MY LONGER COMMENTS ARE A REWRITE OF
3 THE SECTION BREAKING IT INTO TWO PARTS. ONE WHICH DEALS
4 WITH THE REQUEST FOR THE ACCOMMODATION AND VERIFICATION,
5 IF IT'S NECESSARY. AND THEN A SECOND PART DEALING WITH
6 THE INTERACTIVE PROCESS. I'M NOT GOING TO READ IT
7 BECAUSE IT'S LONG AND BORING. THE LAST COMMENTS WE HAVE
8 ARE ON THE SECTION DEALING WITH PROOF OF DISABILITY.
9 THERE ARE A NUMBER OF REMARKS IN MY WRITTEN COMMENTS
10 CLARIFYING THINGS, STRIKING THE REFERENCE TO
11 MODIFICATIONS, BECAUSE THIS REGULATION ISN'T DEALING WITH
12 REASONABLE MODIFICATIONS YET. THERE IS ALSO SOME
13 INCONSISTENCY WITH THE PRIOR SECTION REGARDING SHARING
14 PRIVATE INFORMATION. AND THEN, LASTLY, THE MAIN COMMENT
15 HERE REALLY IS TO INCLUDE THAT SECTION ABOUT QUALIFIED
16 HEALTHCARE PROVIDERS HAVING SPECIFIC KNOWLEDGE OF THE
17 PATIENT'S MEDICAL CONDITION IN THIS SECTION SO THAT IT
18 APPLIES TO ALL ACCOMMODATIONS. THANK YOU FOR YOUR
19 CONSIDERATION.
20 MR. MANDELBAUM: THANK YOU.
21 MS. SCHUR: THANK YOU.
22 MR. WAGLE: HELLO. MY NAME IS SANJAY WAGLE.
23 I'M A LEGISLATIVE ADVOCATE WITH THE CALIFORNIA
24 ASSOCIATION OF REALTORS. BEFORE I BEGIN TODAY I WOULD
25 LIKE TO THANK MEMBERS OF THE COUNCIL FOR ALLOWING ME TO

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1 BE HEARD AS WELL. C.A.R. HAS SUBMITTED A LETTER WITH
2 COMMENTS ON THE REGULATIONS. I AM GOING TO BASICALLY
3 ELABORATE AND EXPAND BRIEFLY ON THOSE. CERTAIN POINTS
4 THAT I WAS GOING TO MAKE HAVE ALREADY BEEN MADE BY KELLY
5 RICHARDSON AND I'M NOT GOING TO JUST GO OVER THOSE AGAIN
6 SINCE YOU'VE HEARD THEM. SO I WILL BE DELETING THOSE
7 FROM MY COMMENTS. SO I'M LEANING RIGHT INTO IT. FIRST
8 THING I'M GOING TO DISCUSS IS REGARDING PROOF OF
9 DISABILITY AND SPECIFICALLY SECTION 11098.30. THE HUD
10 AND DOJ LETTERS' INTERPRETATION BOTH ALLOW HOUSING
11 PROVIDER TO ASK FOR RELIABLE DOCUMENTATION OF A
12 DISABILITY. WE WOULD REQUEST THAT THE WORD "RELIABLE" BE
13 ADDED TO LINE 2 OF 11098.30B INSTEAD OF JUST THE WORD
14 "DOCUMENTATION." WHILE THAT MAY SEEM LIKE A MINOR
15 CHANGE, WE BELIEVE THAT THAT WOULD HELP TO MAKE IT CLEAR
16 THAT SUCH DOCUMENTATION DOES NEED TO BE RELIABLE, NOT
17 JUST ANY DOCUMENTATION SUFFICES. FURTHERMORE, WE BELIEVE
18 AND REQUEST THAT A PARAGRAPH SHOULD BE ADDED TO THIS
19 SECTION TO CITE THOSE TYPES OF PROOFS WHICH ON THEIR OWN
20 DO NOT PROVIDE RELIABLE DOCUMENTATION. AND THIS WOULD BE
21 CONSISTENT WITH THE DFEH'S SETTLEMENT WITH THE IRVINE
22 COMPANY. A SECTION COULD BE ADDED. PAGE 27 OF THAT
23 SETTLEMENT -- THAT SETTLEMENT AGREEMENT, I BELIEVE, WAS
24 INCLUDED AS A PART OF THE CALIFORNIA POLITICAL CONSULTANT
25 GROUPS LETTER. THAT PARTICULAR PAGE DISCUSSES TYPES OF

