No.

In the Supreme Court of the United States

Lawrence Salisbury,

Petitioner

v.

City of Santa Monica

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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Questions Presented

In 2000, the City of Santa Monica purchased an existing mobile home park that it intended to use for low-income housing. Lawrence Salisbury had lived in the mobile home park with his father since the 1970s.

Mr. Salisbury is a disabled person with a mobility impairment. In 2011, a dispute arose between Mr. Salisbury and the City regarding Mr. Salisbury's dog. The City wrote to Mr. Salisbury's father and told the father that his son could no longer bring his dog into the Park. In response, Mr. Salisbury's father informed the City that the dog was a service animal, and that Mr. Salisbury was not a visitor but lived with him, and had lived with him since 1975. The City contested Mr. Salisbury's right to reside in the Park, claiming that it had no record of his residence there. The City asked Mr. Salisbury to apply to live in the Park, and Mr. Salisbury did so over his father's objection, but because Mr. Salisbury's father refused to participate in the application process Mr. Salisbury's application was deemed incomplete by the City.

In 2013, Mr. Salisbury's father died, and the City refused to accept rent from Mr. Salisbury. The City demanded that he move out, an invitation Mr. Salisbury declined. The landlord-tenant dispute intensified when Mr. Salisbury, acting *pro se,* sued the City in the California Superior Court. The City won that lawsuit when the suit was dismissed on procedural grounds, but the relationship between the City and Mr. Salisbury remained adverse. The

City continued to refuse rent from Mr. Salisbury and again demanded that he move out of the Park. However, the City never filed an eviction lawsuit against him.

In 2015, Mr. Salisbury asked the City repeatedly to accommodate his disability by allowing him to park closer to his mobilehome. The City ignored his requests. Mr. Salisbury ultimately sued the City under the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601 *et seq.* (the "FHAA"), for refusing to grant him a reasonable parking accommodation.

The district court granted summary judgment in favor the City and the Ninth Circuit Court of Appeals affirmed the judgment, concluding, as a matter of first impression, that the City was not obligated to accommodate Mr. Salisbury's request for a parking space closer to his mobilehome because "the FHAA applies to rentals only when the rental arrangement is supported by adequate consideration."

The questions presented are:

1. Under the FHAA, are landlords required to accommodate the disabilities of individuals who occupy rental housing, even where the rental arrangement is not supported by adequate consideration? Is the payment of rent or other consideration a pre-condition to filing a lawsuit alleging violation of the FHAA? If so, may landlords avoid their obligations under the FHAA to reasonably accommodate occupants of rental housing by refusing to accept consideration from those who occupy rental housing?

2. Should Fair Housing Act cases, including FHAA cases, be decided by applying a federal common law of landlord and tenant?

Parties to Proceeding

The parties are those listed in the caption: Lawrence Salisbury and the City of Santa Monica. The City of Santa Monica is a charter city in California.

Related Cases

Salisbury v. Caritas Acquisitions V, LLC and City of Santa Monica, No. CV 18-08247-CJC(Ex), U.S. District Court for the Central District of California. Judgment entered December 10, 2019. (Appendix A.)

Salisbury v. City of Santa Monica, No. 20-55039, U.S. Court of Appeals for Ninth Circuit. Opinion filed April 16, 2021. (Appendix B.) A timely petition for rehearing was denied and an amended opinion filed June 7, 2021. (Appendix C.)

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Opinion Below

The initial opinion of the United States Court of Appeals for the Ninth Circuit is reported at *Salisbury v. City of Santa Monica,* 994 F. 3d 1056 (9th Cir. 2021). The Ninth Circuit denied Mr. Salisbury's timely petition for rehearing en banc and amended its opinion on June 7, 2021. The amended opinion is reported at 998 F. 3d 852 (9th Cir. 2021). The Ninth Circuit affirmed the order granting the City of Santa Monica's Motion for Summary Judgment, which is reported at *Salisbury v. Caritas Acquisitions V, LLC and City of Santa Monica,* Case No. CV 18-08247-CJC(Ex), 2019 WL 8105373 (C.D. Cal. December 10, 2019.) *See* Appendices A-C.

Statement of Jurisdiction

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

The Ninth Circuit's order denying rehearing en banc and amended opinion was issued on June 7, 2021. Under this Court's Orders of March 19, 2020 and July 19, 2021, the deadline to file this petition for a writ of certiorari was 150 days from the date of the order denying the petition for rehearing. 150 days from June 7, 2021 is November 4, 2021. Therefore, this petition is timely.

Statutes Involved

Title 42 United States Code, section 3601

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

Title 42 United States Code, section 3602

As used in this subchapter--

* * *

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, receivers, and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 3604, 3605, 3606, or 3617 of this title.

* * *

(h) "Handicap" means, with respect to a person--

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) a record of having such an impairment, or

(3) being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21).

(i) "Aggrieved person" includes any person who--

(1) claims to have been injured by a discriminatory housing practice; or

(2) believes that such person will be injured by a discriminatory housing practice that is about to occur. …

Title 42 United States Code, Section 3604.
Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of

a particular race, color, religion, sex, handicap, familial status, or national origin.

(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—

(A) that buyer or renter,

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of--

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes—

* * *

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such

person equal opportunity to use and enjoy a dwelling; ….

Statement of the Case

In 1974, when he was a teenager, Lawrence Salisbury moved, with his father, brother and sister, into a mobilehome located at Mountain View Mobilehome Park in Santa Monica, California (hereinafter the "Park"). He lived there, with his father, continuously from 1974 through the present, and never lived in any other location.

In 1979, Santa Monica voters passed a comprehensive rent control system. *See Schnuck v. City of Santa Monica,* 935 F.2d 171, 172 (9th Cir. 1991); Santa Monica City Charter, Article XVIII, section 1800, *et seq.* (the "Rent Control Law"). The Park became subject to it. In addition to controlling rents, the Rent Control Law also prescribed grounds for eviction. *See Schnuck,* 935 F.2d at 172. Because he resided with his father, Lawrence Salisbury was a "tenant" of Space 57 under the Rent Control Law. *See* Santa Monica Charter section 1801(i); *Borten v. Santa Monica Rent Control Bd.,* 141 Cal. App. 4th 1485, 1487 (Cal. Ct. App. 2006) ("As originally adopted, the Rent Control Law defined 'tenant' broadly, to include a 'tenant, subtenant, lessee, sublessee or any other person entitled under the terms of a rental housing agreement to the use or occupancy of any rental unit.'")

Twenty-six years after the Salisburys moved into the Park, the City of Santa Monica purchased it. Prior to any dispute arising between Lawrence Salisbury and the City, between 2008 and 2010, the City sent rental invoices to "JG/LA Salisbury." JG Salisbury was Mr. Lawrence

Salisbury's father. LA Salisbury stood for Lawrence Salisbury.

In 2010, the City hired a new management company. Lawrence Salisbury's name was removed from the rent rolls and the management began referring to him as a "guest." The new manager refused to explain to Mr. Salisbury and his father why Mr. Salisbury's name had been removed from the rent rolls.

In 2011, the City's new management company sent Mr. Salisbury's father a letter informing him that Lawrence Salisbury was not allowed to "bring his dog into the park" without a leash. Mr. Salisbury's father responded that the dog was a service dog, that Lawrence Salisbury was "totally disabled" and residing with him, and further that Mr. Salisbury "has been a long time resident of the park since 1975." In response, the City notified the elder Mr. Salisbury that going forward Lawrence Salisbury would not be considered an occupant of the Park, but only a guest. The City invited Lawrence Salisbury to "apply" for residency, but under the proposal both the elder Mr. Salisbury and Lawrence Salisbury were required to fill out and sign the application. Alternatively, the City offered, Lawrence Salisbury could apply to be an in-home caretaker for his father, but he would have to give up his right to live in the Park after his father's death.

Lawrence Salisbury relented and "applied" to live in the Park over his father's objection. But the City deemed the application incomplete, because, among other things, Mr. Salisbury's father refused to complete or sign the

application. Ultimately, Lawrence Salisbury's application remained unapproved. However, the City took no steps to evict Lawrence Salisbury and continued to collect rent from his father.

In 2013, Mr. Salisbury's father died. From that point forward, the City refused rent from Lawrence Salisbury and notified him that he must move out within 60 days. Mr. Salisbury did not vacate, and the City took no steps to evict him. Under its own Charter it was prohibited from doing so, due to the fact that Mr. Salisbury had resided with his father for over a year.[1]

On July 3, 2013, Mr. Salisbury filed *pro se* a verified Complaint against the City for "unlawful eviction," tenant harassment, and other wrongs. His lawsuit was dismissed on purely procedural grounds in 2015.

After the dismissal, the City again demanded that Mr. Salisbury move out of the Park and warned that it would tow his vehicle out of the Park if he continued to park it on site. Mr. Salisbury suffered from spondylolisthesis, spinal osteoarthritis, and degenerative disc disease, and walking long distances was difficult. In response, while

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[1] Santa Monica Charter section 1806(c) states: "Notwithstanding any contrary provision in this Section or in the rental housing agreement, if the tenant's … child(ren) … have lived in the unit for at least one year at the time the tenant vacates the unit due to death or incapacitation, the landlord is prohibited from taking any action to obtain possession of the unit from the tenant's … child(ren) … on the ground that the … child(ren) … are not authorized to occupy the unit."

acknowledging the City's position that it did not consider him a tenant, Mr. Salisbury nonetheless requested a reasonable accommodation of his disability—that the landlord remove the barriers that blocked his ability to park next to his mobile home. The City ignored the request and began issuing parking citations to Mr. Salisbury. Over the next two years, Mr. Salisbury continued to request a parking accommodation and the City continued to ignore the requests.

On September 24, 2018, Mr. Salisbury filed suit against the City for violation of the FHAA. The City moved for summary judgment. The district court granted the City's motion, finding that no jury could reasonably find that the City consented to Plaintiff's residence in the park and created a binding landlord-tenant relationship, and that the City did not violate the FHAA because "[a] landlord has no obligation to provide reasonable accommodations to a resident that illegally occupies a dwelling."

Mr. Salisbury appealed to the Ninth Circuit. The Ninth Circuit found that the case "presents a threshold question of first impression in this circuit: Whether the FHAA applies at all to claims by plaintiffs who never themselves or through an associate entered into a lease or paid rent to the defendant landlord."

> The district court found the FHAA presupposed the existence of a valid tenancy as a necessary precondition to apply the statute's duty of reasonable accommodation and determined Salisbury failed to establish an express or implied

> landlord-tenant relationship under California law. We agree with the district court that Salisbury's claim falls outside the FHAA's domain but for a different yet allied reason. We hold that, as to occupants requesting accommodation, the FHAA's disability discrimination provisions apply only to cases involving a "sale" or "rental" for which the landlord accepted consideration in exchange for granting the right to occupy the premises.

The Ninth Circuit went on to explain that although the district court applied California law to reject Mr. Salisbury's argument that he was a tenant of the Park:

> We do not pass on the issues of California landlord-tenant law discussed in the decision below … because we conclude the application of the FHAA in this case does not turn on the law of the state in which the violation allegedly occurred. Instead, we apply a federal standard derived from the FHAA's text and "common-law foundations."
>
> The Ninth Circuit held that the FHAA applies to rentals only when the landlord of his designee has received consideration in exchange for granting the right to occupy the premises. Because, it concluded, Salisbury never provided consideration in exchange for the right to occupy his mobilehome at Space 57, "the FHAA was inapplicable to his claim for relief," and "the City was not obligated to provide, offer, or discuss an accommodation." (Appendix B and C.)

Mr. Salisbury filed a timely petition for rehearing. Although the petition for rehearing was denied on June 7, 2021, the Ninth Circuit amended its April 16, 2021 Opinion. (Appendix C.)

REASONS FOR ALLOWANCE OF THE WRIT

1. *Salisbury* created a conflict among the circuits regarding whether a tenant must have paid rent to seek redress under the Fair Housing Act.

The FHAA is part of the Fair Housing Act. The Fair Housing Act was enacted to eradicate discriminatory practices within a sector of our Nation's economy by providing a clear national policy against discrimination in housing. *See Texas Dept. of Housing & Comm. Affairs v. Inclusive Comms. Project, Inc.,* 576 U.S. 519, 539, 135 S.Ct. 2507, 2521, 192 L.Ed. 2d 514 (2015). Originally Title VIII of the Civil Rights Act of 1968, the Fair Housing Act prohibited discrimination in housing on the basis of race, color, religion, national origin, and, later, gender. *Hunt v. Aimco Properties, L.P.*, 814 F.3d 1213, 1218 (11th Cir. 2016). In 1988, the FHAA amended the Fair Housing Act to also bar housing discrimination based on disability or handicap. *See id.* 42 U.S.C. section 3604[2] describes the discriminatory acts prohibited by the Fair Housing Act and includes the

[2] Hereinafter, all references to "Section __" refer to "42 U.S.C. section ___."

discriminatory acts prohibited by the later-enacted FHAA at Section 3604(f).

The Ninth Circuit's *Salisbury* opinion effectively narrows the class of persons who have standing to sue for violation of the FHAA by limiting potential claimants to persons who can show that the landlord of their unit accepted rent from them. By looking to the language of Section 3604 to determine whether Mr. Salisbury had standing to sue under the FHAA, rather than looking to the parts of the Fair Housing Act that confer standing (Sections 3613, 3602(i)), the Ninth Circuit construed a new standing requirement that rental housing occupants must meet in order to bring suit. The *Salisbury* opinion therefore conflicts with *Bank of America Corp. v. City of Miami,* __ U.S. __, 137 S. Ct. 1296, 197 L.Ed.2d 678 (2017) ("*Bank of America*"). An "aggrieved person" who may bring suit under the Fair Housing Act is one who "claims to have been injured by a discriminatory housing practice" or "believes that such person will be injured by a discriminatory housing practice that is about to occur." *See* Section 3602(i). Standing under the Fair Housing Act does not include a payment-of-consideration requirement. The *Salisbury* opinion therefore narrows the definition of "aggrieved person" by limiting the right to sue for violation of Section 3604(f)(2) to aggrieved persons who "pay consideration" to a landlord or seller "as understood at the time of the FHAA's enactment."

