

APPENDIX

APPENDIX A

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FILED
JUL 20 2016
JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chais, Deputy

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MARIN

KERRIE REILLY,)
) **Case No. CIV 1503896**
 Petitioner,)
) **AMENDED VERIFIED**
) **PETITION FOR WRIT**
 vs.) **OF MANDATE**
)
MARIN HOUSING)
AUTHORITY,) CCP §§ 1085, 1094.5, 1094.6
)
 Respondent.)
_____)

I. INTRODUCTION

1. Petitioner KERRIE REILLY (“Ms. Reilly”) seeks a peremptory writ of administrative mandate pursuant to Code Civ. Proc. §§ 1085, 1094.5, and § 1094.6 to vacate the decision by Respondent MARIN

HOUSING AUTHORITY (“MHA”) that upheld termination of her Section 8 Housing Voucher benefits. Ms. Reilly also seeks an order by the Court compelling Respondent to comply with federal regulations at 24 CFR § 5.609(c)(16) by exempting her IHSS income going forward. MHA’s termination decision was unsupported by the evidence, and it violated due process and other procedural protections mandated by the U.S. and California Constitutions, as well as federal laws and regulations. Thus, MHA’s decision to terminate Ms. Reilly’s Section 8 housing benefits is an abuse of discretion contrary to federal and state law, and must be reversed by this Court.

2. Ms. Reilly lives with a severely disabled adult daughter, and Ms. Reilly provides full-time care and supervision to replace the institutional setting her disabled daughter would otherwise require. Ms. Reilly receives payments from the State of California for providing this care, and although federal regulations require these payments to be excluded from calculation of the family’s rent obligation, MHA refuses to comply with this requirement. MHA’s excessive housing charges, in addition to demanding thousands of dollars from Ms. Reilly under an agreement MHA imposed on her in 2009, resulted in an improper voucher termination decision that will leave her family homeless.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction under the California Code of Civil Procedure, sections 1084 et seq., and the California Constitution, article VI, section 10.

4. Venue in this Court is proper because all the events at issue took place in Marin County.

III. THE PARTIES

5. Ms. Reilly is and was at the time of the termination, a citizen of California. Since approximately July of 1998, Ms. Reilly has lived in the same residential unit in Novato, California, and she has been a participant in the Housing Choice Voucher program (also known as "Section 8") since that time in the County of Marin. The Housing Choice Voucher program was created pursuant to Section 8 of the U.S. Housing Act of 1937, 42 U.S.C. § 1437f(o), with its purpose being to subsidize the rents of lower income families and thereby providing them with decent and affordable places to live.

6. Respondent MHA is a governmental entity created and existing under the laws of the State of California, having as its principal place of business in the city of San Rafael, California. MHA is a local public housing agency charged with administering the Section 8 program in the manner set forth by statute and 24 CFR Part 982.

IV. THE SECTION 8 PROGRAM

7. In Marin County, the Section 8 Program is administered by the Respondent MHA. In so doing, MHA must comply with the rules, guidelines, and regulations promulgated by the United States Department of Housing and Urban Development (HUD).

8. Prior to terminating a tenant's participation in the Section 8 program, MHA is required to give the tenant a notice containing a brief statement of the reasons for the action. 24 CFR § 982.555(c)(2)(i). Pursuant to 24 CFR § 982.555(d), MHA is required to afford an informal hearing to the tenant whenever it

has decided to terminate such benefits. The informal hearing must be governed by written procedures for the conduct of the hearing; presided over by a person “other than a person who made or approved the decision under review,” must permit the recipient to have legal representation; must give MHA and the recipient the opportunity to present evidence and question witnesses, must culminate in a written decision in which “[f]actual determinations relating to the individual circumstances of the [recipient] shall be based on a preponderance of the evidence presented at the hearing,” and the resulting decision must be issued “promptly.” 24 CFR § 982.555(e).

9. Among the subsidized rent programs authorized under 42 USC § 1437f is a “Housing Choice Voucher Program,” also known as “Section 8.” 42 U.S.C. §1437f(o). This program provides monthly subsidies on an individual unit basis to lower income families who possess a Section 8 Housing Voucher. In this program, the tenant participant finds a private landlord who is willing to rent to a voucher holder. HUD annually determines the monthly limit for a “Fair Market Rent” of typical units of various bedroom sizes in the relevant geographical area, and the difference between the Fair Market Rent and 30% of the tenant participant’s adjusted income, called a “housing assistance payment,” is paid on a monthly basis to the private landlord by the local housing agency administering the Section 8 program. 24 CFR § 982.505. The owner landlord can be permitted to charge a Section 8 voucher holder more than Fair Market Rent, but any amount in excess is paid by the voucher holder, even if the total rent paid exceeds 30% of his or her income. 24 CFR § 982.516(a)(1).

V. INCOME CALCULATION FOR SECTION 8 VOUCHER HOLDERS

10. At least annually, MHA must recalculate a participant's eligibility for the program, and adjust the housing assistance payment to reflect any changes in a participant's monthly income. 24 CFR § 982.516(a)(1). HUD regulations also provide for "interim" recalculation upon request of a participant's rent amount. 24 CFR § 982.516(c).

11. The determination of a participant's "income" is defined by Federal Regulations, and "income" includes "all amounts . . . [w]hich are not specifically excluded in paragraph (c) of this section." 24 CFR § 5.609(a). The listed applicable exclusions include this exception: "Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home." 24 CFR § 5.609(c)(16).

VI. MHA WRONGFULLY TERMINATED MS. REILLY'S VOUCHER

12. Ms. Reilly has lived with her severely disabled daughter KR at 110 Gazania Court in Novato since approximately July 1998. Until mid-2004, Ms. Reilly's other adult daughter (RR) also lived with the family in this three-bedroom apartment.