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1 VERIFICATIONS WHICH IN AND OF THEMSELVES ARE NOT
2 SUFFICIENT. AND WE BELIEVE SETTING THAT OUT WOULD BE A
3 BENEFIT. THE BENEFIT OF SUCH CLARITY FROM HOUSING
4 PROVIDERS IS OBVIOUS. WHEN THEY GET THESE TYPES OF
5 THINGS THEY CAN KNOW THAT THIS IS NOT ADEQUATE
6 DOCUMENTATION. IT'S ALSO BENEFICIAL FOR THOSE WHO ARE
7 DISABLED OR FOR ADVOCATES FOR THE DISABLED BECAUSE WE ARE
8 AWARE THERE ARE PEOPLE OUT THERE WHO MIGHT JUST THINK,
9 "WELL, I WILL GO AND GET ONE OF THOSE AND THEN I'M GOOD."
10 CONSISTENT WITH THE NEED FOR CLARITY AS TO WHAT IS
11 RELIABLE DOCUMENTATION WE ALSO OBJECT TO THE ALLOWING OF
12 VERIFICATION FROM SOURCES OUTSIDE OF THE COUNTRY. I
13 BELIEVE IN THE -- IN THAT SECTION IT STATES FROM THE
14 STATE -- FROM ANY OTHER STATE OR COUNTRY. ONE OF THE
15 REASONS WE WANT CLARITY IS FOR LANDLORDS TO BE PROPERLY
16 AND QUICKLY ABLE TO FIGURE OUT THE VALIDITY OF THE
17 REQUEST. I REALLY THINK IT IS TOO MUCH FOR A HOUSING
18 PROVIDER TO BE ABLE TO ASSESS THE VALIDITY OF
19 OUT-OF-COUNTRY CERTIFICATION. THEY WOULD HAVE TO BE ABLE
20 TO FIGURE OUT WHAT THE MEDICAL STANDARDS ARE, WHAT TYPES
21 OF PHYSICIANS OR OTHER VARIOUS TYPES OF HEALTHCARE
22 PROVIDERS THAT MIGHT BE AVAILABLE IN A DIFFERENT COUNTRY.
23 LANGUAGE ISSUES, CATEGORIES OF CARE. FURTHERMORE, THEN
24 TRYING TO ACTUALLY MAKE CONTACT WITH THAT PERSON CAN BE
25 VERY DIFFICULT. WITHIN THE U.S. IT'S OFTEN VERY EASY

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1 THROUGH ONLINE OR OTHER METHODS TO FIND OUT -- VERIFY
2 WHETHER SOMEBODY IS, IN FACT, A DOCTOR OR ARE AWARE OF
3 WHAT THIS ENTITY IS. THAT COULD BE EXTREMELY DIFFICULT
4 WITH FOREIGN SOURCES, SO WE WOULD SAY THAT DECIDING --
5 INCLUDING OUT OF COUNTRY IS HIGHLY PROBLEMATIC. AGAIN,
6 THE SECOND PART OF THAT WOULD BE ALSO PUTTING A BURDEN ON
7 THE HOUSING PROVIDER TO EVALUATE THESE VARIOUS MEDICAL
8 PROFESSIONALS, WHICH AGAIN IS VERY PROBLEMATIC. SECTION
9 11098.29B BORROWS EXTENSIVELY FROM QUESTION 12 OF 10 OF
10 2004 HUD DOJ GUIDANCE. HOWEVER, IT OMITTS A VERY HELPFUL
11 AND CLEAR STATEMENT IN THAT GUIDANCE THAT SAYS AN
12 APPLICANT OR RESIDENT IS NOT ENTITLED TO RECEIVE A
13 REASONABLE ACCOMMODATION UNLESS SHE REQUESTS ONE. WE
14 THINK THAT THAT CLEAR STATEMENT SHOULD BE PUT INTO PART A
15 OR PART B AS IT MAKES IT VERY CLEAR THAT ONUS IS ON THE
16 TENANT TO BASICALLY REQUEST A REASONABLE ACCOMMODATION TO
17 GET THE PROCESS IN MOTION. WE UNDERSTAND THAT THE
18 SECTION GOES INTO HOW THAT REQUEST CAN BE MADE AND THAT
19 THERE IS MANY WAYS THAT THE REQUEST CAN BE MADE, BUT WE
20 THINK ADDITIONAL CLARITY WHICH IS IN THE HUD GUIDANCE,
21 THAT THEY'RE NOT ENTITLED TO RECEIVE REASONABLE
22 ACCOMMODATION UNTIL IT'S REQUESTED, WOULD BE HELPFUL.
23 ALSO, WE REQUEST LANGUAGE IN 11098.27 THAT A TENANT
24 SHOULD BE REQUIRED TO INFORM THE LANDLORD OF THE NEED FOR
25 A SERVICE ANIMAL AS SOON AS THEY KNOW THAT THEY NEED ONE,