The definition of aggrieved person has never been so narrow. This Court has allowed Fair Housing Act suits by plaintiffs who were plainly not buyers or renters, such as a

city alleging that it lost tax revenue or a non-profit organization that spent money to combat housing discrimination. *See Bank of America,* __ U.S. __, 137 S. Ct. at 1303. By construing a bar to Mr. Salisbury's standing to sue under the FHAA based on the City of Santa Monica's refusal to accept rent from him, the Ninth Circuit's *Salisbury* opinion directly conflicts with an opinion of the District of Columbia Circuit: *Webb v. United States Veterans Initiative (US Vets) and Community Partnership,* 933 F.3d. 970, 451 U.S. App. D.C. 507 (2021). In *Webb,* a disabled veteran, sued a nonprofit veterans' services provider ("U.S. Vets") for sex discrimination under the Fair Housing Act, alleging that U.S. Vets discriminated against him by refusing to offer him a one-bedroom apartment while offering one to a less-qualified female applicant. *Webb,* 933 F.3d at 971. U.S. Vets administered two housing programs, one that allowed participants to live with a roommate in a multiple-occupancy unit, and the Shelter Plus Care program, which placed chronically homeless veterans in one-bedroom units without roommates. *See id.* Mr. Webb, although as a chronically-homeless veteran he was qualified for a single-occupancy unit, was placed in a multiple-occupancy unit. A few months after Mr. Webb moved into his multiple-occupancy unit, U.S. Vets placed a female applicant into a one-bedroom single-occupancy unit under its Shelter Plus Care program even though the female applicant did not claim to be chronically homeless. *See id.* Mr. Webb sued U.S. Vets for discrimination under the Fair Housing Act, alleging that U.S. Vets' preferential treatment of the female housing

applicant constituted sex discrimination under the Fair Housing Act. *See* Section 3604(a).

Using reasoning similar to that of the district court in *Salisbury,* the district court in *Webb* dismissed the complaint, concluding that because Mr. Webb had paid no rent, he had "no legally protected interest" under the Fair Housing Act. *Id.* at 971. The *Webb* district court concluded, by putting undue emphasis on the phrase "sell or rent" in Section 3604, that Mr. Webb was not an aggrieved person under the Fair Housing Act because "he paid no rent." *Id.* at 972. The District of Columbia Circuit Court, however, reversed, holding that the Fair Housing Act "prohibits making a dwelling 'unavailable' based on sex regardless of whether the injured party paid rent." *Id.* at 971. The District of Columbia Circuit Court observed: "U.S. Vets might have had a good case if the statute did not contain the phrase 'otherwise make unavailable," but that language, following the phrase 'to sell or rent,' clearly demonstrates that the section encompasses conduct beyond simply refusing to sell or rent," including making housing unavailable by advising tenants to seek alternative accommodations. *See id.* at 972, *citing 2922 Sherman Avenue Tenants' Ass'n v. District of Columbia,* 444 F.3d 673 (D.C. Cir. 2006).

Claims under the FHAA are part of the Fair Housing Act, and disability discrimination claims under Section 3604(f) should be treated no differently than discrimination claims under Section 3604(a). Like Section 3604(a), Section 3604(f) prohibits discrimination in the sale or rental of a dwelling, and also prohibits *otherwise making unavailable*

or denying a dwelling, because of a handicap of a person residing in that dwelling *after* it is rented *or made available*. Section 3604(f)(2) prohibits discrimination "against any person" in the provisions of services or facilities in connection with a rental dwelling because of a handicap of "that person" or "a person residing in … that dwelling after it is … rented, or made available."[3] The payment of rent is not a precondition to the landlord obeying federal anti-discrimination law, and a landlord cannot condition his compliance with federal law on the receipt of consideration.

Salisbury and *Webb* are thus in conflict, and the conflict should be resolved. A principal purpose for which the United States Supreme Court exercises its certiorari jurisdiction is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law. *Braxton v. United States*, 500 U.S. 344, 347, 111 S.Ct. 1854, 1857, 114 L.Ed.2d 385 (1991). The *Salisbury* opinion effectively alters the rights and obligations of landlords and tenants in the Ninth Circuit, providing tenants in the Ninth Circuit fewer rights than tenants residing within the bounds of other Circuits. The holding means that, in the Ninth Circuit, landlords need only reasonably accommodate the handicaps of persons

[3] Furthermore, it is not the case that rent was never paid for Mr. Salisbury's mobile home space. It is undisputed that Mr. Salisbury's father paid rent prior to his death, that the City thereafter refused rent from Mr. Lawrence Salisbury. Therefore, the City's repeated refusals to provide Mr. Lawrence Salisbury a parking accommodation for two years starting in 2015 constituted disability discrimination against Mr. Salisbury in the provisions of services or facilities in connection with a dwelling "after it [was] … rented, or made available." Section 3604(f)(2).

residing in rental housing from whom they have willingly accepted rent. This creates a bar to enforcement that landlords can easily create and is thus contrary to the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. *See* Section 3601. The Ninth Circuit has decided an important federal question—who has standing to sue for violation of the Fair Housing Act—in a way that substantially narrows the Fair Housing Act's standing requirements in the Ninth Circuit.

2. By directing trial courts to interpret the Fair Housing Act by applying a federal common law of landlord and tenant, the Ninth Circuit's *Salisbury* opinion conflicts with other Circuits and Supreme Court precedent.

The Ninth Circuit in the *Salisbury* decision directed trial courts to look to federal common law when deciding cases brought under the Fair Housing Act (including the FHAA), to avoid frustrating the purpose of the Fair Housing Act. But this direction to the trial courts is erroneous as it conflicts with decisions of this Supreme Court and other Circuit Courts. In *Salisbury,* the Ninth Circuit advised:

> To determine whether Salisbury's claim involves a "rental" covered by the FHAA, we turn next to the proof required to establish a landlord-tenant relationship within the terms of the statute. The district court applied California law to reject the various state law theories under which Salisbury argued the City somehow inherited or acquiesced in

an implied tenancy. We do not pass on the issues of California landlord-tenant law discussed in the decision below, however, because we conclude application of the FHAA in this case does not turn on the law of the state in which the violation allegedly occurred. Instead, we apply a federal standard derived from the FHAA's text and "common-law foundations."

It also directed that:

Because the FHAA clearly requires "consideration" to establish a rental, we need not pass on whether the district court properly analyzed California property law in the decision below. We note, however, that the district court should not have applied contemporary state law without first considering whether a federal common law rule is required in this context. Although "the existence of related federal statutes" does not "automatically show that Congress intended courts to create federal common-law rules, *Atherton v. FDIC,* 519 U.S. 213, 218 (1997), federal rules may be applicable when the statutory scheme "evidences a distinct need for nationwide legal standards," *Kamen v. Kemper Fin. Servs., Inc.,* 500 U.S. 90, 98 (1991). Our court has previously noted that the nuances of contemporary state and local law may frustrate the nationwide objectives of federal antidiscrimination statutes like the FHAA. *See Wheeler,* 894 F.3d at 1056 (applying a uniform federal common law rule to the

survivorship of federal disability discrimination claims).

The vesting of jurisdiction in the federal courts does not in and of itself give rise to authority to formulate federal common law, (citation) nor does the existence of congressional authority under Art. I mean that federal courts to free to develop a common law to govern those areas until Congress acts." *See Texas Industries, Inc. v. Radcliff Materials, Inc.,* 451 U.S. 630, 640-641, 101 S.Ct. 2061 (1981). "Rather, absent some congressional authorization to formulate substantive rules of decision, federal common law exists only in such narrow areas as those concerned with the rights and obligations of the United States, interstate and international disputes implicating the conflicting rights of States or our relations with foreign nations, and admiralty cases." (*Id., footnotes omitted.*)

A Third Circuit fair housing case involving the application of federal common law is in conflict with *Salisbury*: *Revock v. Cowpet Bay West Condominium Ass'n,* 853 F.3d 96 (3rd Cir. 2017). In *Revock,* the Third Circuit applied federal common law only to resolve the question of "whether a claim [under the Fair Housing Act] survives the death of a party." *Revock,* 853 F.3d at 108. The Third Circuit noted: "One area where courts consistently apply a uniform rule of federal common law is survival of a federal claim." *Id.* at 109 (collecting cases). "The federal interest at stake in the Fair Housing Act, to provide for fair housing throughout the United States, 42 U.S.C. § 3601, warrants displacement of

state law on the 'confined' issue of survival." *Revock,* 853 F.3d at 109 (cleaned up).

Similarly, in *Louisiana ACORN Fair Housing v. LeBlanc,* 211 F.3d 298 (5th Cir. 2000), the Fifth Circuit applied the federal common law of damages to determine whether a plaintiff suing under the Fair Housing Act may receive punitive damages absent compensatory or nominal damages. "Under these circumstances, we must apply the federal common law to fill this gap in the FHA which Congress has left unanswered." Application of a federal common law of damages was appropriate to determine what types of damages were available under the statutory scheme, a question of congressional intent not answered by the Fair Housing Act itself. *Id.* at 303. But whether a particular item of damages is an available remedy under a federal statute is correctly decided under federal common law. Conversely, whether a landlord-tenant relationship exists is uniquely a question of state or local law.

Based on its federal common law interpretation of the FHAA, the Ninth Circuit determined that no landlord-tenant relationship existed between Mr. Salisbury and the City that gave rise to a duty on the part of the City to accommodate the Mr. Salisbury's disability. However, the nationwide objectives of the FHAA are clearly stated in Section 3601— "to provide, within constitutional limitations, for fair housing throughout the United States." Nothing in the contemporary state or local law applicable to the *Salisbury* case frustrated that objective.

The fact that there *is* no federal common law of landlord and tenant is another reason that *Salisbury's* directive to apply federal common law when interpreting whether a landlord-tenant relationship exists under the FHAA is destined to confuse trial courts. *See Powers v. U.S. Postal Service*, 671 F.2d 1041, 1045 (7th Cir. 1982). In holding that a postal service lease would be interpreted according to state law rather than federal common law, Judge Posner wrote: "a powerful argument against applying federal common law in this case has yet to be mentioned: a federal common law of landlord and tenant does not exist." *Powers,* 671 F.2d at 1045.

> The federal courts could of course create that law, picking and choosing among existing state laws and proposed reforms in accordance with recommendations of eminent scholars and practitioners. It is not to be expected that the federal courts would do a very good job of devising a model code of landlord-tenant law, since they have very little experience in landlord-tenant matters; and though eventually some body of law would emerge it would not in all likelihood be a uniform body, because there are twelve federal circuits and the Supreme Court could be expected to intervene only sporadically.

Id. at 1045-46.

In a case involving the rights and obligations of the United States under a contract and therefore governed by federal law, in *Conille v. Secretary of Housing & Urban Dev.*,

840 F. 2d 105, 109 (1st Cir. 1988), the Court advised "Stating that an issue is governed by federal law … does not open the door to the fashioning of federal common law by federal courts." *Conille*, 840 F. 2d at 109. Rather, federal common law "is resorted to only as a 'necessary expedient' when federal courts are compelled to consider federal questions which cannot be answered from federal statutes alone." *See id.* The *Conille* court recognized that "Landlord-tenant relationships have long been governed by state common or statutory law, and it would be inefficient for [federal courts] to begin writing on a clean slate. It also would be presumptuous, since states' interests in regulating the relations of landlord and tenant militate against the wholesale displacement of those laws by federal courts." *Id.* at 114.

The Ninth Circuit's directive to trial courts to interpret the FHAA according to federal common law is also erroneous because it does not follow the guidance of this Court in *O'Melveny & Myers v. FDIC*, 512 U.S. 79, 114 S. Ct. 2048 (1994) (addressing when a federal common law rule of decision may be created at the expense of state law). In *O'Melveny & Myers*, Justice Scalia wrote that the creation of a federal common law rule is "limited to situations where there is a significant conflict between some federal policy or interest and the use of state law." *O'Melveny & Myers*, 512 U.S. at 87. Justice Scalia reasoned:

> Our cases uniformly require the existence of such a conflict as a precondition for recognition of a federal rule of decision. Not only the permissibility but also

> the scope of judicial displacement of state rules turns upon such a conflict. What is fatal to respondent's position in the present case is that it has identified no significant conflict with an identifiable federal policy or interest. There is not even at stake that most generic (and lightly invoked) of alleged federal interests, the interest in uniformity…. Uniformity of law might facilitate the FDIC's nationwide litigation of these suits, eliminating state-by-state research and reducing uncertainty—but if the avoidance of those ordinary consequences qualified as an identifiable federal interest, we would be awash in "federal common-law" rules.

Id. at 87-88 (citing references omitted).

By interpreting the FHAA based first on the federal common law meaning of parts of the FHAA's text, but not first identifying a significant conflict between state and/or local law and federal policy, the Ninth Circuit in *Salisbury* inverted the established legal standard. The Supreme Court has been clear that the application of federal common law is one of last resort. "The instances where we have created federal common law are few and restricted." *Wheeldin v. Wheeler*, 373 U.S. 647, 651, 83 S.Ct. 1441 (1963). "In deciding whether rules of federal common law should be fashioned, normally the guiding principle is that a significant conflict between some federal policy or interest and the use of state law in the premises must first be specifically shown." *Wallis v. Pan Am Petroleum Corp.*, 384 U.S. 63, 68, 86 S.Ct. 1301 (1966).

> Our cases indicate that a court should endeavor to fill the interstices of federal remedial schemes with uniform federal rules only when the scheme in question evidences a distinct need for nationwide legal standards, or when express provisions in analogous statutory schemes embody congressional policy choices readily applicable to the matter at hand. Otherwise, we have indicated that federal courts should "incorporat[e] [state law] as the federal rule of decision," unless 'application of [the particular] state law [in question] would frustrate specific objectives of the federal programs.'