13. Ms. Reilly's daughter KR has a severe developmental disability and genetic disorder known as "Fragile X Syndrome." Although KR is now 28 years old, her IQ has tested at 40, and she requires constant supervision 24 hours per day.

14. After RR moved from her home in 2004, Ms. Reilly mistakenly believed she could continue to live there with KR, and she did not properly report RR's departure.

15. In 2009, Ms. Reilly told MHA that RR no longer lived in the home, and MHA informed Ms. Reilly that her failure to report RR's departure in a timely manner was a program violation. MHA also informed Ms. Reilly that she could continue living with KR in the same apartment as a reasonable accommodation if she paid damages to MHA in the amount of \$16,011 for her failure to timely report RR's departure and her resulting delay in requesting a reasonable accommodation. This settlement was memorialized in MHA's "2009 Repayment Plan."

16. Ms. Reilly had great difficulty making payments under the 2009 Repayment Plan while also paying for RR's college expenses, KR's medical expenses, and other costs.

17. In apparent recognition of the immense burden on Ms. Reilly from her obligation to pay more than \$16,000 to MHA, the agency made at least five revisions to its 2009 Repayment Plan for Ms. Reilly:

- (a) September 25, 2009: Monthly payments reduced from \$486 to \$258
- (b) October 24, 2009: Monthly payments reduced from \$258 to \$222
- (c) January 14, 2011: Three missed \$222 payments added to end of payment plan.
- (d) March 29, 2011: Monthly payments reduced from \$222 to \$150

- (e) February 16, 2012: Three missed \$150 payments added to end of payment plan

Ms. Reilly has missed at least 22 payments since the repayment plan commenced in 2009.

18. By letter dated April 7, 2015, Ms. Reilly requested an interim recalculation of her rent, and based on the exclusion of her IHSS income under 24 CFR § 5.609(c)(16). MHA never responded to this request by Ms. Reilly for a recalculation of her rent portion.

19. MHA served Ms. Reilly with a notice dated June 25, 2015, and which proposed termination of her housing voucher for an alleged failure to report income in a timely manner. A hearing was held by MHA on July 22, 2015, and in a decision dated July 27, 2015, the hearing officer determined that MHA did not show any failure to report income by Ms. Reilly, and reversed MHA's decision to terminate her housing voucher.

20. On July 31, 2015, MHA issued a new termination notice to Ms. Reilly, and allegedly based on her failure to make 16 payments under the 2009 Repayment Plan.

21. At an administrative hearing on August 25, 2015, Ms. Reilly appeared without legal counsel, and she explained MHA's failure to properly account for her IHSS income, and the lack of any legal basis for MHA to have demanded payment of \$16,000 in the 2009 Repayment Plan (at that point, Ms. Reilly had paid MHA more than \$8000).

22. In a decision dated September 8, 2015, the Hearing Officer found that 16 payments were missed by Ms. Reilly in 2014 and 2015 under the 2009

Repayment Plan, and upheld the decision by MHA to terminate Ms. Reilly's housing voucher. This decision completely disregarded the IHSS income exclusion issue raised by Ms. Reilly.

23. Ms. Reilly requested a rehearing by MHA of this termination decision, but a letter dated October 7, 2015 from Bernadette Stuart denied her request. This letter stated:

Please keep in mind that there are other legal remedies available to you, such as initiating a civil action, and this denial does not in any way preclude you from proceeding with any other legal remedies that may be open to you.

A copy of this letter from MHA to Ms. Reilly is attached as Exhibit A to this petition.

24. IHSS payments to Ms. Reilly for care of her severely disabled daughter should have been excluded as income by MHA for calculation of her voucher rent payments. California courts have explained that "IHSS is a state social welfare program designed to avoid institutionalization of incapacitated persons. It provides supportive services to aged, blind, or disabled persons who cannot perform the services themselves and who cannot safely remain in their homes unless the services are provided to them. The program compensates persons who provide the services to a qualifying incapacitated person." *Norasingh v. Lightbourne* 229 Cal. App. 4th 740, 744 (2014) (citation omitted).

25. MHA's decision was not supported by evidence submitted at an informal hearing, and should be reversed by this Court as an abuse of discretion because the agency violated federal regulations and

improperly calculated Ms. Reilly's income, thus preventing her from successfully completing repayment of the plan she started in 2009.

**VII. FIRST CAUSE OF ACTION
(Administrative Writ, CCP § 1094.5)**

26. Petitioner incorporates by reference all the allegations in the paragraphs above as though fully set forth herein.

27. With respect to the MHA operation of the Section 8 Program, the Petitioner has a clear, present and beneficial interest in Respondents' performance of the duties mandated by the due process clauses of the United States and California Constitutions, the United States Housing Act of 1937, the Housing and Community Development Act of 1974, the federal regulations and handbooks promulgated thereto and California law.

28. Respondent MHA effectively denied the reasonable accommodation requested by Ms. Reilly under state and federal fair housing law by demanding continued payments under its 2009 Repayment Plan for this accommodation to be granted by MHA.

29. Respondent MHA should be ordered to terminate the 2009 Repayment Plan it obligated Ms. Reilly to enter into in order to preserve her family's voucher, and MHA should be ordered not to seek any future payments from Ms. Reilly under this plan.

30. Notwithstanding the plain duties imposed upon by law, Respondent MHA made a finding in the termination hearing that is unsupported by evidence. Specifically, the Hearing Officer failed to consider MHA's violation of federal regulations by including

IHSS payments as income for Ms. Reilly, and upheld termination of the voucher based solely on missed payments. The decision terminating Ms. Reilly's housing voucher was not supported by evidence, and therefore must be reversed as an abuse of discretion.

31. Petitioner has exhausted all available administrative remedies and has no plain, speedy or adequate remedy at law.

32. Unless compelled to perform its duties and obligations in conformity with the law, Respondent MHA will fail to do so.