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1 WHICH COULD BE DURING THE PERIOD OF TIME OF THE
2 APPLICATION FOR THE TENANCY. AGAIN, THE BENEFITS OF THAT
3 LANGUAGE -- THAT WOULD ALLOW THE OWNER TO ADDRESS
4 POTENTIAL ISSUES AS SOON AS POSSIBLE AND ALLOW THE
5 INTERACTIVE PROCESS TO BEGIN QUICKLY. WITH RESPECT TO
6 11098.28A5, COMPETING DISABILITY, WE ARE HAPPY THAT THE
7 COUNCIL IS RECOGNIZING THE ISSUE OF COMPETING DISABILITY.
8 HOWEVER, WE, ONCE AGAIN, REQUEST THAT THIS BE CLARIFIED
9 TO STATE THAT WHEN IT IS NOT POSSIBLE TO ACCOMMODATE THE
10 NEEDS OF TWO DISABLED TENANTS, THAT THERE SHOULD BE SOME
11 RULES OR GUIDANCE AS TO BASICALLY HOW A HOUSING PROVIDER
12 CAN MAKE THAT DECISION. ONE SUGGESTION, WHICH HAS BEEN
13 PREVIOUSLY MADE, IS THAT WOULD BE THE -- LET'S TAKE THE
14 EXAMPLE OF SOMEBODY WHO IS LIVING -- TWO TENANTS ON THE
15 PROPERTY. ONE TENANT HAS -- I DON'T WANT TO -- LET'S
16 SEE, I'LL PICK THE EXTREME OR ABSURD EXAMPLE. ONE TENANT
17 PERHAPS HAS EXTREME ALLERGY TO PEANUTS AND THE OTHER
18 TENANT SAYS, "WELL, I MUST HAVE PEANUTS AROUND ALL THE
19 TIME." WE HAVE -- HOW DO WE -- HOW DOES THE HOUSING
20 PROVIDER MAKE A DECISION WHICH WON'T EXPOSE THEM TO
21 LIABILITY? WE SUGGEST IT SHOULD BE THE FIRST IN TIME
22 TENANT. WHOEVER WAS THERE FIRST SHOULD GET SOME
23 PRIORITY, BUT THAT SOME CLARITY SHOULD BE ADDED TO THAT
24 AREA. WE DO HAVE HOUSING PROVIDERS WHO GET COMPETING
25 DISABILITY ISSUES AND IT'S HARD FOR THEM TO DISCERN WHICH

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1 WAY THEY SHOULD GO. 11098.27A WITH RESPECT TO DIRECT
2 THREAT ANALYSIS, WE WOULD REQUEST THAT THE COUNCIL
3 CONSIDER ADDING AFTER THE WORD "IF" IN THE FIRST
4 SENTENCE -- THE SECOND "IF," NOT THE FIRST "IF" -- THAT
5 THEY ADD THE LINE THAT IF THE HOUSING PROVIDER HAS A
6 REASONABLE BELIEF THAT THE ANIMAL -- AND THEN THE
7 VARIOUS -- THE REASON FOR THAT IS A REASONABLE BELIEF
8 STANDARD WAS ADOPTED BY THE 10TH CIRCUIT IN AN EMPLOYMENT
9 CONTEXT FOR DIRECT THREAT ANALYSIS. I RECOGNIZE THE 10TH
10 CIRCUIT DOES NOT HAVE -- WE ARE IN THE 9TH CIRCUIT.
11 HOWEVER, WE BELIEVE THAT DOES PROVIDE SOME GUIDANCE.
12 THAT WAS AGAIN AN EMPLOYMENT CONTEXT. HOWEVER, THE COURT
13 DID SAY THAT THE STANDARD THAT THE EMPLOYER HAS FOR
14 ASSESSING DIRECT THREAT FOR AN EMPLOYEE WAS A REASONABLE
15 BELIEF. AND THAT CASE WAS EEOC VS. BEVERAGE DISTRIBUTORS
16 COMPANY, LLC, 10TH CIRCUIT, 2015, DOCKET NO. 14-1012. SO
17 THAT BASICALLY COVERS IT. AGAIN, SOME OTHER POINTS WERE
18 COVERED EARLIER. I JUST WANTED TO EXPLAIN THAT A LARGE
19 PART OF OUR REQUEST FOR CLARITY IS IN OUR ASSOCIATION I
20 THINK THERE IS A PERCEPTION OFTEN OF HOUSING PROVIDERS
21 BEING THESE LARGE HOUSING PROVIDERS, KIND OF LIKE THE
22 IRVINE COMPANY. MANY REALTORS REPRESENT CLIENTS WHO
23 ARE -- MAYBE THEY'LL OWN ONE PROPERTY OR THEY WANT TO BUY
24 A RENTAL PROPERTY TO DEVELOP WELL. ALSO, OUR PROPERTY
25 MANAGERS OFTEN WILL MANAGE MANY SINGLE-FAMILY HOMES.