Kamen, 500 U.S. at 98 (citing references omitted).

"The scope of a federal right is, of course, a federal question, but that does not mean that its content is not to be determined by state, rather than federal law." *De Sylva v. Ballentine*, 351 U.S. 570, 580, 76 S.Ct. 974 (1956). "Nothing that the state can do will be allowed to destroy the federal right which is to be vindicated; but in defining the extent of that right its relation to the operation of state laws is relevant." *Board of Commissioners of Jackson County v. United States*, 308 U.S. 343, 350, 60 S.Ct. 285 (1939). "The presumption that state law should be incorporated into federal common law is particularly strong in areas in which private parties have entered legal relationships with the expectation that their rights and obligations would be governed by state-law standards." *Kamen,* 500 U.S. at 98.

The legal relationship of landlord and tenant is such a right. The scope and parameters of landlord-tenant

relationships are already the subject of a robust canon of law at both the state and municipal level. *See, e.g., Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 141 (Cal. 1976) ("California has … extensive state legislation governing many aspects of landlord-tenant relationships.") And the Supreme Court has long recognized that laws related to real property are uniquely rooted in state law. In *Reconstruction Finance Corp. v. Beaver County*, 328 U.S. 204, 66 S.Ct. 992 (1946), the Supreme Court considered a dispute over the interpretation of the term "real property" in the Reconstruction Finance Corporation Act, which the statute did not define. In holding that the state law definition of the term should be used, rather than a federal definition, Justice Black wrote that "[c]oncepts of real property are deeply rooted in state traditions, customs, habits, and laws." *See* 328 U.S. at 210.

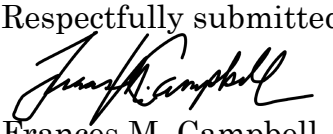
The Ninth Circuit *Salisbury* decision is an outlier in announcing a new way of interpreting the Fair Housing Act. If allowed to stand, the Ninth Circuit *Salisbury* decision, which instructs district courts to interpret the FHAA and the Fair Housing Act as a whole by applying federal common law, particularly where there is no federal common law of landlord and tenant, will likely create uncertainty and inconsistency in the courts with regard to interpreting the Fair Housing Act and undermine tenants' rights under the various state and local laws that govern landlord-tenant relationships in the United States. There can be no conflict between a state or local landlord-tenant law and the "identifiable federal policy or interest" "to provide, within

constitutional limitations, for fair housing throughout the United States." *See* Section 3601. Where standing to sue under the Fair Housing Act is in question, district courts should not look to the descriptions of unlawful acts under Section 3604 and apply a federal common law of landlord and tenant to determine if standing exists. Courts should continue to look to the plain language of Sections 3613 and 3602(i) which define aggrieved persons under the Fair Housing Act and govern when they can bring suit.

CONCLUSION

For these reasons, Petitioner Lawrence Salisbury respectfully requests that the Supreme Court grant review of this matter.

Respectfully submitted,



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APPENDIX

APPENDIX A—ORDER granting Summary Judgment of the United States District Court for the Central District of California, Dated December 10, 2019

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LAWRENCE SALISBURY,	**Case No.: CV 18-08247-CJC(Ex)**
Plaintiff	
v.	**ORDER GRANTING DEFENDANT CITY OF SANTA MONICA'S MOTION FOR SUMMARY JUDGMENT [Dkt. 59]**
CARITAS ACQUISITIONS V, LLC, AND CITY OF SANTA MONICA,	
Defendants.	

I. INTRODUCTION

Plaintiff Lawrence Salisbury brings this action against Defendants Caritas Acquisitions V, LLC ("Caritas")[1] and the City of Santa Monica. (Dkt. 33 [First Amended Complaint, hereinafter "FAC"].) Defendants allegedly failed to reasonably accommodate Plaintiff's disability by refusing to allow him to park closer to his mobile home. Before the Court is Defendant City of Santa Monica's motion for summary

[1] During the December 9, 2019 hearing on the instant motion, Plaintiff's counsel represented to the Court that Defendant Caritas has been dismissed from this case.

judgment, or, in the alternative, summary adjudication. (Dkt. 59 [hereinafter "Mot."].) For the following reasons, the motion is **GRANTED**.

II. BACKGROUND

This case arises out of Plaintiff's residence in a mobilehome in Space 57 of the Mountain View Mobile Home Park (the "Park"), an affordable housing mobilehome park in Santa Monica, California. (*See* FAC.) The City of Santa Monica (the "City") owned the Park between 2000 and 2018. (*Id.* ¶ 7.) Starting in 2010, former Defendant Real Estate Consulting and Services, Inc. ("REC&S") managed the Park on the City's behalf. (Dkt. 63 [Plaintiff's Statement of Genuine Disputes, hereinafter "SGD"] 13.)[2] Plaintiff's

[2] As a preliminary matter, both parties filed numerous evidentiary objections. (*See* Plaintiff's Evidentiary Objections, Dkt. 64; Defendants' Evidentiary Objections, Dkt. 72; *see also* RAF [evidentiary objections throughout], SGD [same].) "[L]odging excessive evidentiary objections" seems to be "a growing trend amongst federal litigants." *Cusack-Acocella v. Dual Diagnosis Treatment Ctr., Inc.*, 2019 WL 2621920, at *1 (C.D. Cal. Apr. 8, 2019) (making this observation after receiving "another slew of unnecessary evidentiary objections"). "In motions for summary judgment with numerous objections, it is often unnecessary and impractical for a court to methodically scrutinize each objection and give a full analysis of each argument raised." *Doe v. Starbucks, Inc.*, 2009 WL 5183773, at *1 (C.D. Cal. Dec. 18, 2009); *see Burch v. Regents of Univ. of Cal.,* 433 F. Supp. 2d 1110, 1118 (E.D. Cal. 2006) ("[T]he court will [only] proceed with any necessary rulings on defendants' evidentiary objections."). This is especially true where, as here, "many of the objections are boilerplate recitations of evidentiary principles or blanket objections without analysis applied to specific items of evidence." *Capitol Records*, 765 F. Supp. 2d at 1200 n.1. To the extent the Court relied on evidence subject to an objection, it relied only on admissible evidence, and the objections are therefore overruled. Any remaining objections are

father, James Salisbury, resided in Space 57 in a mobilehome that he owned (the "mobilehome") from 1974 until his death in 2013. (*Id.* 5, 25.) Plaintiff claims that he has also lived in the mobilehome since 1974, but the City disputes this allegation. (*See* Dkt. 71 [City's Response to Plaintiff's Additional Facts, hereinafter "RAF"] 56.)

The following facts are undisputed. Since at least 2011, Plaintiff lived—or at least sometimes stayed—with his father in Space 57. (SGD 15.) In 2011, REC&S and the City informed Plaintiff and his father that Plaintiff was not an authorized tenant of the Park and that he was not authorized to live in the Park. (*Id.*) In November 2011, Plaintiff applied to live in the Park. (*Id.* 19.) The City rejected the application because he failed to include required information and materials. (*Id.* 19–21.) Based on instructions from his father, Plaintiff never reapplied to become an authorized tenant. (*Id.* 22.)

Plaintiff continued living in the mobilehome after his father passed away in April 2013 and acquired title to the mobilehome on April 23, 2013. (*Id.* 24–25.) In April, May, and June 2013, Plaintiff received three separate 60-day notices to vacate from the City. (SGD 26, 28.) These notices explained that his father's death terminated any tenancy in the Park and that Plaintiff was an unauthorized resident in

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also overruled as moot. The Court also specifically overrules as moot Plaintiff's objection to the Declaration of Ava Lee (Dkt. 59 at 36) based on her use of an electronic signature page. (See Dkt. 64 at 1–2 [objection]; Dkt. 68-1 [properly signed declaration].)

unlawful possession of the premises. (*Id.* 26.) In July 2013, Plaintiff filed an unlawful eviction suit in state court. (*Id.* 30.) The case was dismissed on procedural grounds in 2015, and REC&S sent Plaintiff another notice to vacate. (*Id.* 32.)[3] Plaintiff ignored this notice, and the City never initiated eviction proceedings. (*See id.*) Between April 2013 and July 2018—when the City sold the Park—the City did not accept rent from Plaintiff for Space 57. (*Id.* 50.) According to the City, this uncollected rent totals more than $20,000. (*Id.*)

Starting in 2015, Plaintiff made a series of accommodation requests that led to the instant lawsuit. Plaintiff suffers from spondylolisthesis, osteoarthritis of the spine, and multi-level degenerative disc disease, which interferes with his ability to walk without pain. (RAF 57.) For many years, Plaintiff's father had a designated parking space—for a vehicle other than the mobilehome—in Space 58, directly adjacent to Space 57. (*Id.* 58.) In 2010, the City moved his designated parking space to a lot approximately 150 feet away from the mobilehome. (*Id.* 59.) On or about August 9, 2015, Plaintiff sent a "reasonable accommodation" request to REC&S, explaining his disability and asking for

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[3] Plaintiff asks the Court to take judicial notice of the minute order resolving the state court unlawful eviction case (*Salisbury v. City of Santa Monica*, Case No. BC51413 (L.A. Cty. Sup. Ct. Jan. 13, 2015)). (Dkt. 65.) It is well established that courts may take judicial notice of court filings and other matters of public record. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006). Accordingly, Plaintiff's request is **GRANTED**.

permission to park in Space 58. (SGD 33; FAC Ex. A.) REC&S and the City did not respond but issued several parking citations when Plaintiff parked his vehicle adjacent to the mobilehome. (SGD 41–44.) In November 2015, Plaintiff spoke to REC&S property manager Teresa Gonzalez and reiterated his request. (SGD 46.) Ms. Gonzalez ignored him. (*Id.*) In December 2016, Plaintiff left two voicemails on the Park's 24-hour phone line reiterating his accommodation request. (RAF 61–62.)[4]

In July 2018, the City sold the Park to Caritas. (SGD 48.) According to Plaintiff, he reiterated his accommodation request to Caritas, which initially denied the request. (*Id.* 52; FAC ¶ 20.) Plaintiff filed the instant lawsuit on September 24, 2018. (SGD 53.) At some point thereafter, Caritas executed a rental agreement with Plaintiff. (*Id.* 54.) In July 2019, Caritas altered Space 57 and allowed Plaintiff to park next to the mobilehome, resolving his accommodation request. (*Id.* 55.)

Plaintiff's sole cause of action against the City is for violation of the federal Fair Housing Act ("FHA"), 42 U.S.C. §§ 3601, *et seq.* (FAC ¶¶ 21–27.) Plaintiff claims that the City refused to make a reasonable accommodation under the FHA by denying his requests for a parking space closer to Space 57. *See* 42 U.S.C. § 3604(f)(2). Before the Court is the City's motion for summary judgment.

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[4] Plaintiff also left voicemails contesting parking citations in February and May 2017 but did not reference his accommodation request in these messages. (RAF 63–64.)

III. LEGAL STANDARD

The Court may grant summary judgment on "each claim or defense—or the part of each claim or defense—on which summary judgment is sought." Fed. R. Civ. P. 56(a). Summary judgment is proper where the pleadings, the discovery and disclosure materials on file, and any affidavits show that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.*; *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Id.* at 325. A factual issue is "genuine" when there is sufficient evidence such that a reasonable trier of fact could resolve the issue in the nonmovant's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is "material" when its resolution might affect the outcome of the suit under the governing law and is determined by looking to the substantive law. *Id.*

Where the movant will bear the burden of proof on an issue at trial, the movant "must affirmatively demonstrate that no reasonable trier of fact could find other than for the moving party." *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). In contrast, where the nonmovant will have the burden of proof on an issue at trial, the moving party may discharge its burden of production by either (1) negating an essential element of the opposing party's claim or defense, *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158–60 (1970), or (2) showing that there is an absence of evidence to support the nonmoving party's case, *Celotex*

Corp., 477 U.S. at 325. Once this burden is met, the party resisting the motion must set forth, by affidavit, or as otherwise provided under Rule 56, "specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 256. A party opposing summary judgment must support its assertion that a material fact is genuinely disputed by (i) citing to materials in the record, (ii) showing the moving party's materials are inadequate to establish an absence of genuine dispute, or (iii) showing that the moving party lacks admissible evidence to support its factual position. Fed. R. Civ. P. 56(c)(1)(A)–(B). The opposing party may also object to the material cited by the movant on the basis that it "cannot be presented in a form that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2). But the opposing party must show more than the "mere existence of a scintilla of evidence"; rather, "there must be evidence on which the jury could reasonably find for the [opposing party]." *Anderson*, 477 U.S. at 252.

In considering a motion for summary judgment, the court must examine all the evidence in the light most favorable to the nonmoving party and draw all justifiable inferences in its favor. *Id.*; *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630–31 (9th Cir. 1987). The court does not make credibility determinations, nor does it weigh conflicting evidence. *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 456 (1992). But conclusory and speculative testimony in affidavits and moving papers is insufficient to raise triable issues of fact and defeat

summary judgment. *Thornhill Publ'g Co. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979). The evidence the parties present must be admissible. Fed. R. Civ. P. 56(c). "If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case." Fed. R. Civ. P. 56(g).

IV. DISCUSSION

A. Statute of Limitations

The City first argues that the FHA claim fails because Plaintiff filed suit against the City outside the statute of limitations. The Court previously addressed this issue in an order denying Defendants' motions to dismiss and rejects it here for similar reasons. (See Dkt. 45 at 5–8.)

Under the FHA, "[a]n aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice." 42 U.S.C. § 3613(a)(1)(A). However, "where a plaintiff, pursuant to the Fair Housing Act, challenges not just one incident of conduct violative of the Act, but an unlawful practice that continues into the limitations period, the complaint is timely when it is filed within [the limitations period] of the last asserted occurrence of that practice." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380–81 (1982). Courts distinguish between a continuing violation, which may toll the statute of limitations period,

and the continuing effects of a past violation, which do not. *Garcia v. Brockway*, 526 F.3d 456, 461–63 (9th Cir. 2008); *see also* Ward v. Caulk, 650 F.2d 1144, 1147 (9th Cir. 1981) ("A continuing violation is occasioned by continual unlawful acts, not by continual ill effects from an original violation.").