33. Respondent MHA should be ordered to reinstate Ms. Reilly's voucher.

34. This action will result in a benefit to the public, and Petitioner is entitled to an award of attorneys' fees and costs. *See* Code Civ. Proc. § 1021.5.

**VIII. SECOND CAUSE OF ACTION
(Writ of Mandate, CCP § 1085)**

35. Petitioner incorporates by reference all the allegations in the paragraphs above as though fully set forth herein.

36. Pursuant to 42 U.S.C. § 1437f(o)(2)(A)(i), a voucher recipient's rental payment should not exceed 30% of the voucher household's adjusted income. Under HUD's regulation 24 CFR 5.609(c)(16), "adjusted income" does not include IHSS payments made to a live-in IHSS worker who cares for a developmentally disabled person.

37. Respondent MHA refused to properly calculate Ms. Reilly's rent contribution despite her repeated requests, thereby erroneously concluding that the household owed MHA thousands of dollars in overpaid

rent supplements, and thus failing to perform an act which the law specially enjoins.

38. Respondent MHA effectively denied the reasonable accommodation requested by Ms. Reilly under state and federal fair housing law by demanding continued payments under its 2009 Repayment Plan for this accommodation to be granted by MHA.

39. Respondent MHA should be ordered to terminate the 2009 Repayment Plan it obligated Ms. Reilly to enter into in order to preserve her family's voucher, and MHA should be ordered not to seek any future payments from Ms. Reilly under this plan.

40. Respondent MHA should be ordered to properly calculate Ms. Reilly's income going forward by excluding her IHSS payments as required by federal laws and regulations.

41. This action will result in a benefit to the public, and Petitioner is entitled to an award of attorneys' fees and costs. *See* Code Civ. Proc. § 1021.5.

IX. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

1. Order a stay of execution of MHA's decision to terminate Petitioner's Housing Choice Voucher benefits pending a judgment on this Petition;
2. Issue a peremptory writ of administrative mandate commanding Respondent MHA to vacate the hearing decision and to continue making housing assistance payments on behalf of Petitioner;

3. Order Respondent MHA to review Petitioner's income and exclude any amounts going forward as required under federal laws and regulations;
4. Order Respondent MHA to cease future attempts at collecting money from Petitioner under the 2009 Repayment Plan;
5. Order Respondent MHA to pay Petitioner her costs and attorneys' fees pursuant to Code Civ. Proc. Section 1021.5 and other applicable statutes;
6. And for such other relief as the Court deems just and proper.

Respectfully Submitted,

Date: July 20, 2016

LAW OFFICE OF
DAVID M. LEVIN

s/ David Levin
David Levin
Attorney for Petitioner
KERRIE REILLY

VERIFICATION

1. I have read the foregoing Amended Petition.
2. I am a party to this action.
3. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.
4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
5. Executed on July 19, 2016 at San Rafael in Marin County, California.

s/ Kerrie Reilly

Kerrie Reilly

14a

**Exhibit A to Writ Petition of
Kerrie Reilly v. MHA (CIV 1503896)**

October 7, 2015



Kerrie Reilly
110 Gazania Court
Novato, CA 94945

4020 Civic Center Drive
San Rafael, CA 94903-4173
Executive Director
Lewis A. Jordan

Re: Request for Rehearing, Further Hearing, or
Appeal

Dear Kerrie Reilly:

Marin Housing Authority ("MHA") received your request for a rehearing, further hearing, or appeal (Appeal) on September 22, 2015. The Executive Director, Lewis Jordan, designated me to serve as the Appellate Officer.

A brief description of the issues you raised include:

- 1) There was a violation of the informal hearing procedures, because you allege that the Hearing Officer failed to state the reason for her decision, and provide a summary of the evidence, and
- 2) You allege that the findings are not supported by the evidence, because you claim IHSS income/payments, and requests for reasonable accommodations were not considered.

An independent third party conducted an informal hearing on August 25, 2015, and upheld the termination of your Housing Choice Voucher.

Per MHA's Administrative Plan:

“The only grounds on which an appeal will be granted are:

- 1) There was a violation of the informal hearing process;
- 2) The decision is not supported by the findings; or
- 3) The findings are not supported by the evidence.”

Your request does not demonstrate cause, supported by specific references to the Hearing Officer’s decision and why the request should be granted.

First, there was no violation of the hearing process. The Hearing Officer’s findings include but are not limited to the following: you did not object to the basis for the housing authority’s decision to terminate the household’s participation in the program; you did not dispute your non-payment of debt to the housing authority; and defaulted on the signed agreement on at least three occasions. I find that the Hearing Officer stated the reason for her conclusion, provided an adequate summary of the evidence, including testimony, and complied with the hearing process.

Housing Authority of
the County of Marin
415/491-2525
(FAX) 415/472-2186
(TDD) 1-800-735-2929
www.marinhousing.org

Second, the Hearing Officer issued a written decision to the household and MHA. It included a summary of the evidence, identifying a bullet list of 21 documents, and written and spoken testimony produced at the hearing. The Hearing Officer’s decision contains

numerous references to your spoken testimony, such as “discussing her overall claim, discussed the hardship, discussing the laws she researched, comparing her experience, asking about her options, requesting a change in her income,” etc.

I find that the Hearing Officer’s decision is supported by the findings due to the violations of the Housing Choice Voucher Administrative Plan.

Finally, the Hearing Officer’s findings are supported based on the preponderance of the evidence-the Hearing Officers findings were derived from documentation and testimony.

Based on the foregoing, your request for a rehearing, further hearing, or appeal is denied.

Please keep in mind that there are other legal remedies available to you, such as initiating a civil action, and this denial does not in any way preclude you from proceeding with any other legal remedies that may be open to you.