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1 THESE ARE SMALL -- OFTEN SMALL PROPERTY OWNERS WHO CAN'T
2 AFFORD TO GET AN ATTORNEY EVERY TIME THERE IS A REQUEST
3 FOR AN ACCOMMODATION. THEREFORE, CLARITY OF RULES IS
4 EXTREMELY IMPORTANT FOR OUR PROPERTY MANAGERS. THESE ARE
5 NOT BIG ENTITIES WHO, AGAIN, CAN AFFORD TO GO TO AN
6 ATTORNEY ANYTIME THINGS GET TRICKY OR COMPLICATED. AS WE
7 HEARD EARLIER, THERE ARE A LOT OF UNUSUAL SITUATIONS THAT
8 ARE BEING PRESENTED OUT THERE. THE MORE THE GUIDANCE CAN
9 BE CLEAR, THE PEOPLE CAN JUST ACT ON IT. THAT IS HELPFUL
10 FOR EVERYBODY. THANK YOU.
11 MS. SCHUR: THANK YOU.
12 MS. POWERS: JANET POWERS AGAIN. I DON'T WANT
13 TO BELABOR THIS ANY LONGER. I AM SURE YOU ARE ALL
14 STARVING AND CAN'T WAIT TO GO TO LUNCH. THANK YOU FOR
15 THE OPPORTUNITY TO HAVE BEEN ABLE TO COME TO YOU TODAY
16 AND TALK ABOUT COMMON INTEREST DEVELOPMENTS AND COMMUNITY
17 ASSOCIATIONS. KELLY AND I HAVE KIND OF REALIZED THAT WE
18 WOULD PROBABLY BE REMISS IF WE DIDN'T OFFER OURSELVES AS
19 A RESOURCE TO STAFF. FEEL FREE TO CONTACT EITHER ONE OF
20 US. I HAVE SUBMITTED EXTENSIVE COMMENTS AND INFORMATION
21 IN WRITING PREVIOUSLY, SO YOU HAVE MY CONTACT INFORMATION
22 AND YOU KNOW HOW TO REACH KELLY. IF STAFF HAS ANY
23 QUESTION ABOUT COMMON INTEREST DEVELOPMENTS OR ANY OTHER
24 ISSUES RELATING TO ASSOCIATIONS THAT WE CAN ASSIST YOU
25 WITH, WE'RE HAPPY TO DO THAT. THANK YOU.

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1 MR. MANDELBAUM: ANYONE ELSE WISHING TO MAKE AN
2 ANNOUNCEMENT IN THE PUBLIC HEARING FOR HOUSING
3 REGULATIONS? SEEING NONE, ANY EMAILS THAT WERE REQUESTED
4 TO BE READ? HEARING NONE, WE THANK YOU FOR PROVIDING
5 PUBLIC COMMENTS REGARDING THE ISSUANCE OF THE PROPOSED
6 FEHA HOUSING REGULATIONS. WE WILL ACCEPT WRITTEN
7 COMMENTS ON THE PROPOSED REGULATIONS UNTIL 5:00 P.M.
8 TODAY, JANUARY 10TH. WITH THAT THE HEARING PORTION OF
9 THIS MEETING IS ADJOURNED. SO WE ARE OFF THE RECORD.
10 (PROCEEDINGS CONCLUDED.)
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1 REPORTER'S CERTIFICATE
2
3 STATE OF CALIFORNIA)
4)SS.
5 COUNTY OF LOS ANGELES)
6
7 I, JESSICA DAVIS, CSR 12646, REPORTER PRO
8 TEMPORARY IN AND FOR THE SUPERIOR COURT OF THE STATE OF
9 CALIFORNIA, COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT
10 THE FOREGOING TRANSCRIPT IS A TRUE AND CORRECT TRANSCRIPT
11 OF MY SHORTHAND NOTES, AND IS A FULL, TRUE AND CORRECT
12 STATEMENT OF THE PROCEEDINGS HAD IN SAID CAUSE.
13
14 DATED THIS 14TH DAY OF FEBRUARY, 2017.
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25

JESSICA DAVIS, CSR 12646

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