The City first denied Plaintiff's August 2015 accommodation request by issuing parking citations in October 2015. (*See* Dkt. 45 at 5.) The City argues that, at the latest, the FHA statute of limitations began to run when Ms. Gonzalez refused to speak to Plaintiff in November 2015. (*See* SGD 46.) According to the City, Plaintiff has not presented evidence to support a violation that continued into the statutory period, which started in September 2016. The Court disagrees.

The City does not dispute that Plaintiff left two voicemails in December 2016 reiterating his accommodation request. (SGD 61–62.) Instead, it argues that these voicemails cannot establish a continued violation because (1) the City unequivocally denied the initial request because of Plaintiff's status as an unauthorized resident and (2) Plaintiff apparently believed that "nothing was going to be done" about his requests. (*Id.* 46–47, Mot. at 9, 14–15.) The Court is not convinced. Plaintiff repeatedly asked for an accommodation, which the City repeatedly refused. If Plaintiff can show that these refusals were unlawful, he can show "a continuing violation manifested in a number of incidents." *See Havens*, 455 U.S. at 381. Plaintiff's skepticism that the City would grant the requests does not

change this analysis, nor does the City's steadfast basis for its denials.

B. Punitive Damages

As an initial matter, the City argues that Plaintiff cannot support a claim for punitive damages under the FHA. To obtain punitive damages, Plaintiff must show that the City's conduct was "wanton, willful, malicious, fraudulent, and/or oppressive." *See Brown v. Perris Park Apartments P'ship*, 2018 WL 3740522, at *8 (C.D. Cal. July 17, 2018). Plaintiff concedes that he is not entitled to punitive damages against the City. (Dkt. 62 [Plaintiff's Opposition, hereinafter "Opp."] at 18.) Accordingly, Plaintiff's claim against the City is only for actual damages, attorney's fees, and costs. (*See* FAC ¶¶ 26–27.) *See* 42 U.S.C. § 3613(c)(1).[5]

C. Reasonable Accommodations under the FHA

Plaintiff's FHA claim alleges that the City violated 42 U.S.C. § 3604(f)(2), which makes it unlawful to "discriminate against any person ... in the provision of services or facilities" in connection with the sale or rental of a dwelling because of a disability. "Discrimination" is defined to include a "refusal to make a reasonable accommodation in rules, policies, practices, or services, when such accommodations may be necessary to afford [a disabled] person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). To

[5] Because the City no longer owns the Park, the Court concludes that Plaintiff will also not be able to support a claim for injunctive relief against the City. *See* 42 U.S.C. § 3613(c)(1).

succeed on an FHA accommodation claim, a plaintiff must show (1) that he suffers from a "handicap" as defined in 42 U.S.C. § 3602(h), (2) that the defendant knew or should reasonably be expected to know of the handicap, (3) that accommodation of the handicap may be necessary to afford the plaintiff an equal opportunity to use and enjoy the dwelling, (4) that the accommodation was reasonable, and (5) that the defendant refused to make the accommodation. 42 U.S.C. § 3604(f)(3)(B); *DuBois v. Ass'n of Apartment Owners of 2987 Kalakaua*, 453 F.3d 1175, 1179 (9th Cir. 2006), *cert. denied*, 549 U.S. 1216 (2007).

The City argues that Plaintiff's requested accommodation was not "necessary" or "reasonable" because Plaintiff had no legal right to live in the Park. *See DuBois*, 453 F.3d at 1179 (third and fourth elements).[6] Framed differently, it argues that it had no obligation to consider Plaintiff's requests and therefore its denials did not cause the alleged injuries. Plaintiff concedes that he has never been named in a lease or rental agreement for Space 57. (SGD 6; Dkt 62-6 [Deposition of Lawrence Salisbury, hereinafter "Salisbury Depo."] at 126.)[7] Instead, he argues that his longstanding and continued residence created an implicit right of occupancy. (*See* Opp. at 12.) The parties agree that Plaintiff's FHA claim presupposes a valid

[6] The City does not dispute that Plaintiff suffers from a handicap, that it knew about the handicap, or that it refused to make an accommodation. *See DuBois,* 453 F.3d at 1179 (first, second, and fifth elements).

[7] Plaintiff and the City both submitted slightly different excerpts from Plaintiff's deposition transcript. (See Dkt. 61-1; Dkt 62-6.) For brevity, the Court cites to both exhibits as "Salisbury Depo."

tenancy. A landlord has no obligation to provide reasonable accommodations to a resident that illegally occupies a dwelling. *See* 42 U.S.C. § 3604(f)(2); *see also Garcia v. Alpine Creekside, Inc.*, 2013 WL 3228453 (S.D. Cal., June 25, 2013), at *6–7 (explaining that the FHA does not create "an impenetrable shield against eviction").

The City's evidence negates Plaintiff's claim that he lived in the Park with the City's implied or express consent. The City submitted copies of leases Plaintiff's father executed with the City and its predecessors in 1974, 1988, 1990, 2000, and 2005. (Dkt. 59-5 Exs. 1–3; Dkt 59-6 Exs. 39–42, 44–46.) Plaintiff is not named as a tenant or occupant in any of these documents. (*See id.*) In 2000, Plaintiff's father completed a City of Santa Monica Tenant Estoppel Certification, declaring under penalty of perjury that he was the only tenant or occupant of the unit. (Dkt. 59-6 Ex. 44.) That same year, Plaintiff's father listed Plaintiff as an emergency contact in a resident update form, which gave an address for Plaintiff outside the Park. (*Id.* Ex. 42.) In 2005, Plaintiff's father submitted an occupancy form and again declared under penalty of perjury that he was the only tenant or occupant of the mobilehome. (*Id.* Ex. 46.)

The City's evidence shows that, after learning that Plaintiff planned to live in the Park in 2011, it consistently refused to recognize Plaintiff as an authorized resident or tenant unless and until he submitted a valid resident application. In July 2011, Plaintiff's father sent a letter to REC&S explaining that "Lawrence is now taking care of me and will be residing with me at my request. He has been a

long time [sic] resident of the park since 1975." (Dkt 59-5 Ex. 5.) REC&S responded that "[y]our son is not on your lease and we have no record of him being approved to reside in the park." (*Id.* Ex. 6.) The City offered Plaintiff and his father several options for establishing Plaintiff as an authorized tenant or a live-in aid. (*Id.* Exs. 6, 8.) In September 2011, Plaintiff's father responded that Plaintiff would apply for residency "when time permits" and that "[h]e has not moved in, but is making sure my bills/rent are paid on time." (*Id.* Ex. 24.) Plaintiff's November 2011 residency application was denied because he failed to include required materials and information, including copies of identifying documents, the $80 application fee, asset information, proof of SSDI benefits, and a signature from the current resident—his father. (*See id.* Ex. 10, 11.) This application also listed Plaintiff's residence at an address outside the Park and noted that he had lived there since 1962. (*Id.* Ex. 10.) Plaintiff never reapplied to become an authorized tenant. (SGD 22.) As explained above, after Plaintiff's father died in April 2013, the City refused to accept rent payments from Plaintiff and sent him several notices to vacate before and after the resolution of the state court lawsuit. (*Id.* 24–28, 30, 32.)

Based on this evidence, the Court finds that City has met its initial burden of negating an essential element of Plaintiff's FHA claim. *See Adickes*, 398 U.S. at 158–60. Under California law, an approved occupant that remains in a rental unit after the named tenants vacate can become a tenant by occupancy with consent. *Mosser Companies v. San*

Francisco Rent Stabilization & Arbitration Bd., 233 Cal. App. 4th 505, 515 (2015) (holding that a son did not "inherit" his parent's tenancy after his parents vacated a rented apartment but had his own right of occupancy based on his approved, longstanding residence and landlord's implicit consent). The touchstone of an implied tenancy is the consent of the owner. *Parkmerced Co. v. San Francisco Rent Stabilization & Arbitration Bd.*, 215 Cal. App. 3d 490, 494 (Ct. App. 1989); *see also* Santa Monica Muni. Code § 1801(g) (defining a rental housing agreement as "[a]n agreement, oral, written or implied, between a landlord and tenant for use or occupancy of a rental unit and for housing services"). The City has presented clear evidence showing that it never gave such consent. Based on the City's evidence, when Plaintiff inherited the mobilehome in April 2013, his father was the only authorized resident of Space 57. Accordingly, Plaintiff's father's death terminated his month-to-month tenancy. *See* Cal. Civil Code § 1934. The termination of a month-to-month lease upon notice of the death of the only authorized tenant or resident "prevents the inequitable result of requiring the landlord to participate in a potentially indefinite lease with a tenant he never contracted with in the first place." *Miller & Desatnik Mgmt. Co. v. Bullock*, 221 Cal. App. 3d Supp. 13, 18–19 (1990).

The burden therefore shifts to Plaintiff to present evidence showing a "genuine issue for trial." *Anderson*, 477 U.S. at 256. Plaintiff has not carried this burden. Plaintiff first argues that the City consented to his residence in the Park and created an implied tenancy sometime before his

father's death in April 2013.[8] His only evidence to support this claim is a single rental invoice issued on March 21, 2010 addressed to "JG/LA Salisbury." (Dkt. 59-6 Ex. 47.)[9] Plaintiff's father allegedly asked for Plaintiff's initials to be included on rental invoices sometime in 2008 or 2009. (*See* Salisbury Depo. at 50.) According to Plaintiff, the City initially agreed, but then removed his initials from the invoices sometime in 2010. (*See id.*) Plaintiff claims that he has copies of other invoices addressed to "JG/LA Salisbury" from this period but has not submitted them to the Court. (*See id.*) Plaintiff concedes that he never made any rent payments to the City prior to his father's death. (*See* Salisbury Depo. at 92, 199, 220.) This invoice alone is insufficient to create a genuine issue of material fact. Nowhere in the invoice does the City indicate that it recognized Plaintiff as an approved occupant. (Dkt. 59-6 Ex. 47.) *Cf. Mosser Companies*, 233 Cal. App. 4th at 515. No jury could reasonably find that the City consented to Plaintiff's residence in the Park and created a binding landlord-tenant relationship—one that continued after his father's death—

[8] Accordingly, Plaintiff argues that he had no obligation to formalize his tenancy when the City objected to his residency in 2011 or when he inherited the mobilehome in 2013.

[9] Plaintiff also testifies that he lived in the Park for many years, but his testimony does not address whether he lived there with the City's knowledge and/or implied or express consent.

based on this document alone. *See Anderson*, 477 U.S. at 252.[10]

Plaintiff next argues that he acquired a valid tenancy under the California Mobilehome Residency Law ("MRL"), California Civil Code §§ 798, *et seq*. Under the MRL, an heir or joint tenant who inherits title to a mobilehome in a private park must comply with the same requirements as a prospective purchaser who seeks to establish a tenancy in the park. Cal. Civ. Code § 798.78(d). The transfer of a mobilehome that will remain in a park—whether by sale or by inheritance—requires "a fully executed rental agreement or a statement signed by the park's management and the prospective homeowner that the parties have agreed to the terms and conditions of a rental agreement." Id., § 798.75(a). The management of a park can require notice of a transfer and "the right of prior approval" of a purchaser of—or an heir to—a mobilehome that will remain in the park. *Id.* § 798.74. "In the event the [transferee] fails to execute the rental agreement, the [transferee] shall not have any rights of tenancy," and if the transferee ignores a notice to surrender the site, he becomes an "unlawful occupant." *Id.* § 798.75(b), (c). Plaintiff concedes that he never executed a rental agreement with the City after inheriting the mobilehome. (SGD 23–24.)

Plaintiff argues that he nevertheless established a valid tenancy under the MRL because the City improperly and in

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[10] Plaintiff testified that his brother's name appeared on rental invoices before 2008 even though he was not living there at the time. (*See* Salisbury Depo. at 30, 125.)

bad faith failed to offer Plaintiff a rental agreement after the transfer. (Opp. at 14.) A transferee occupying a mobilehome is not an unlawful occupant if (1) "[t]he occupant is the registered owner of the mobilehome," (2) "[t]he management has determined that the occupant has the financial ability to pay the rent and charges of the park; will comply with the rules and regulations of the park, based on the occupant's prior tenancies; and will comply with this article," and (3) "[t]he management failed or refused to offer the occupant a rental agreement." Cal. Civ. Code § 798.75(d). The evidence in the record undermines Plaintiff's MRL argument.

As discussed above, park management can require notice of the transfer of a mobilehome that will remain in the park and can require prior approval of the tenancy of the transferee. *See id.* The Park had such a policy in place. (*See* Dkt. 59-6 Ex. 31 at COSM00134.) Plaintiff testifies that he told Ms. Gonzalez about the transfer approximately a month after inheriting the mobilehome but concedes that he did not ask to execute a rental agreement after his father's death and never attempted to cure the defects in his 2011 tenancy application. (See Dkt. 61-1 at 189, 193–96.) Indeed, Plaintiff maintains that he had no obligation to formalize his tenancy. (See SGD 23A, 24.) But the MRL clearly places the initial burden on the transferee of a mobilehome to provide notice of the transfer and to attempt to perfect tenancy in the park. *See* Cal. Civ. Code §§ 798.74–798.75, 798.78. Plaintiff has not presented any evidence that he made such an attempt. Nor has he presented evidence that the City determined he had the financial ability to pay the rent or comply with the

Park's rules and regulations. *See id.* § 798.75(d). Accordingly, the Court finds that Plaintiff has failed to establish a genuine issue of material fact as to the existence of a valid tenancy under the MRL.