Thank you,
s/ Bernadette Stuart
Bernadette Stuart

CC: Lewis Jordan, Executive Director
Tenant File

APPENDIX B

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FILED

AUG 22 2016

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: S. Hernandez, Deputy

**SUPERIOR COURT OF THE
STATE OF CALIFORNIA
COUNTY OF MARIN**

KERRIE REILLY,

Petitioner,

v.

MARIN HOUSING
AUTHORITY,

Respondent.

Case No. CIV 1503896

**DEFENDANT MARIN
HOUSING AUTHORITY'S
DEMURRER TO
PLAINTIFF'S AMENDED
VERIFIED PETITION FOR
WRIT OF MANDATE**

Date: Sep 23 2016

Time: 1:30 P.M.

Dept: E

Judge: The Honorable Paul
Haakenson

PLEASE TAKE NOTICE that on _____, 1:30 P.M. or as soon thereafter as this matter may be heard in Department E of the Marin County Superior Court, located at 3501 Civic Center Drive, San Rafael, CA 94903, Defendant MARIN HOUSING AUTHORITY's ("Defendant" or Housing Authority") will demur and hereby does demur to KERRIE REILLY's ("Reilly") Amended Verified Petition for Writ of Mandate on each of the following grounds:

FIRST CAUSE OF ACTION

Defendant demurs to the Plaintiff's Cause of Action seeking an Administrative Writ, pursuant to Code of Civil Procedure Section 1094.5, on the grounds that it fails to state facts sufficient to state a cause of action. (Code Civ. Proc. § 430.10(e).) Further, because it is evident that the defects in the petition cannot be cured by amendment, Defendant requests that the demurrer be sustained without leave to amend.

SECOND CAUSE OF ACTION

Defendant demurs to the Plaintiff's Cause of Action seeking Writ of Mandate, pursuant to Code of Civil Procedure Section 1085, on the grounds that it fails to state facts sufficient to state a cause of action. (Code Civ. Proc. § 430.10(e).) Further, because it is evident that the defects in the petition cannot be cured by amendment, Defendant requests that the demurrer be sustained without leave to amend.

Further, should the Court sustain the demurrer to each cause of action without leave to amend, Defendant requests that the court dismiss the entire with prejudice.

This demurrer is based on this Notice, the Memorandum of Points and Authorities, the Request for Judicial Notice, the Notice of Lodgment and the papers and pleadings on file in this matter, and oral argument and documentary evidence as may be presented at the hearing on this motion.

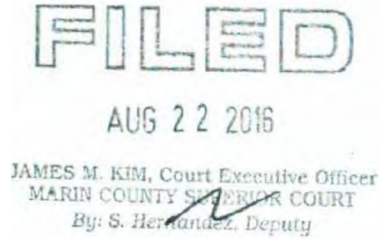
Dated: August 19, 2016 WFBM, LLP

By: s/ Anne C. Gritzer
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**SUPERIOR COURT OF THE
STATE OF CALIFORNIA
COUNTY OF MARIN**

KERRIE REILLY,

Petitioner,

v.

MARIN HOUSING
AUTHORITY,

Respondent.

Case No. CIV 1503896

**MEMORANDUM OF
POINTS AND
AUTHORITIES IN
SUPPORT OF DEFENDANT
MARIN HOUSING
AUTHORITY'S DEMURRER
TO PLAINTIFF'S AMENDED
VERIFIED PETITION FOR
WRIT OF MANDATE**

Date: Sep 23 2016

Time: 1:30 P.M.

Dept: E

Judge: The Honorable Paul
Haakenson

Defendant MARIN HOUSING AUTHORITY (“Housing Authority”) demurrers to plaintiff KERRIE REILLY’s (“Reilly”) respectfully submit this memorandum of points and authorities in support of its demurrer to plaintiff’s petition.

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I. INTRODUCTION

Reilly is a participant in HUD's Section 8 Housing Choice Voucher Program, administered by the Housing Authority. In July 2015, the Housing Authority provided notice to Reilly of its intent to terminate her participation in the program due to her failure to pay restitution owed to the Housing Authority for sums owed due to Reilly's previous failure to report a material change in her household composition. Importantly, as set forth in Reilly's Petition for Administrative Mandate, Reilly judicially admits that she breached this agreement ("2009 Repayment Agreement") an astonishing 22 times. (Amended Petition, p. 5:10.) On August 25, 2016, an informal hearing was conducted, and the Hearing Officer found that the facts supported the Housing Authority's decision to terminate Reilly's participation. The hearing officer also found the Marin Housing Authority Administrative Plan for the Housing Choice Voucher Program ("Admin. Plan") expressly authorized the Housing Authority to terminate Reilly's Section 8 Voucher due to the breach of the repayment agreement. (24 CFR 982.552(c)(1)(vii); Admin. Plan, p. 253-54.) Reilly challenges these findings, claiming that the Hearing Officer abused her discretion and the decision is not supported by substantial evidence. (First Cause of Action, Petition for Administrative Writ (Code Civ. Proc. §1094.5), ¶ 30, p. 7:7-12.).

In both the First Cause of Action, Petition for Administrative Writ (Code Civ. Proc. §1094.5) and the Second Cause of Action, Petition for Writ of Mandate (Code Civ. Proc. § 1085), Reilly claims that the Housing Authority improperly calculated her income

under HUD regulations, which negatively impacted the value of her rent subsidy under the program. She claims that this was prejudicial error and seeks an order vacating the Administrative Hearing Decision as well as an order requiring the Housing Authority to perform a new calculation. (Amended Petition, First Cause of Action, ¶ 30, p. 7:7–12 and Second Cause of Action, ¶¶36, 37, 40, p. 7:24–8:4, 11–13.) Also in both causes of action, Reilly also seeks a writ granting a “reasonable accommodation” to set aside the 2009 Repayment Agreement and relieve her of any further obligation to pay restitution as agreed under the 2009 Repayment Agreement. (Amended Petition, First Cause of Action, ¶¶ 28, 29 p. 7:1–6; Second Cause of Action, ¶¶ 38, 39, p. 8:5–10.) Neither position is supported by the law.