Finally, Plaintiff argues that he acquired a tenancy at will through the implied consent of the City sometime between his father's death in April 2013 and the December 2016 accommodation request.[11] A tenancy at will is "[a] permissive occupation of real estate, where no rent is reserved or paid and no time agreed on to limit the occupation." *Covina Manor, Inc. v. Hatch*, 133 Cal. App. 2d Supp. 790, 793 (Cal. App. Dep't Super. Ct. 1955). As with all implied tenancies, the key inquiry is the property owner's implied or express consent. *See id.*; *Parkmerced Co.*, 215 Cal. App. 3d at 494. No tenancy at will arises when the initial occupation is without the landlord's knowledge and express or implied consent. *Norton v. Overholtzer*, 63 Cal. App. 388, 396 (Cal. Ct. App. 1923). Plaintiff fails to present any affirmative evidence that the City consented to his tenancy. Before and immediately after his father's death, the City expressly and repeatedly asked Plaintiff to vacate Space 57. (SGD 26, 28.) Between 2013 and 2015, the City challenged the legality of Plaintiff's occupancy in state court. (*Id.* 30.) After the case was dismissed, the City told Plaintiff to vacate Space 57 before August 1, 2015. (*Id.* 32.) Throughout this period, the City consistently refused to accept rent payments

[11] For this motion, the Court need not address whether Plaintiff established an implied tenancy sometime after making the December 2016 accommodation request.

from Plaintiff. *Cf. Mosser Companies*, 233 Cal. App. 4th at 515 (finding tenancy by consent where landlord attempted to collect rent from occupant).

The only evidence that the City implicitly consented to Plaintiff's continued occupancy during this period is its decision not to file an unlawful detainer action after the resolution of the state court case in 2015 and before Plaintiff's 2016 accommodation request. The Court finds that this inaction alone is insufficient to create a genuine issue of material fact of whether the City implicitly consented to Plaintiff's continued occupancy. *Cf. Parkmerced Co.*, 215 Cal. App. 3d at 494 (implied tenancy based on landlord's acquiescence by silence acceptance of rent from occupant). Accordingly, the Court **GRANTS** the City's motion for summary judgment on the FHA claim.

The Court's decision is a narrow one. It cannot adjudicate the unlawful eviction case dismissed by the state court. Nor does it resolve whether the City could have successfully brought an unlawful detainer action sometime after Plaintiff inherited the mobilehome. Instead, the Court's decision is narrowly confined to Plaintiff's FHA claim and the specific facts at hand. *See DuBois*, 453 F.3d at 1179 ("The reasonable accommodation inquiry is highly fact-specific, requiring case-by-case determination.").

V. CONCLUSION

For the foregoing reasons, the City of Santa Monica's motion for summary judgment is **GRANTED**. Because the

City is the sole remaining Defendant, this case is **DISMISSED** in its entirety on the merits.[12]

DATED: December 10, 2019

/s/ Cormac J. Carney

UNITED STATES DISTRICT JUDGE

[12] During the December 9, 2019 hearing on the instant motion, Plaintiff's counsel represented to the Court that the City was the sole remaining Defendant in this case and that all other Defendants have been dismissed.

APPENDIX B—Opinion in Case No. 20-55039, *Salisbury v. City of Santa Monica,* filed April 16, 2021

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Lawrence Salibury,	No. 20-55039
Plaintiff Appellant,	D.C. No. 2:18-cv-08247-CJC-E
v.	
City of Santa Monica,	OPINION
Defendant-Appellee.	

On Appeal from the United States District Court
For the Central District of California
Cormac J. Carney, District Judge, Presiding

Argued and Submitted December 11, 2020
Pasadena, California
Filed April 16, 2021

Before: Carlos T. Bea, Amul R. Thapar*, and Daniel P. Collins, Circuit Judges.

Opinion by Judge Bea

* The Honorable Amul R. Thapar, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

SUMMARY

Fair Housing

Affirming the district court's summary judgment in favor of the City of Santa Monica, the panel held that the Fair Housing Amendments Act of 1988 does not require landlords to accommodate the disability of an individual who neither entered into a lease nor paid rent in exchange for the right to occupy the premises.

Plaintiff lived with his father in a mobile home on land rented from the City of Santa Monica. Upon his father's death, plaintiff refused to vacate the mobile home park, and he asked the City to accommodate his disability by waiving park rules to allow him to store his vehicle immediately next to his mobile home.

The panel held that, by its plain language, the FHAA does not apply to claims by plaintiffs who never themselves or through an associate entered into a lease or paid rent to the defendant landlord. As to occupants requesting accommodation, the FHAA's disability discrimination provisions apply only to cases involving a "sale" or "rental" for which the landlord accepted consideration in exchange for granting the right to occupy the premises. Applying a federal standard, rather than California landlord-tenant law, the panel concluded that because plaintiff never provided consideration in exchange for the right to occupy a space in the mobile home park, the FHAA did not apply to

his claim for relief, and the City was not obligated to provide, offer, or discuss an accommodation.

COUNSEL

Frances M. Campbell (argued) and Nima Farahani, Campbell & Farahani LLP, Sherman Oaks, California, for Plaintiff-Appellant.

Michelle M. Hugard (argued), Deputy City Attorney; Lance S. Gams, Chief Deputy City Attorney; George S. Cardona, Interim City Attorney; City Attorney's Office, Santa Monica, California; for Defendant-Appellee.

OPINION

BEA, Circuit Judge:

Lawrence Salisbury suffers from serious spinal conditions that make it painful to walk.[1] Salisbury lived for many years with his elderly father, James, in a mobile home on rented land in the Mountain View Mobilehome Park ("the Park"), which the City of Santa Monica ("the City")

[1] This case is an appeal from summary judgment. In reviewing a grant of summary judgment, "we assume the version of the material facts asserted by the non-moving party." Carrillo v. Cty. of Los Angeles, 798 F.3d 1210, 1218 (9th Cir. 2015) (quoting Mattos v. Agarano, 661 F.3d 433, 439 (9th Cir. 2011)).

purchased in 2000 to provide housing for low-income persons. It is undisputed that Salisbury never signed a lease for the land nor successfully paid rent to Park management, or indeed, to anyone, in exchange for the right to reside in the Park.

Upon James's death, Salisbury refused repeated demands to vacate the Park and sued the City for wrongful eviction in California Superior Court based on several theories of state law implied tenancy. The state court granted summary judgment to the City after determining Salisbury failed to follow procedural claims requirements for suing a municipal defendant. Soon thereafter, Salisbury requested that the City accommodate his disability by waiving Park rules to allow him to store his vehicle immediately next to his mobile home rather than the parking area designated for the unit for which he claimed the right to inhabit. The City denied the request because Salisbury was not an authorized tenant of the Park. Salisbury then brought a claim of disability discrimination in federal court. The district court granted summary judgment to the City after concluding that, under California law, Salisbury was indeed not authorized to reside in the Park.

The question presented in this appeal is whether the Fair Housing Amendments Act of 1988 ("FHAA"), 42 U.S.C. § 3601 et seq., requires landlords to accommodate the disability of an individual who neither entered into a lease nor paid rent in exchange for the right to occupy the premises. We conclude the FHAA applies to rentals only

when the rental arrangement is supported by adequate consideration and therefore affirm the judgment of the district court.

I. BACKGROUND

This housing dispute dates back to 1974, when James purchased a mobile home and signed a month-to-month lease for Spot 57 in the Park, then under private ownership. The original lease listed James and Salisbury's older brother, Russell, as the only adult occupants of the mobile home. Salisbury and his younger sister, Monique, both teenagers at the time, moved in with James and Russell soon after execution of the lease. Salisbury maintains that he resided continuously in the Park from the 1970s until the present day, decades after Russell and Monique moved out of the mobile home.

It is undisputed, however, that Salisbury's name never appeared on any leases signed by his father for residency in the Park. In 1988, James signed a new month-to-month lease that expressly prohibited subletting or assignment without the Park's consent and stated that he was the only occupant of Spot 57. In 1990, James signed a resident update form confirming he was the only resident of Spot 57, aside from a cat named Spike. In 2000, the City purchased the Park, classified it as an affordable housing project, and imposed new maximum income and household size restrictions for Park tenants. Existing tenants were exempted from the maximum income restriction on the condition that they sign an estoppel certificate stating the number of persons in their household and promise thereafter

not to increase the household's size.[2] James signed an estoppel certificate declaring, under penalty of perjury, that he was the only resident of Spot 57. In 2005, James recertified his compliance with the household size restriction by declaring that he continued to live alone.

It is also undisputed that James paid rent to Park management exclusively in his own name before and after the City's acquisition of the Park. In the mid-2000s, James asked the City to include Russell's initials on several rent invoices for unknown reasons. In addition, the City agreed to include Salisbury's initials on several rent invoices sent to Spot 57 from 2008 to 2010. Notwithstanding the inclusion of their initials on rent invoices, neither Salisbury nor Russell ever paid rent on James's behalf.

The City first contested Salisbury's presence in 2011 when other residents complained that Salisbury had violated Park rules by bringing a large dog into the Park. James told the City's property managers that Salisbury had lived in the Park "since 1975" and that the dog was a service animal. The City noted it had no record of Salisbury's residence in that Park and instructed Salisbury to apply for residence either as an income-restricted tenant or as a live-

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[2] Estoppel certificates are commonly used by the buyer of a commercial property with residential tenants to confirm the seller's representations as to tenancies and to "serve as a record of each tenant's statements or representations in case disputes should arise between the purchaser, as the new owner of the property, and a particular tenant." Miller & Starr, Cal. Real Estate Forms § 1:64 (2d ed. 2020 update). The estoppel certificate prevents the tenant from later asserting facts or claims different from those recited in the certificate based on the reliance of the buyer on the certification and the representations made therein.

in caregiver for James. Salisbury submitted an incomplete application for residency and ignored the City's request to provide missing financial information required to determine whether Salisbury qualified for residency in the Park as a low-income tenant.[3] Meanwhile, Salisbury acquired title to James's mobile home without notifying the City (in its capacity as the owner of the land) as required to initiate a new lease under Park rules and California's Mobilehome Residency Law, Cal. Civ. Code § 798.74.

James died in April 2013. The City subsequently refused to accept rent checks drawn by Salisbury against James's bank account and repeatedly demanded Salisbury vacate Spot 57 within sixty days. Salisbury sued the City in California Superior Court in July 2013 for wrongful eviction and related tort and contract theories. As noted above, the court granted summary judgment for the City in January 2015 after concluding Salisbury failed to comply with procedural requirements for claims against a municipal defendant.

Thereafter, the City renewed its demand that Salisbury vacate Spot 57 and began to cite Salisbury for violating traffic rules by improperly parking his personal vehicle on neighboring mobile home sites and in common thoroughfares. Under Park rules, all personal vehicles must

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[3] Salisbury does not claim that the City discriminated against him based on disability when it required him to complete the standard residential application process as a condition of being offered a lease for Spot 57. Nor does Salisbury claim his disability prevented him from completing the application, or that the City refused to grant an accommodation that would have allowed him to complete the application.

be registered with management and parked in assigned spaces. The City attempted to enforce these rules by blocking access to vacant lots with bollards but never towed Salisbury's vehicle nor collected any of the fines attached to the citations.

Salisbury responded to the City's renewed order to vacate in August 2015 by requesting a parking accommodation under the FHAA. In a brief letter, Salisbury informed the City he suffered from spondylolisthesis, spinal osteoarthritis, and disc degenerative disease, all of which made it painful to walk. Accordingly, Salisbury requested the City "remove the barriers to the space next to my unit ... or that you remove the barriers that have been put in front of my trailer [in the thoroughfare] to prevent me from parking there." The City ignored Salisbury's initial request and subsequent requests made as late as December 2016. Salisbury continued to receive citations until July 2018, when the City sold the Park to a private holding company. The Park's new owner has executed a lease with Salisbury, accepted payment of rent, and granted his requested parking accommodation.

This lawsuit began in September 2018 when Salisbury sued the City and related entities under the FHAA in the U.S. District Court for the District of Central California. The complaint alleged that the City discriminated against Salisbury based on disability by refusing to grant the requested parking accommodation and sought compensatory damages, punitive damages, equitable relief, and attorneys' fees and costs. See 42 U.S.C. §§ 3604(f)(2)–(3), 3613(a), (c).

Salisbury has never claimed that he entered into a lease with the City or that the City accepted rent from him prior to the sale of the Park. Instead, Salisbury has maintained that California law somehow established a landlord-tenant relationship between himself and the City prior to the accommodation request in one of three ways. First, because the Park's prior owners had consented to his residency in the Park as a teenager in the 1970s; second, because the City's failure to initiate unlawful detainer proceedings after discovering Salisbury lived in the Park in 2011 created a tenancy at will; or third, because California's Mobilehome Residency Law barred the City from treating Salisbury as a non-tenant because the City failed to offer him a lease when he acquired title to James's mobile home in 2012. See Cal. Civ. Code §§ 798.74(c), 798.75(d).

After several hearings and the completion of discovery, the district court granted the City's motion for summary judgment. The court began by holding that under the FHAA, "[a] landlord has no obligation to provide reasonable accommodations to a resident [who] illegally occupies a dwelling." To prove the City violated its duty to accommodate under the FHAA, therefore, Salisbury bore the burden of proving he lawfully resided in the Park at the time of the accommodation request. Applying California law, the court concluded Salisbury presented insufficient evidence to establish a landlord-tenant relationship with the City under any of the state law theories noted above.

Salisbury timely appealed, arguing the FHAA prohibits discrimination against "any person" without regard to the

existence of a tenancy, that the district court ignored evidence creating triable issues of fact as to the formation of an implied tenancy under California law, and that the City's repeated refusals to engage in an "interactive process" after the initial request for accommodation were standalone violations of the FHAA. Jurisdiction is proper. *See* 28 U.S.C. § 1291.