As set forth below, Reilly fails to plead facts constituting a cause of action, and on this basis the Housing Authority demurrers to each of the First and Second Causes of Action. (Code Civ. Proc. § 430.10(e).)

II. UNDERLYING FACTS

As set forth in the Amended Petition, Reilly has been the recipient of a HUD Section 8 Housing Choice Voucher since 1998. (Petition, p. 2:13–14.) The Section 8 voucher is paid with federal monies administered through the Marin Housing Authority. In 2004, one of Reilly’s daughters moved out. However, Reilly did not report the change in her household composition as was required under the Administrative plan. (Petition, p. 4:20–24.) In 2009, following the discovery of this deception, the Housing Authority afforded Reilly the opportunity to repay the sums received under false pretenses and remain in the

voucher program. Reilly entered into the 2009 Repayment in which she agreed to pay restitution to the Housing Authority. (Petition, p. 4:22–28.)

Over the years, this contract has been modified multiple times at Reilly’s request to ease the financial burden caused by this debt. (Petition, p. 5:3–9.) Nonetheless, on numerous occasions, Reilly failed to make payments and in fact, as she acknowledges in the Amended Petition, she failed to make an astonishing twenty-two payments placing her seriously in arrears of the restitution agreement. (Petition, p. 4:10.) As further pled in the Amended Petition, Reilly failed to make 3 payments each year during two annual periods. (Id.)

In July 2015, the housing authority provided notice of its intent to terminate the Section 8 Voucher on the grounds that Reilly had breached the repayment agreement. (Petition, p. 5:19–20.) Reilly requested a hearing. A hearing was held in late August 2015, and the hearing officer found that Reilly had repeatedly breached the repayment agreement and this breach provided grounds for termination of the Section 8 Voucher. (Petition, p. 5:21–27.) Reilly appeals this decision by way of her Petition for Administrative Writ, claiming that the Administrative Hearing Officer erred by disregarding Reilly’s misinterpretation of federal laws and regulations which caused Reilly to erroneously conclude that her IHSS income should not be included in the income calculation. (Amended Petition, p. 5:27–28, 6:6–17.) She further claims that Hearing Decision is not supported by the evidence and the Hearing Officer abused her discretion.

Following the filing of the original petition, Reilly and the Housing Authority began efforts to informally resolve this lawsuit by way of mediation. As part of these discussions, the parties entered into an open-ended extension to the Housing Authority to file a responsive pleading. During this period, Reilly fired counsel and then later re-retained him. After meeting and conferring, Reilly filed and served the Amended Petition which is the subject of this demurrer. The Housing Authority have met and conferred regarding deficiencies in the Amended Petition as required by Code of Civil Procedure Section 430.41, et seq. During this process, Reilly against discharged her attorney. As of the filing of this demurrer, Reilly represents that she is endeavoring to retain new counsel.

III. LEGAL ARGUMENT

A. Demurrer To Plaintiff's First Cause Of Action Seeking An Administrative Writ Under Code of Civil Procedure Section 1094.5.

Under Code of Civil Procedure section 430.10(e), a demurrer is appropriate where the pleading does not state facts sufficient to constitute a cause of action. (Code Civ. Proc. § 430.10(e).) Indeed, California law requires that a complaint set forth facts supporting essential elements of any claim against a defendant. (Gruenberg v. Aetna Ins. Co. (1973) 9 Cal.3d 566, 572.) In determining if a complaint is subject to demurrer, the court considers not only the facts set forth on face of the complaint, but any facts judicially noticed. (Washington v. County of Contra Costa (1995) 38 Cal.App.4th 890, 895.) As set forth in the Request for Judicial Notice served concurrently, the Housing

Authority offers for the Court's consideration the 2015 Hearing Decision as well as Federal Regulations and pertinent portions of the Marin Housing Authority Administrative Plan for the Housing Choice Voucher Program.

1. Judicial Admissions Set Forth In The Petition Preclude Further Litigation On The First Cause of Action.

As set forth in the Amended Petition, the hearing officer found that Reilly had repeatedly breached the 2009 Repayment Agreement. In fact, in the Amended Petition, Reilly judicially admits that she missed no fewer than 22 payments. (Amended Petition, p. 5:10.) The hearing officer also found the Marin Housing Authority Administrative Plan and federal regulations expressly authorized the Housing Authority to terminate Reilly's Section 8 Voucher due to the breach of the repayment agreement. (Administrative Hearing Decision, dated August 25, 2016, p. 5–6, attached as Exhibit 4 to the Request for Judicial Notice filed concurrently with this demurrer.) Reilly does not dispute these findings, and accordingly the court may take judicial notice of the decision. (See *Commercial Union Assurance Co. v. City of San Jose* (1982) 127 Cal.App.3d 730, 740 (court may take Judicial Notice of an official act that is undisputed.) Based on these findings, the Hearing Officer concluded that the Housing Authority had acted within its authority when it proposed to terminate of Reilly's voucher. (24 CFR 982.552(c)(1)(vii), Admin. Plan, p. 253–254.)

Marin Housing Administrative Plan section 16-IV.A. OVERVIEW provides in pertinent part:

When the action or inaction of . . . a participant results in the overpayment of housing assistance, MHA holds the . . . participant liable to return any overpayments to MHA.

(Admin. Plan, p. 336.)

Marin Housing Administrative Plan section 16-IV.B. REPAYMENT POLICY provides in pertinent part:

Any amount due to MHA by an HCV participant must be repaid by the family. If the family is unable to repay the debt within 30 days, MHA will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, . . . or breaches the repayment agreement, MHA will terminate the assistance upon notification to the family and pursue other modes of collection.

. . .