II. STANDARD OF REVIEW

We review grants of summary judgment de novo. *Dubois v. Ass'n of Apt. Owners of 2987 Kalakaua*, 453 F.3d 1175, 1178 (9th Cir. 2006). Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

III. DISCUSSION

Salisbury brought his disability discrimination claim under 42 U.S.C. § 3604(f)(2) and (f)(3)(B), which prohibit "a refusal to make reasonable accommodations ... when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." We have previously interpreted this language to determine whether a landlord subject to the FHAA's duty of reasonable accommodation fell short of his statutory obligations. In so doing, we have held a failure-to-accommodate plaintiff must show: 1) the existence of a covered handicap; 2) the defendant's knowledge or constructive knowledge of that handicap; 3) that an accommodation "may be necessary"; 4) that the accommodation is reasonable; and 5) that the

defendant refused to make the necessary and reasonable accommodation upon request. *Howard v. HMK Holdings, LLC*, 988 F.3d 1185, 1189–90 (9th Cir. 2021) (quoting *Dubois*, 453 F.3d at 1179). In these cases, the existence of a tenancy was undisputed.

This case, by contrast, presents a threshold question of first impression in this circuit: Whether the FHAA applies at all to claims by plaintiffs who never themselves or through an associate entered into a lease or paid rent to the defendant landlord. The district court found the FHAA presupposed the existence of a valid tenancy as a necessary precondition to applying the statute's duty of reasonable accommodation and determined Salisbury failed to establish an express or implied landlord-tenant relationship under California law. We agree with the district court that Salisbury's claim falls outside the FHAA's domain, but for a different, yet allied reason. We hold that, as to occupants requesting accommodation, the FHAA's disability discrimination provisions apply only to cases involving a "sale" or "rental" for which the landlord accepted consideration in exchange for granting the right to occupy the premises.

A. The FHAA's "Sale" or "Rental" Requirement

"As usual, we start with the statutory text." *Tanzin v. Tanvir*, —— U.S. ——, 141 S. Ct. 486, 489, 208 L.Ed.2d 295 (2020); *United States ex rel. Hartpence v. Kinetic Concepts, Inc.*, 792 F.3d 1121, 1128 (9th Cir. 2015) (en banc). The FHAA makes it unlawful:

> To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap ... [and]
>
> To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap[.]

42 U.S.C. § 3604(f)(1)–(2). Discriminatory conduct includes "a refusal to permit ... reasonable modifications of existing premises," "a refusal to make reasonable accommodations ... necessary to afford such person equal opportunity to use and enjoy a dwelling," and "a failure to design and construct [covered multifamily] dwellings" in a manner accessible to the handicapped. *Id.* § 3604(f)(3)(A)–(C).

"It is a fundamental canon that where the 'statutory text is plain and unambiguous,' a court 'must apply the statute according to its terms.'" *Wheeler v. City of Santa Clara*, 894 F.3d 1046, 1054 (9th Cir. 2018) (quoting *Carcieri v. Salazar*, 555 U.S. 379, 387, 129 S.Ct. 1058, 172 L.Ed.2d 791 (2009)). The relevant operative language of the FHAA bars discrimination "*in* the sale or rental" of a dwelling, "*in* the terms, conditions, or privileges of sale or rental of a dwelling," and "*in* the provision of services or facilities in connection with such dwelling." 42 U.S.C. § 3604(f)(1)–(2) (emphases added). The preposition "in" limits the scope of the preceding term "[w]ithin the limits or bounds of" the "place or thing" that follows. Oxford English Dictionary (2d

ed. 1989); see also Simonoff v. Expedia, Inc., 643 F.3d 1202, 1206 (9th Cir. 2011) ("The word 'in' means to 'express[ ] relation of presence, existence, situation, inclusion ...; inclosed or surround by limits, as in a room.' " (citation omitted)). The prohibitions and duties enumerated in the following subsection, 42 U.S.C. § 3604(f)(3), modify the meaning of "[t]o discriminate" in the preceding subsections and are subject to the same "sale" or "rental" limitation.

By its plain language, therefore, the FHAA applies only in cases involving a "sale or "rental" of a dwelling to a buyer or tenant. There is no doubt that the FHAA bars a wide range of discrimination "against any person" and plays an important role in securing equal housing opportunity for handicapped persons. But the statute by its terms regulates only sellers and renters, not every owner of any roof and parcel in the land. When discerning the limits of a statute's domain, no less than when interpreting its substantive requirements, we must presume "the legislature says in a statute what it means and means in a statute what it says there." *Hartpence*, 792 F.3d at 1128 (*quoting BedRoc Ltd. v. United States*, 541 U.S. 176, 183, 124 S.Ct. 1587, 158 L.Ed.2d 338 (2004)); *see generally* Frank H. Easterbrook, Statutes' Domains, 50 U. Chi. L. Rev. 533 (1983).

Salisbury reads the FHAA quite differently. In his view, the FHAA covers "*any* person" denied a reasonable housing accommodation without regard for how that person came to occupy the premises in question. Salisbury argues we must set aside plain meaning in favor of a more expansive reading because courts are bound to give the FHAA a "generous

construction" that accomplishes the statute's underlying purpose. *United States v. Cal. Mobile Home Park Mgmt. Co.*, 29 F.3d 1413, 1416 (9th Cir. 1994) (*quoting Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 212, 93 S.Ct. 364, 34 L.Ed.2d 415 (1972)). We disagree with Salisbury's conception of the judicial power.

Federal judges undertake to apply the law as it is written, not to devise alternative language that might accomplish Congress's asserted purpose more effectively. "Our task is to apply the text, not to improve upon it." *Pavelic & LeFlore v. Marvel Ent. Grp.*, 493 U.S. 120, 126, 110 S.Ct. 456, 107 L.Ed.2d 438 (1989); *see also Mertens v. Hewitt Assocs.*, 508 U.S. 248, 261, 113 S.Ct. 2063, 124 L.Ed.2d 161 (1993) ("[V]ague notions of a statute's 'basic purpose' are [ ] inadequate to overcome the words of its text regarding the *specific* issue under consideration."). Settled principles of statutory interpretation place it beyond dispute that the "generous spirit" with which our court interprets the FHAA, *Mobile Home*, 29 F.3d at 1416, is not a license to ignore the text. Where, as here, the plain meaning of a statute indicates a particular result, the "judicial inquiry is complete." *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 462, 122 S.Ct. 941, 151 L.Ed.2d 908 (2002) (*quoting Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992)); *see also CVS Health Corp. v. Vividus, LLC*, 878 F.3d 703, 706 (9th Cir. 2017) ("If the language has a plain meaning or is unambiguous, the statutory interpretation inquiry ends there." (citing *Hartpence*, 792 F.3d at 1128)).

B. Meaning of "Rental" under 42 U.S.C. § 3602(e)

To determine whether Salisbury's claim involves a "rental" covered by the FHAA, we turn next to the proof required to establish a landlord-tenant relationship within the terms of the statute. The district court applied California law to reject the various state law theories under which Salisbury argued the City somehow inherited or acquiesced in an implied tenancy. We do not pass on the issues of California landlord-tenant law discussed in the decision below, however, because we conclude application of the FHAA does not turn on the law of the state in which the violation allegedly occurred. Instead, we apply a federal standard derived from the FHAA's text and "common-law foundations." *Bank of Am. Corp. v. City of Miami*, —— U.S. ——, 137 S. Ct. 1296, 1306, 197 L.Ed.2d 678 (2017) (quoting *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 457, 126 S.Ct. 1991, 164 L.Ed.2d 720 (2006)).

When interpreting a statutory term, we first give effect to statutory definitions and then to the term's "ordinary, contemporary, common meaning." *Perrin v. United States*, 444 U.S. 37, 42, 100 S.Ct. 311, 62 L.Ed.2d 199 (1979). The FHAA defines "[t]o rent" as "to lease, to sublease, to let and otherwise to grant *for a consideration* the right to occupy premises not owned by the occupant." 42 U.S.C. § 3602(e) (emphasis added). "[L]ease," "sublease," and "let" are not further defined by the statute, but each term had a settled ordinary meaning when Congress enacted the FHAA: "[a] contract between parties, by which the one conveys lands or tenements to the other ... usually in consideration of rent or

other periodical compensation." Lease, Oxford English Dictionary (2d ed. 1989); *see also* Let ("To grant the temporary possession and use of ... to another in consideration of rent or hire."); Sublease ("A lease granted by one who is a lessee or tenant."). The FHAA's definition of "[t]o rent" captures these meanings in the catch-all phrase "otherwise to grant *for a consideration* the right to occupy premises not owned by the occupant."

We hold the FHAA applies to rentals only when the landlord or his designee has received consideration in exchange for granting the right to occupy the premises. Consideration is not further defined by the statute, but this term, also, bore a well-established meaning among the states at the time of the FHAA's enactment. The most common form of consideration for a lease is periodic rent. *See* Consideration, Oxford English Dictionary (2d ed. 1989) ("Anything regarded as recompense or equivalent for what one does or undertakes for another's benefit."). The term is somewhat broader, however, and may include other forms of remuneration. *See, e.g., Dixon v. Hallmark Cos.*, 627 F.3d 849, 858 (11th Cir. 2010) (maintaining an apartment building may serve as consideration for the right to occupy an apartment). For our purposes, it suffices to say "consideration" as used in the FHAA means a performance consisting of "an act other than a promise, or a forbearance, or the creation, modification, or destruction of a legal relation." Restatement (Second) of Contracts § 71(3)(a)–(c); *accord* Consideration, Black's Law Dictionary (2d ed. 1910) ("Any benefit conferred, or agreed to be conferred, upon the

promisor ... to which the promisor [i]s not lawfully entitled, or any [new] prejudice suffered." (citing, *inter alia*, Cal. Civ. Code § 1605)).[4]

C. Application to Salisbury's Claim

The FHAA's predicate "sale" or "rental" requirement makes short work of Salisbury's refusal to accommodate claim. As the district court correctly noted, Salisbury conceded that he resided in Spot 57 despite never having entered into a lease to live in the Park and never having paid rent to the City. The record is also devoid of any evidence that Salisbury performed any act or forbearance other than the payment of rent capable of serving as consideration for a valid tenancy. Because Salisbury never provided consideration in exchange for the right to occupy Spot 57, the FHAA was inapplicable to his claim for relief; the City was not obligated to provide, offer, or discuss an accommodation.

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[4] Because the FHAA clearly requires "consideration" to establish a rental, we need not pass on whether the district court properly analyzed California property law in the decision below. We note, however, that the district court should not have applied contemporary state law without first considering whether a federal common law rule is appropriate in this context. Although "the existence of related federal statutes" does not "automatically show that Congress intended courts to create federal common-law rules," *Atherton v. FDIC*, 519 U.S. 213, 218, 117 S.Ct. 666, 136 L.Ed.2d 656 (1997), federal rules may be appropriate when the statutory scheme "evidences a distinct need for nationwide legal standards," *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 98, 111 S.Ct. 1711, 114 L.Ed.2d 152 (1991). Our court has previously noted that the nuances of contemporary state and local law may frustrate the nationwide objectives of federal antidiscrimination statutes like the FHAA. *See Wheeler*, 894 F.3d at 1056 (applying uniform federal common law rule to survivorship of FHAA claims).

Notably, Salisbury never claimed the City refused to offer him an equal opportunity to *apply* for a rental. The FHAA bars landlords from refusing to rent or sell an otherwise available premises based on the disability of the prospective renter or buyer prior to an exchange of consideration. *See* 42 U.S.C. § 3604(f)(1). Landlords may deny prospective tenants for failing to comply with generally applicable rules for obtaining a lease but must offer reasonable accommodations when necessary to allow a disabled person equal opportunity to reside in the premises. *Id.* § 3604(f)(3)(b); *see Giebeler v. M&B Assocs.*, 343 F.3d 1143, 1148–59 (9th Cir. 2003) (concluding a landlord violated the FHAA by refusing to make reasonable exception to a general rule prohibiting cosigners). By contrast here, Salisbury's accommodation claim presupposed a tenancy because he already occupied Spot 57 when he requested an accommodation. Salisbury never claimed the City refused to offer him a lease because of his disability. Neither is there any evidence in the record that Salisbury failed to complete an application because the City failed to accommodate aspects of his disability that prevented him from obtaining and filing the necessary paperwork.

Instead, Salisbury argues the district court's conclusion that Salisbury lacked a valid tenancy rests on a misapplication of California law. Citing several state cases, Salisbury argues the City inherited an implied tenancy from the Park's prior owners, and, in any event, was barred from treating him as a non-tenant by its failure to file an unlawful detainer proceeding and by operation of local rent control

laws. None of these state law issues are relevant to whether Salisbury provided the "consideration" required to establish that he had a "rental" under the FHAA. Rather, it is "consideration" as understood at the time of the FHAA's enactment that triggers application of the statute to a "rental." Salisbury failed to provide evidence of such consideration in this case.

The parties also dispute whether Salisbury's requested accommodation was "necessary" or "reasonable" under federal law. *See United States v. Cal. Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1381 (9th Cir. 1997) (suggesting parking accommodations for handicapped tenants may be "necessary" and "reasonable"); *cf. Howard*, 988 F.3d at 1190 ("Necessary suggests something that cannot be done without." (citation and quotation marks omitted)); *Giebeler*, 343 F.3d at 1157 ("[A]n accommodation is reasonable under the FHAA when it imposes no fundamental alteration in the nature of the program or undue financial or administrative burdens." (citation and quotation marks omitted)). Whether Salisbury's requested accommodation was "necessary" and "reasonable" is immaterial, however, because the City was not obligated to make any accommodations absent its acceptance of consideration from Salisbury in exchange for the right to occupy Spot 57.

Finally, Salisbury argues the City's repeated refusals to engage in an "interactive process" to ascertain the precise scope of the accommodation required to ensure equal opportunity for use and enjoyment of Spot 57 constituted standalone violations of the FHAA. The district court did not

separately address this argument. However, during the pendency of this appeal, our court has definitively rejected the "interactive process" theory as a separate, "standalone" font of FHAA liability. *Howard*, 988 F.3d at 1192 ("[W]e hold that there is no 'standalone' liability under the FHAA for a landlord's failure to engage in an 'interactive process' with a tenant."). In any event, Salisbury's "interactive process" theory would fail for the same reason as his primary failure to accommodate claim—in the absence of a tenancy supported by consideration, the City was not obligated by the FHAA to discuss the requested accommodation.[5]

IV. CONCLUSION

Salisbury failed to establish that the FHAA applies to his discrimination claim. We therefore **AFFIRM** the judgment of the district court.