If the family . . . breaches a repayment agreement, MHA will terminate the assistance upon notification to the family and pursue other modes of collection.

. . .

If the family misses three payments in a 12 month period, the repayment agreement will be considered in default, and MHA will terminate assistance upon written notification to the family . .

(Admin. Plan, p. 337–338.)

The Marin Housing Administrative Plan also states:

HUD permits MHA to terminate assistance under a number of . . . circumstances [left to MHA's discretion]

. . .

MHA will terminate a family's assistance if:

. . .

The family has not reimbursed any PHA for amounts PHA paid to an owner under a HAP contract for rent . . or other amounts owed by the family under the lease.

The family has breached the terms of a repayment agreement entered into with MHA or any PHA.

(Admin. Plan, p. 253–254 (emphasis in the original.))

In addition, 24 CFR 982.552(c) provides in pertinent part:

(1) The PHA may . . . terminate program assistance for a participant, for any of the following grounds:

(v) If the family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

(vi) If the family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

(vii) If the family breaches an agreement with the PHA to pay amounts owed to a PHA, or amounts

paid to an owner by a PHA. (The PHA, at its discretion, may offer a family the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an owner by a PHA. The PHA may prescribe the terms of the agreement.)

(24 CFR 982.522(c)(1)(v), (vi), (vii) (emphasis added)..)

Reilly's judicial admission that she repeatedly breached the 2009 Repayment Agreement cannot be ignored and must be deemed as true. (See, *Dang v. Smith* (2010) 190 Cal.App.4th 646, 657.) She states in the Amended Petition that she missed "at least 22 payments since the repayment plan commenced in 2009," three of which were missed in 2010 and three more missed in 2011–2012, despite five revisions to the agreement reducing Reilly's monthly payments. (Amended Petition, p. 5:3–10.) As of the filing of the Amended Petition, Reilly acknowledges that \$8,000 remains owing to the Housing Authority. (Amended Petition, p. 5:23–24.) This is basis on which the Hearing Officer determined that the Housing Authority action terminating Reilly's HUD Section 8 Housing Choice Voucher was consistent with the Marin Housing Administrative Plan and federal regulations, cited above. (24 CFR 982.522(c)(1)(v), (vi), (vii), Admin. Plan, p. 253–254.) Moreover, Reilly's judicial admission to this breach in the Amended Petition precludes further consideration by this court on this point. (See, *Dang*, supra, 190 Cal.App.4th at 657.) Nothing can change this result. Accordingly, this court should sustain the demurrer to the First Cause of Action without leave to amend on the grounds that Reilly has failed to plead facts

constituting a cause of action. (Code Civ. Proc. § 430.10(e).)

2. Reilly's Other Claimed Errors

Although irrelevant to the termination of Reilly's voucher due to the repeated breach of the 2009 Repayment Plan, Reilly's additional claimed errors are also addressed as they fail to plead facts constituting a cause of action. (Code Civ. Proc. § 430.10(e).)

(a) IHSS Wages Are Indisputably Income

Reilly contends in both the Petition for Administrative Writ and the Petition for Writ of Mandate that wages she received for providing In-home Supportive Services ("IHSS") as compensation for providing care to her disabled daughter are not income and should not have been included in the annual income calculation used to calculate her housing subsidy. Reilly is simply wrong.

The In-home Supportive Services Program is administered by the State of California Department of Social Services which dispenses payments to persons who provide basic care, such as housecleaning, meal preparation, laundry, grocery shopping, bathing and grooming so that disabled family members may remain in their home instead of being institutionalized. (Welf. & Inst. Code, § 12300, et seq.) Even the authorities cited by Reilly in the Amended Petition acknowledge that IHSS payments to family members, who care for disabled family members, is income. (Norasingh v. Lightbourne (2014) 229 Cal.App.4th 740, 744, cited in the Amended Petition at page 6:13.) The Norasingh Court explains the that the

California Department of Social Services is responsible for overseeing the IHSS program and has promulgated regulations to assist in its implementation. Administration of the IHSS program, however, falls to county welfare departments, under their supervision. (Id. at 744–745.) Similarly, in *Basden v. Wagner*, the Court acknowledges that the payer of IHSS is obligated to carry out the duties of an employer, including making income tax deductions. The *Basden* Court further illuminates:

Each county is required to act as an “employer,” or to establish an “employer,” for IHSS providers for purposes of the state public employee-employer relations laws. ([Welfare and Institutions Code] § 12302.25, subd. (a).)

Where a provider or a recipient receives direct payment from the county, the state is responsible for performing for the recipient a number of legal obligations an employer has for its employees, such as those related to unemployment compensation disability benefits, workers’ compensation, federal and state income tax, and federal old-age survivors and disability insurance benefits. ([Welfare and Institutions Code] § 12302.2.) These “employer” duties suggest providing IHSS full-time could be considered an employment.

(*Basden v. Wagner* (2010) 181 Cal.App.4th 929, 940 (emphasis added).) Thus, it is clear that IHSS payments made to Reilly to provide care for her daughter is income. Not only it is income, it is taxable income paid to Reilly.

**(b) IHSS Wages Are Not Sum Paid
To Others For Services**

In Paragraph 11 of the Amended Petition, Reilly cites to 24 CFR 5.609(c)(16) to support her contention that IHSS payments should be exempted from income counted when calculating eligibility for her Section 8 vouchers. One only needs to read the plain and unambiguous language of this regulation to conclude that Reilly is incorrect. 24 CFR 5.609 defines income as all amounts which “go to . . . the family head” and which are not specifically excluded in paragraph (c). (24 CFR 5.609 (a)(1).) Income includes the full amount of wages or salaries before any payroll deductions. (24 CFR 5.609 (B)(1). Under this definition, IHSS wages paid to Reilly is income. An exhaustive list of payments, not considered to be income for eligibility purposes, is set forth in paragraph (c) which provides in pertinent part:

(c) Annual income does not include the following:

. . .

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home;

(24 CFR 5.609 (a)(1), (3)(b)(1), (c)(16).

By its plain meaning and as acknowledged in the Amended Petition, 24 CFR 5.609(c)(16) exempts from income calculations sums paid to families to offset the costs of services and equipment purchased in order to keep the disabled person at home. (Amended Petition,

p. 4:9–12.) By its own terms Section 16 excludes sums paid to reimburse the family for sums paid to others. It does not exempt income earned by the family for providing caregiving services to their disabled family member.

In a case that is directly on point, a Federal Court of Appeals considered whether wages paid through a state program to the parent to care for her disabled son, should be excluded under 24 CFR 5.609(c)(16). In *Anthony v. Poteet Housing Authority*, appellant lived in low-rent public housing with her three sons, one of which was severely disabled due to multiple sclerosis. She received wages paid through two state-sponsored programs to care for her son so that he could remain at home. (*Anthony v. Poteet Housing Authority* (5th Cir. 2009) 306 Fed.Appx. 98, 99.) Anthony challenged the inclusion of these wages in the determination of her housing allowance, claiming that they should be excluded as costs of services provided to keep her son from being institutionalized. The Court soundly rejected that contention, stating:

The regulation is clear regarding “offset[ting] the cost of services and equipment needed to keep the developmentally disabled family member at home[.]” One must incur costs before they can be offset. In the instant case, Anthony has incurred no costs which must be offset with state funds. The record demonstrates that MED TEAM and Saldivar paid Anthony to provide Gilbert with in-home care with money partially provided by the state. However, the fact that Anthony’s employment income coincides with state funds that are set aside for her son’s care does not make that income a form of reimbursement. . . . Under the regulation, Anthony’s wages earned as

Gilbert's personal-care attendant are not to be excluded from PHA's calculation of her rent.

(Id. at 101–02, emphasis added.) Ms. Reilly is identically situated to the plaintiff in *Andrews*. She has incurred no costs that must be offset by state funds and the fact that her employment income coincides with state funds that are set aside for her son's care does not make that income a form of reimbursement. As in *Anthony*, Reilly's wages earned from providing personal care to her disabled daughter is not a cost to be excluded from the Housing Authority's Section 8 calculation. It is beyond question that Ms. Reilly is incorrect in her legal reasoning. By its plain terms, section 16 has no application to IHSS income, and the contention, that the Hearing Officer erred when she found Reilly's argument and citation to regulations irrelevant, does not state facts constituting a cause of action. (Code Civ. Proc. § 430.10(e).)

**(c) IRS Tax Code Interpretation
Concerning Foster Care
Payments Is Inapposite**

It is anticipated that in her opposition, Reilly will cite to the January 2014 revisions in the interpretation of the IRS Code, announced by the Internal Revenue Service, to support the argument that IHSS income should not be characterized as income. The proposed revisions, to be applied prospectively to income earned in 2014 and later, change the IRS's prior characterization of income received as Foster Care payments by families who are caring for disabled family members in their own home. However, this argument fails.

First, HUD regulations directly address this issue and are controlling over the directives of another federal agency in defining the standards to be applied to income calculations. (See generally, 24 CFR 5.609.) HUD regulations expressly provide that Foster Care payments are excluded from income calculations only if paid to non-family members. (24 CFR 5.609(c)(2).) Because HUD regulations unequivocally address this distinction and exclude income only for non-family Foster Care, Reilly's argument that recent changes in IRS regulations should apply to exempt her income has no merit. The court need not look beyond the pleadings and regulations, for which judicial notice may be taken, to conclude that Reilly again fails to plead facts constituting a cause of action. (Code Civ. Proc. § 430.10(e).)

**(d) Debt Relief Goes Beyond That
Authorized By Code Of Civil
Procedure Section 1094.5**

In the First Cause of Action, Reilly seeks an order setting aside the 2009 Repayment Agreement and relieving her of any further repayment obligation. (Amended Petition, ¶ 29, p. 7:4–6.) She also pleads that she was denied a reasonable accommodation, to have her debt forgiven, by the requirement that she continue to make payments as previously agreed in the 2009 Repayment Agreement. (Amended Petition, ¶ 28, p. 7:1–3.) However, this request is improper in that it goes well beyond the scope of the Administrative Hearing Decision which addressed only whether Reilly had breached the agreement. Thus, the relief sought is beyond the jurisdiction of this Court and must be denied. (Code Civ. Proc. §§ 1094.5.)

**(e) Debt Relief Is Not A
Reasonable Accommodation**

Moreover, Reilly misapprehends the meaning of “reasonably accommodation” and as a matter of law “reasonable accommodations” do not provide a legal vehicle to obtain debt relief. Under the Fair Housing Act and HUD regulations, “reasonable accommodation” is a term of art, and reasonable accommodations are those that even the playing field by making it possible for a disabled person to have equal access to housing by removing barriers, created by the disability, that would preclude the use and enjoyment of a dwelling. (The Fair Housing Act as codified at 42 U.S.C. § 3604(f)(3)(B).) The act prohibits discriminating against a person with a disability, or anyone associated with them, by treating those persons less favorably than others because of their disability. The Act also makes it unlawful for any person to refuse “to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling.” (Id.) Examples of reasonable accommodations are permitting a seeing-eye dog in a property with a no pets policy or a reserved handicapped parking place within a reasonable proximity to the disabled person’s unit. (U.S. Department of Justice, Civil Rights Division and U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodations Under the Fair Housing Act (2004), p. 6.)