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[5] Because the court affirms the judgment below, we have no occasion to rule on Salisbury's request that this case be remanded to a different district judge to preserve the appearance of justice. *See, e.g., Disability Rights Mont., Inc. v. Batista*, 930 F.3d 1090, 1100 (9th Cir. 2019). We note, however, that the hearing excerpts cited by Salisbury to buttress allegations of closedmindedness on the part of Judge Carney fall short of demonstrating impropriety by a country mile. Indeed, the record shows the contrary is true. Judge Carney was signally patient and thorough in his detailed perusal of Salisbury's claims.

APPENDIX C—Order and Amended Opinion in Case No. 20-55039, *Salisbury v. City of Santa Monica,* Amended June 7, 2021

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Lawrence Salibury, Plaintiff Appellant, v. City of Santa Monica, Defendant-Appellee.	No. 20-55039 D.C. No. 2:18-cv-08247-CJC-E ORDER AND AMENDED OPINION

On Appeal from the United States District Court
For the Central District of California
Cormac J. Carney, District Judge, Presiding

Argued and Submitted December 11, 2020
Pasadena, California
Filed April 16, 2021
Amended June 7, 2021

Before: Carlos T. Bea, Amul R. Thapar*, and Daniel P. Collins, Circuit Judges.

Order;
Opinion by Judge Bea

* The Honorable Amul R. Thapar, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

SUMMARY

Fair Housing

Affirming the district court's summary judgment in favor of the City of Santa Monica, the panel held that the Fair Housing Amendments Act of 1988 does not require landlords to accommodate the disability of an individual who neither entered into a lease nor paid rent in exchange for the right to occupy the premises.

Plaintiff lived with his father in a mobile home on land rented from the City of Santa Monica. Upon his father's death, plaintiff refused to vacate the mobile home park, and he asked the City to accommodate his disability by waiving park rules to allow him to store his vehicle immediately next to his mobile home.

The panel held that, by its plain language, the FHAA does not apply to claims by plaintiffs who never themselves or through an associate entered into a lease or paid rent to the defendant landlord. As to occupants requesting accommodation, the FHAA's disability discrimination provisions apply only to cases involving a "sale" or "rental" for which the landlord accepted consideration in exchange for granting the right to occupy the premises. Applying a federal standard, rather than California landlord-tenant law, the panel concluded that because plaintiff never provided consideration in exchange for the right to occupy a space in the mobile home park, the FHAA did not apply to

his claim for relief, and the City was not obligated to provide, offer, or discuss an accommodation.

COUNSEL

Frances M. Campbell (argued) and Nima Farahani, Campbell & Farahani LLP, Sherman Oaks, California, for Plaintiff-Appellant.

Michelle M. Hugard (argued), Deputy City Attorney; Lance S. Gams, Chief Deputy City Attorney; George S. Cardona, Interim City Attorney; City Attorney's Office, Santa Monica, California; for Defendant-Appellee.

ORDER

Lawrence Salisbury filed a timely petition for rehearing en banc on May 3, 2021 [Dkt. No. 36]. Judge Collins has voted to deny the petition, and Judge Bea and Judge Thapar so recommend. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on whether to rehear the matter en banc. See Fed. R. App. P. 35. The petition for rehearing en banc is DENIED, and no further petitions will be entertained.

The Opinion filed on April 16, 2021, is amended as follows:

On page 13, insert "in this case" between "because we conclude application of the FHAA" and "does not turn on the law of the state in which the violation allegedly occurred."

On page 15, note 4, replace "appropriate" in the second sentence with "required," "appropriate" in the third sentence with "applicable," and replace the final sentence with: "Our court has previously noted that the nuances of contemporary state and local law may frustrate the nationwide objectives of federal antidiscrimination statutes like the FHAA. See Wheeler, 894 F.3d at 1056 (applying a uniform federal common law rule to the survivorship of federal disability discrimination claims)."

OPINION

BEA, Circuit Judge:

Lawrence Salisbury suffers from serious spinal conditions that make it painful to walk.[1] Salisbury lived for many years with his elderly father, James, in a mobile home on rented land in the Mountain View Mobilehome Park ("the Park"), which the City of Santa Monica ("the City") purchased in 2000 to provide housing for low-income persons. It is undisputed that Salisbury never signed a lease for the land nor successfully paid rent to Park management,

[1] This case is an appeal from summary judgment. In reviewing a grant of summary judgment, "we assume the version of the material facts asserted by the non-moving party." Carrillo v. Cty. of Los Angeles, 798 F.3d 1210, 1218 (9th Cir. 2015) (quoting Mattos v. Agarano, 661 F.3d 433, 439 (9th Cir. 2011)).

or indeed, to anyone, in exchange for the right to reside in the Park.

Upon James's death, Salisbury refused repeated demands to vacate the Park and sued the City for wrongful eviction in California Superior Court based on several theories of state law implied tenancy. The state court granted summary judgment to the City after determining Salisbury failed to follow procedural claims requirements for suing a municipal defendant. Soon thereafter, Salisbury requested that the City accommodate his disability by waiving Park rules to allow him to store his vehicle immediately next to his mobile home rather than the parking area designated for the unit for which he claimed the right to inhabit. The City denied the request because Salisbury was not an authorized tenant of the Park. Salisbury then brought a claim of disability discrimination in federal court. The district court granted summary judgment to the City after concluding that, under California law, Salisbury was indeed not authorized to reside in the Park.

The question presented in this appeal is whether the Fair Housing Amendments Act of 1988 ("FHAA"), 42 U.S.C. § 3601 et seq., requires landlords to accommodate the disability of an individual who neither entered into a lease nor paid rent in exchange for the right to occupy the premises. We conclude the FHAA applies to rentals only when the rental arrangement is supported by adequate consideration and therefore affirm the judgment of the district court.

I. BACKGROUND

This housing dispute dates back to 1974, when James purchased a mobile home and signed a month-to-month lease for Spot 57 in the Park, then under private ownership. The original lease listed James and Salisbury's older brother, Russell, as the only adult occupants of the mobile home. Salisbury and his younger sister, Monique, both teenagers at the time, moved in with James and Russell soon after execution of the lease. Salisbury maintains that he resided continuously in the Park from the 1970s until the present day, decades after Russell and Monique moved out of the mobile home.

It is undisputed, however, that Salisbury's name never appeared on any leases signed by his father for residency in the Park. In 1988, James signed a new month-to-month lease that expressly prohibited subletting or assignment without the Park's consent and stated that he was the only occupant of Spot 57. In 1990, James signed a resident update form confirming he was the only resident of Spot 57, aside from a cat named Spike. In 2000, the City purchased the Park, classified it as an affordable housing project, and imposed new maximum income and household size restrictions for Park tenants. Existing tenants were exempted from the maximum income restriction on the condition that they sign an estoppel certificate stating the number of persons in their household and promise thereafter not to increase the household's size.[2] James signed an

[2] Estoppel certificates are commonly used by the buyer of a commercial property with residential tenants to confirm the seller's representations

estoppel certificate declaring, under penalty of perjury, that he was the only resident of Spot 57. In 2005, James recertified his compliance with the household size restriction by declaring that he continued to live alone.

It is also undisputed that James paid rent to Park management exclusively in his own name before and after the City's acquisition of the Park. In the mid-2000s, James asked the City to include Russell's initials on several rent invoices for unknown reasons. In addition, the City agreed to include Salisbury's initials on several rent invoices sent to Spot 57 from 2008 to 2010. Notwithstanding the inclusion of their initials on rent invoices, neither Salisbury nor Russell ever paid rent on James's behalf.

The City first contested Salisbury's presence in 2011 when other residents complained that Salisbury had violated Park rules by bringing a large dog into the Park. James told the City's property managers that Salisbury had lived in the Park "since 1975" and that the dog was a service animal. The City noted it had no record of Salisbury's residence in that Park and instructed Salisbury to apply for residence either as an income-restricted tenant or as a live-in caregiver for James. Salisbury submitted an incomplete application for residency and ignored the City's request to

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as to tenancies and to "serve as a record of each tenant's statements or representations in case disputes should arise between the purchaser, as the new owner of the property, and a particular tenant." Miller & Starr, Cal. Real Estate Forms § 1:64 (2d ed. 2020 update). The estoppel certificate prevents the tenant from later asserting facts or claims different from those recited in the certificate based on the reliance of the buyer on the certification and the representations made therein.

provide missing financial information required to determine whether Salisbury qualified for residency in the Park as a low-income tenant.[3] Meanwhile, Salisbury acquired title to James's mobile home without notifying the City (in its capacity as the owner of the land) as required to initiate a new lease under Park rules and California's Mobilehome Residency Law, Cal. Civ. Code § 798.74.

James died in April 2013. The City subsequently refused to accept rent checks drawn by Salisbury against James's bank account and repeatedly demanded Salisbury vacate Spot 57 within sixty days. Salisbury sued the City in California Superior Court in July 2013 for wrongful eviction and related tort and contract theories. As noted above, the court granted summary judgment for the City in January 2015 after concluding Salisbury failed to comply with procedural requirements for claims against a municipal defendant.

Thereafter, the City renewed its demand that Salisbury vacate Spot 57 and began to cite Salisbury for violating traffic rules by improperly parking his personal vehicle on neighboring mobile home sites and in common thoroughfares. Under Park rules, all personal vehicles must be registered with management and parked in assigned spaces. The City attempted to enforce these rules by blocking

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[3] Salisbury does not claim that the City discriminated against him based on disability when it required him to complete the standard residential application process as a condition of being offered a lease for Spot 57. Nor does Salisbury claim his disability prevented him from completing the application, or that the City refused to grant an accommodation that would have allowed him to complete the application.

access to vacant lots with bollards but never towed Salisbury's vehicle nor collected any of the fines attached to the citations.

Salisbury responded to the City's renewed order to vacate in August 2015 by requesting a parking accommodation under the FHAA. In a brief letter, Salisbury informed the City he suffered from spondylolisthesis, spinal osteoarthritis, and disc degenerative disease, all of which made it painful to walk. Accordingly, Salisbury requested the City "remove the barriers to the space next to my unit ... or that you remove the barriers that have been put in front of my trailer [in the thoroughfare] to prevent me from parking there." The City ignored Salisbury's initial request and subsequent requests made as late as December 2016. Salisbury continued to receive citations until July 2018, when the City sold the Park to a private holding company. The Park's new owner has executed a lease with Salisbury, accepted payment of rent, and granted his requested parking accommodation.

This lawsuit began in September 2018 when Salisbury sued the City and related entities under the FHAA in the U.S. District Court for the District of Central California. The complaint alleged that the City discriminated against Salisbury based on disability by refusing to grant the requested parking accommodation and sought compensatory damages, punitive damages, equitable relief, and attorneys' fees and costs. See 42 U.S.C. §§ 3604(f)(2)–(3), 3613(a), (c).

Salisbury has never claimed that he entered into a lease with the City or that the City accepted rent from him prior

to the sale of the Park. Instead, Salisbury has maintained that California law somehow established a landlord-tenant relationship between himself and the City prior to the accommodation request in one of three ways. First, because the Park's prior owners had consented to his residency in the Park as a teenager in the 1970s; second, because the City's failure to initiate unlawful detainer proceedings after discovering Salisbury lived in the Park in 2011 created a tenancy at will; or third, because California's Mobilehome Residency Law barred the City from treating Salisbury as a non-tenant because the City failed to offer him a lease when he acquired title to James's mobile home in 2012. See Cal. Civ. Code §§ 798.74(c), 798.75(d).

After several hearings and the completion of discovery, the district court granted the City's motion for summary judgment. The court began by holding that under the FHAA, "[a] landlord has no obligation to provide reasonable accommodations to a resident [who] illegally occupies a dwelling." To prove the City violated its duty to accommodate under the FHAA, therefore, Salisbury bore the burden of proving he lawfully resided in the Park at the time of the accommodation request. Applying California law, the court concluded Salisbury presented insufficient evidence to establish a landlord-tenant relationship with the City under any of the state law theories noted above.

Salisbury timely appealed, arguing the FHAA prohibits discrimination against "any person" without regard to the existence of a tenancy, that the district court ignored evidence creating triable issues of fact as to the formation of

an implied tenancy under California law, and that the City's repeated refusals to engage in an "interactive process" after the initial request for accommodation were standalone violations of the FHAA. Jurisdiction is proper. *See* 28 U.S.C. § 1291.

II. STANDARD OF REVIEW

We review grants of summary judgment de novo. *Dubois v. Ass'n of Apt. Owners of 2987 Kalakaua*, 453 F.3d 1175, 1178 (9th Cir. 2006). Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

III. DISCUSSION

Salisbury brought his disability discrimination claim under 42 U.S.C. § 3604(f)(2) and (f)(3)(B), which prohibit "a refusal to make reasonable accommodations ... when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." We have previously interpreted this language to determine whether a landlord subject to the FHAA's duty of reasonable accommodation fell short of his statutory obligations. In so doing, we have held a failure-to-accommodate plaintiff must show: 1) the existence of a covered handicap; 2) the defendant's knowledge or constructive knowledge of that handicap; 3) that an accommodation "may be necessary"; 4) that the accommodation is reasonable; and 5) that the defendant refused to make the necessary and reasonable accommodation upon request. *Howard v. HMK Holdings,*

LLC, 988 F.3d 1185, 1189–90 (9th Cir. 2021) (quoting *Dubois*, 453 F.3d at 1179). In these cases, the existence of a tenancy was undisputed.