The Marin HCV Administrative Plan acknowledges the intrinsic nature of the term and consistent with HUD policy, will consider a disabled person's request for a reasonable accommodation that is needed to provide full access to MHA services. Consistent with HUD policies, "[t]here must be an identifiable relationship, or nexus, between the requested accommodation the individual's disability." (Marin Administrative Plan, p. 33.) Here, there is no nexus between Reilly's daughter's mental disabilities and the requested debt relief. Reilly and her daughter are not situated any differently than a non-disabled person seeking debt relief. Further, debt relief does not achieve the goals of the Fair Housing Act or any similar act intended to eliminate disability discrimination. Thus, the forgiveness of debt is not a legitimate request for a reasonable accommodation. Once again, the court need not look beyond the pleadings and regulations, for which judicial notice may be taken, to conclude that Reilly's petitions for writ of administrative mandate fails to state facts constituting a cause of action. (Code Civ. Proc. § 430.10(e).)

In sum, Reilly fails to plead fact constituting a cause of action, and on this basis the Housing Authority demurrers to the First Cause of Action.

B. Demurrer To The Second Cause Of Action For Writ of Mandate, CCP §1085

In the Second Cause of Action, Reilly seeks a Writ of Mandate pursuant to Code of Civil Procedure Section 1085, setting aside the 2009 Repayment Agreement, claiming that she is entitled to the "reasonable accommodation" of debt forgiveness.

(Amended Petition, ¶¶ 38, 39, p. 8:5–10.) She also seeks a writ requiring the Housing Authority to recalculate her income going forward to exclude her IHSS income in accordance with her interpretation of federal laws and regulations. (Amended Petition, ¶¶ 36, 37, 40, p. 7:24–8:4, 11–13.)

1. A Writ Is Not Viable When Other Remedies Are Available

Reilly seeks an order directing the housing authority to terminate the 2009 Repayment Plan. (Code Civ. Proc. § 1085.) However, a writ of mandate is not an appropriate remedy to enforce or set aside a contractual obligation with a public entity. (Code Civ. Proc. § 1086; *McPherson v. City of Los Angeles*, 8 Cal.2d 748.) Rather, a writ will lie solely to enforce an official duty of the respondent officer.

It is well settled that public entities are not distinguished from corporate entities or other individuals, and the law imposes no special duty upon a municipal corporation or its officers to carry out the terms of contracts or to refrain from breaches of contractual obligations. (*Black v. City of Santa Monica* (1936) 13 Cal.App.2d 4, 6.) Accordingly, disputes arising out of a contract with a public entity are to be litigated in the usual and ordinary forms of legal actions rather than by calling upon the extraordinary remedy of mandamus. (*Wenzler v. Municipal Court of Pasadena Judicial Dist.* (1965) 235 Cal.App.2d 128, 132–33.) In sum, Reilly may not use a petition for writ to try to set aside a bargain for exchange of consideration entered into seven years ago. That is exactly what Reilly seeks to do. Once again, the court need not look beyond the pleadings to

conclude that Reilly's petition for a writ of mandate to set aside the 2009 Repayment is improper in that such a dispute, arises out of a contract which must be litigated in the usual and ordinary forms of legal actions rather than by calling upon the extraordinary remedy of mandamus. (Wenzler, *supra*, 235 Cal.App.2d at 132–33.)

**2. A “Reasonable Accommodation”
Under The Fair Housing Act Does
Not Provide For Debt Relief**

As discussed more fully above, it is apparent that Reilly misunderstands the meaning of the term of art, “reasonable accommodation.” Debt forgiveness achieved by setting aside the 2009 Repayment Plan is not a reasonable accommodation contemplated by the Fair Housing Act which is intended to remove. The Fair Housing Act prohibits disability discrimination where the refusal to make reasonable accommodations deprives a disabled person the equal opportunity to use and enjoy a dwelling. (42 U.S.C. § 3604(f)(3)(B).) The act prohibits disparate treatment arising out of the disability. (*Id.*) Here, contrary to Marin Housing policies, there is no identifiable relationship, or nexus, between the requested accommodation of debt relief and the daughter's disability. (See, Admin. Plan, p. 33.) Further, debt relief does not achieve the interests of the Fair Housing Act, or any similar act intended to eliminate disability discrimination because the relief she seeks is no different than that sought by a non-disabled person. Thus, the forgiveness of debt is not a legitimate request for a reasonable accommodation. Once again, the court need not look beyond the pleadings and regulations, for which judicial notice may be taken, to conclude that Reilly's petition for writ

of mandate, pursuant to Code of Civil Procedure Section 1085, fail to state facts constituting a cause of action. (Code Civ. Proc. § 430.10 (e).)

3. IHSS Wages Are Income That Should Not Be Excluded In Section 8 Voucher Calculations

This argument is thoroughly briefed in the demurrer to the First Cause of Action Seeking an Administrative Writ, and in the interest of brevity will be incorporated herein as though fully set forth. In sum, California has created a program to assist families in caring for disabled family members in lieu of institutionalizing them. As recognized in *Norasingh* and *Basden*, discussed more fully above, IHSS payments to family caregivers are undeniably income, taxed by the federal government as income, and are appropriately considered when calculating Section 8 housing subsidies. (*Norasingh*, supra, 229 Cal.App.4th at 744; *Basden*, supra, 181 Cal.App.4th at 940.) Moreover, based on the plain meaning of the regulation, it is undeniable that 24 CFR 5.609(c)(16) has no application in that it excludes from income calculations sums paid by Reilly to others for services not sums paid to Reilly to provide services to her child. (See, *Anthony*, supra, 306 Fed.Appx. at 99.) Because the law does not support Reilly's claim that she is entitled to recalculation of her income, the Amended petition fails to state facts constituting a cause of action. (Code Civ. Proc. § 430.10(e).)

IV. CONCLUSION

For the reasons set forth above, the Housing Authority respectfully requests this court to sustain the demurrer to each cause of action without leave to

amend and to award its costs of suit and reasonable attorney's fees, as may be allowed by law, and such other and further relief as this court deems just and proper.

Dated: August 19, 2016 WFBM, LLP

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