This case, by contrast, presents a threshold question of first impression in this circuit: Whether the FHAA applies at all to claims by plaintiffs who never themselves or through an associate entered into a lease or paid rent to the defendant landlord. The district court found the FHAA presupposed the existence of a valid tenancy as a necessary precondition to applying the statute's duty of reasonable accommodation and determined Salisbury failed to establish an express or implied landlord-tenant relationship under California law. We agree with the district court that Salisbury's claim falls outside the FHAA's domain, but for a different, yet allied reason. We hold that, as to occupants requesting accommodation, the FHAA's disability discrimination provisions apply only to cases involving a "sale" or "rental" for which the landlord accepted consideration in exchange for granting the right to occupy the premises.

A. The FHAA's "Sale" or "Rental" Requirement

"As usual, we start with the statutory text." *Tanzin v. Tanvir*, —— U.S. ——, 141 S. Ct. 486, 489, 208 L.Ed.2d 295 (2020); *United States ex rel. Hartpence v. Kinetic Concepts, Inc.*, 792 F.3d 1121, 1128 (9th Cir. 2015) (en banc). The FHAA makes it unlawful:

> To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap ... [and]
>
> To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap[.]

42 U.S.C. § 3604(f)(1)–(2). Discriminatory conduct includes "a refusal to permit ... reasonable modifications of existing premises," "a refusal to make reasonable accommodations ... necessary to afford such person equal opportunity to use and enjoy a dwelling," and "a failure to design and construct [covered multifamily] dwellings" in a manner accessible to the handicapped. *Id.* § 3604(f)(3)(A)–(C).

"It is a fundamental canon that where the 'statutory text is plain and unambiguous,' a court 'must apply the statute according to its terms.'" *Wheeler v. City of Santa Clara*, 894 F.3d 1046, 1054 (9th Cir. 2018) (quoting *Carcieri v. Salazar*, 555 U.S. 379, 387, 129 S.Ct. 1058, 172 L.Ed.2d 791 (2009)). The relevant operative language of the FHAA bars discrimination "*in* the sale or rental" of a dwelling, "*in* the terms, conditions, or privileges of sale or rental of a dwelling," and "*in* the provision of services or facilities in connection with such dwelling." 42 U.S.C. § 3604(f)(1)–(2) (emphases added). The preposition "in" limits the scope of the preceding term "[w]ithin the limits or bounds of" the "place or thing" that follows. Oxford English Dictionary (2d

ed. 1989); see also Simonoff v. Expedia, Inc., 643 F.3d 1202, 1206 (9th Cir. 2011) ("The word 'in' means to 'express[ ] relation of presence, existence, situation, inclusion ...; inclosed or surround by limits, as in a room.' " (citation omitted)). The prohibitions and duties enumerated in the following subsection, 42 U.S.C. § 3604(f)(3), modify the meaning of "[t]o discriminate" in the preceding subsections and are subject to the same "sale" or "rental" limitation.

By its plain language, therefore, the FHAA applies only in cases involving a "sale or "rental" of a dwelling to a buyer or tenant. There is no doubt that the FHAA bars a wide range of discrimination "against any person" and plays an important role in securing equal housing opportunity for handicapped persons. But the statute by its terms regulates only sellers and renters, not every owner of any roof and parcel in the land. When discerning the limits of a statute's domain, no less than when interpreting its substantive requirements, we must presume "the legislature says in a statute what it means and means in a statute what it says there." *Hartpence*, 792 F.3d at 1128 (*quoting BedRoc Ltd. v. United States*, 541 U.S. 176, 183, 124 S.Ct. 1587, 158 L.Ed.2d 338 (2004)); *see generally* Frank H. Easterbrook, Statutes' Domains, 50 U. Chi. L. Rev. 533 (1983).

Salisbury reads the FHAA quite differently. In his view, the FHAA covers "*any* person" denied a reasonable housing accommodation without regard for how that person came to occupy the premises in question. Salisbury argues we must set aside plain meaning in favor of a more expansive reading because courts are bound to give the FHAA a "generous

construction" that accomplishes the statute's underlying purpose. *United States v. Cal. Mobile Home Park Mgmt. Co.*, 29 F.3d 1413, 1416 (9th Cir. 1994) (*quoting Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 212, 93 S.Ct. 364, 34 L.Ed.2d 415 (1972)). We disagree with Salisbury's conception of the judicial power.

Federal judges undertake to apply the law as it is written, not to devise alternative language that might accomplish Congress's asserted purpose more effectively. "Our task is to apply the text, not to improve upon it." *Pavelic & LeFlore v. Marvel Ent. Grp.*, 493 U.S. 120, 126, 110 S.Ct. 456, 107 L.Ed.2d 438 (1989); *see also Mertens v. Hewitt Assocs.*, 508 U.S. 248, 261, 113 S.Ct. 2063, 124 L.Ed.2d 161 (1993) ("[V]ague notions of a statute's 'basic purpose' are [ ] inadequate to overcome the words of its text regarding the *specific* issue under consideration."). Settled principles of statutory interpretation place it beyond dispute that the "generous spirit" with which our court interprets the FHAA, *Mobile Home*, 29 F.3d at 1416, is not a license to ignore the text. Where, as here, the plain meaning of a statute indicates a particular result, the "judicial inquiry is complete." *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 462, 122 S.Ct. 941, 151 L.Ed.2d 908 (2002) (*quoting Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992)); *see also CVS Health Corp. v. Vividus, LLC*, 878 F.3d 703, 706 (9th Cir. 2017) ("If the language has a plain meaning or is unambiguous, the statutory interpretation inquiry ends there." (citing *Hartpence*, 792 F.3d at 1128)).

B. Meaning of "Rental" under 42 U.S.C. § 3602(e)

To determine whether Salisbury's claim involves a "rental" covered by the FHAA, we turn next to the proof required to establish a landlord-tenant relationship within the terms of the statute. The district court applied California law to reject the various state law theories under which Salisbury argued the City somehow inherited or acquiesced in an implied tenancy. We do not pass on the issues of California landlord-tenant law discussed in the decision below, however, because we conclude application of the FHAA in this case does not turn on the law of the state in which the violation allegedly occurred. Instead, we apply a federal standard derived from the FHAA's text and "common-law foundations." *Bank of Am. Corp. v. City of Miami*, —— U.S. ——, 137 S. Ct. 1296, 1306, 197 L.Ed.2d 678 (2017) (quoting *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 457, 126 S.Ct. 1991, 164 L.Ed.2d 720 (2006)).

When interpreting a statutory term, we first give effect to statutory definitions and then to the term's "ordinary, contemporary, common meaning." *Perrin v. United States*, 444 U.S. 37, 42, 100 S.Ct. 311, 62 L.Ed.2d 199 (1979). The FHAA defines "[t]o rent" as "to lease, to sublease, to let and otherwise to grant *for a consideration* the right to occupy premises not owned by the occupant." 42 U.S.C. § 3602(e) (emphasis added). "[L]ease," "sublease," and "let" are not further defined by the statute, but each term had a settled ordinary meaning when Congress enacted the FHAA: "[a] contract between parties, by which the one conveys lands or tenements to the other ... usually in consideration of rent or

other periodical compensation." Lease, Oxford English Dictionary (2d ed. 1989); *see also* Let ("To grant the temporary possession and use of ... to another in consideration of rent or hire."); Sublease ("A lease granted by one who is a lessee or tenant."). The FHAA's definition of "[t]o rent" captures these meanings in the catch-all phrase "otherwise to grant *for a consideration* the right to occupy premises not owned by the occupant."

We hold the FHAA applies to rentals only when the landlord or his designee has received consideration in exchange for granting the right to occupy the premises. Consideration is not further defined by the statute, but this term, also, bore a well-established meaning among the states at the time of the FHAA's enactment. The most common form of consideration for a lease is periodic rent. *See* Consideration, Oxford English Dictionary (2d ed. 1989) ("Anything regarded as recompense or equivalent for what one does or undertakes for another's benefit."). The term is somewhat broader, however, and may include other forms of remuneration. *See, e.g., Dixon v. Hallmark Cos.*, 627 F.3d 849, 858 (11th Cir. 2010) (maintaining an apartment building may serve as consideration for the right to occupy an apartment). For our purposes, it suffices to say "consideration" as used in the FHAA means a performance consisting of "an act other than a promise, or a forbearance, or the creation, modification, or destruction of a legal relation." Restatement (Second) of Contracts § 71(3)(a)–(c); *accord* Consideration, Black's Law Dictionary (2d ed. 1910) ("Any benefit conferred, or agreed to be conferred, upon the

promisor ... to which the promisor [i]s not lawfully entitled, or any [new] prejudice suffered." (citing, *inter alia*, Cal. Civ. Code § 1605)).[4]

C. Application to Salisbury's Claim

The FHAA's predicate "sale" or "rental" requirement makes short work of Salisbury's refusal to accommodate claim. As the district court correctly noted, Salisbury conceded that he resided in Spot 57 despite never having entered into a lease to live in the Park and never having paid rent to the City. The record is also devoid of any evidence that Salisbury performed any act or forbearance other than the payment of rent capable of serving as consideration for a valid tenancy. Because Salisbury never provided consideration in exchange for the right to occupy Spot 57, the FHAA was inapplicable to his claim for relief; the City was not obligated to provide, offer, or discuss an accommodation.

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[4] Because the FHAA clearly requires "consideration" to establish a rental, we need not pass on whether the district court properly analyzed California property law in the decision below. We note, however, that the district court should not have applied contemporary state law without first considering whether a federal common law rule is required in this context. Although "the existence of related federal statutes" does not "automatically show that Congress intended courts to create federal common-law rules," *Atherton v. FDIC*, 519 U.S. 213, 218, 117 S.Ct. 666, 136 L.Ed.2d 656 (1997), federal rules may be applicable when the statutory scheme "evidences a distinct need for nationwide legal standards," *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 98, 111 S.Ct. 1711, 114 L.Ed.2d 152 (1991). Our court has previously noted that the nuances of contemporary state and local law may frustrate the nationwide objectives of the FHAA. *See Wheeler*, 894 F.3d at 1056 (applying uniform federal common law rule to the survivorship of federal disability discrimination claims).

Notably, Salisbury never claimed the City refused to offer him an equal opportunity to *apply* for a rental. The FHAA bars landlords from refusing to rent or sell an otherwise available premises based on the disability of the prospective renter or buyer prior to an exchange of consideration. *See* 42 U.S.C. § 3604(f)(1). Landlords may deny prospective tenants for failing to comply with generally applicable rules for obtaining a lease but must offer reasonable accommodations when necessary to allow a disabled person equal opportunity to reside in the premises. *Id.* § 3604(f)(3)(b); *see Giebeler v. M&B Assocs.*, 343 F.3d 1143, 1148–59 (9th Cir. 2003) (concluding a landlord violated the FHAA by refusing to make reasonable exception to a general rule prohibiting cosigners). By contrast here, Salisbury's accommodation claim presupposed a tenancy because he already occupied Spot 57 when he requested an accommodation. Salisbury never claimed the City refused to offer him a lease because of his disability. Neither is there any evidence in the record that Salisbury failed to complete an application because the City failed to accommodate aspects of his disability that prevented him from obtaining and filing the necessary paperwork.

Instead, Salisbury argues the district court's conclusion that Salisbury lacked a valid tenancy rests on a misapplication of California law. Citing several state cases, Salisbury argues the City inherited an implied tenancy from the Park's prior owners, and, in any event, was barred from treating him as a non-tenant by its failure to file an unlawful detainer proceeding and by operation of local rent control

laws. None of these state law issues are relevant to whether Salisbury provided the "consideration" required to establish that he had a "rental" under the FHAA. Rather, it is "consideration" as understood at the time of the FHAA's enactment that triggers application of the statute to a "rental." Salisbury failed to provide evidence of such consideration in this case.

The parties also dispute whether Salisbury's requested accommodation was "necessary" or "reasonable" under federal law. *See United States v. Cal. Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1381 (9th Cir. 1997) (suggesting parking accommodations for handicapped tenants may be "necessary" and "reasonable"); *cf. Howard*, 988 F.3d at 1190 ("Necessary suggests something that cannot be done without." (citation and quotation marks omitted)); *Giebeler*, 343 F.3d at 1157 ("[A]n accommodation is reasonable under the FHAA when it imposes no fundamental alteration in the nature of the program or undue financial or administrative burdens." (citation and quotation marks omitted)). Whether Salisbury's requested accommodation was "necessary" and "reasonable" is immaterial, however, because the City was not obligated to make any accommodations absent its acceptance of consideration from Salisbury in exchange for the right to occupy Spot 57.

Finally, Salisbury argues the City's repeated refusals to engage in an "interactive process" to ascertain the precise scope of the accommodation required to ensure equal opportunity for use and enjoyment of Spot 57 constituted standalone violations of the FHAA. The district court did not

separately address this argument. However, during the pendency of this appeal, our court has definitively rejected the "interactive process" theory as a separate, "standalone" font of FHAA liability. *Howard*, 988 F.3d at 1192 ("[W]e hold that there is no 'standalone' liability under the FHAA for a landlord's failure to engage in an 'interactive process' with a tenant."). In any event, Salisbury's "interactive process" theory would fail for the same reason as his primary failure to accommodate claim—in the absence of a tenancy supported by consideration, the City was not obligated by the FHAA to discuss the requested accommodation.[5]

IV. CONCLUSION

Salisbury failed to establish that the FHAA applies to his discrimination claim. We therefore **AFFIRM** the judgment of the district court.

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[5] Because the court affirms the judgment below, we have no occasion to rule on Salisbury's request that this case be remanded to a different district judge to preserve the appearance of justice. *See, e.g., Disability Rights Mont., Inc. v. Batista*, 930 F.3d 1090, 1100 (9th Cir. 2019). We note, however, that the hearing excerpts cited by Salisbury to buttress allegations of closedmindedness on the part of Judge Carney fall short of demonstrating impropriety by a country mile. Indeed, the record shows the contrary is true. Judge Carney was signally patient and thorough in his detailed perusal of Salisbury's claims.