APPENDIX

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APPENDIX A

65 F.4th 349

United States Court of Appeals, Eighth Circuit.

Suellen KLOSSNER, Plaintiff - Appellee,
v.
IADU TABLE MOUND MHP, LLC, Defendant - Appellant,
Impact MHC Management, LLC, Defendant - Appellant.

United States; Disability Rights Iowa; Lawyers' Committee for Civil Rights Under Law; MHAction, Amici on Behalf of Appellee.

Suellen Klossner, Plaintiff - Appellant,
v.
IADU Table Mound MHP, LLC, Defendant - Appellee,
Impact MHC Management, LLC, Defendant - Appellee.

No. 21-3503, No. 21-3544
Submitted: September 21, 2022
Filed: April 10, 2023

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Appellant, Defendant-Appellee Impact MHC Management, LLC.

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Before COLLOTON, WOLLMAN, and STRAS, Circuit Judges.

COLLOTON, Circuit Judge.

This appeal concerns the scope of a landlord's duty under the Fair Housing Amendments Act of 1988 to make "reasonable accommodations" for the "handicap" of a tenant. The question is whether that duty extends to "accommodating" a tenant's lack of income by accepting a government housing voucher

that the landlord otherwise would not accept from a low-income tenant. We conclude that while the statute requires a landlord to make reasonable accommodations that directly ameliorate the handicap of a tenant, the obligation does not extend to alleviating a tenant's lack of money to pay rent. The district court believed that the landlord's position was "facially appealing," but thought itself constrained by a decision of the Supreme Court on a different issue to enter an injunction in favor of the tenant. We respectfully disagree, and therefore vacate the injunction.

I.

Suellen Klossner has lived in a mobile-home park in Dubuque, Iowa, since 2009. The park is owned by IADU Table Mound MHP, LLC, which is controlled by Impact MHC Management, LLC. Tenants in the park pay rent for a lot where they can situate a mobile home. Klossner receives income from government programs that she used to pay her rent for ten years. She is unable to work full-time due to psychiatric and physical disabilities.

In 2019, the City of Dubuque approved a measure allowing the local public housing authority to provide residents of mobile-home parks with housing choice vouchers that could be used to supplement their rent payments. Under this voucher program, the federal government provides funds to local public housing agencies, which in turn may distribute them to low-income tenants. As the rent on Klossner's lot increased, she received a voucher and sought to use it to supplement her rent payments, but the companies declined to accept the voucher.

The companies explained that federal law does not require landlords to accept housing choice vouchers, and that Impact declines to do so except in limited circumstances: where state law requires acceptance or where the company has purchased property where a prior owner accepted vouchers from a holdover tenant—a total of approximately forty tenants out of more than twenty thousand under Impact's management. Impact cited the administrative burdens of accepting vouchers, including the obligation to sign a housing assistance payment contract with restrictions on rent amounts and lease terminations, the requirement to meet certain housing quality standards, and the inefficiencies of keeping records and collecting rent when multiple payers are involved.

Klossner sued Impact and IADU Table Mound, alleging that the companies violated the Fair Housing Amendments Act by refusing to accept her voucher. Her theory was that she is a person with a "handicap" under the FHAA, and that the law required the companies to accept the housing voucher as a "reasonable accommodation" that was "necessary" to afford her "equal opportunity to use and enjoy a dwelling." *See* 42 U.S.C. § 3604(f)(3)(B). Klossner requested an injunction requiring the companies to accept her housing choice voucher, and she sought damages for alleged emotional distress. Klossner also brought claims under state law.

The case proceeded to an expedited bench trial on the federal claim only, with the state law claims to be resolved at a later time. The district court ruled that the companies' refusal to accept Klossner's housing voucher violated the FHAA. The court con-

cluded that where a tenant's disability prevents her from working enough to afford rent, the statute may require a landlord to accept a housing choice voucher as a "reasonable accommodation." The court found that if Klossner were not disabled, then she "could work and earn enough money to pay her rent." The court further determined that Klossner's requested accommodation was reasonable, because it would not impose an undue financial or administrative hardship on the companies or fundamentally alter their policy against accepting housing vouchers except in limited circumstances.

As a remedy, the court granted injunctive relief requested by Klossner, and ordered Impact and IADU Table Mound to accept Klossner's housing choice voucher. The court declined to impose damages, explaining that "the law in this area is far from clear," that the companies acted in good faith, and that the companies reached an agreement with Klossner about rent pending the trial.

Impact and IADU Table Mound appeal the district court's order requiring them to accept Klossner's housing voucher. Klossner cross-appeals the district court's refusal to award damages. We have jurisdiction over the companies' appeal from an interlocutory order of the district court granting an injunction. 28 U.S.C. § 1292(a)(1); R. Doc. 86, at 23-24; *see Williams v. St. Louis Diecasting Corp.*, 611 F.2d 1223, 1224 (8th Cir. 1979).

II.

The FHAA makes it unlawful to discriminate in housing or make unavailable a dwelling "because of a handicap of [a] buyer or renter." 42 U.S.C. §

3604(f)(1)(A). "Handicap" is a "physical or mental impairment which substantially limits one or more of such person's major life activities." *Id.* § 3602(h)(1). And "major life activities" means "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working." 24 C.F.R. § 100.201(b). The statute prohibits "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(1)(B). Other statutes use the term "disability" rather than "handicap," but as this case involves the FHAA, we will employ the term used in the statute at issue.

On appeal, the companies argue that although the FHAA calls for reasonable accommodations that directly ameliorate the effect of a handicap, the statute does not require a landlord to accommodate a tenant's economic circumstances by accepting housing vouchers. Two leading cases support that view.

In *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293 (2d Cir. 1998), tenants asked a landlord to accept government housing certificates to assist with rent as a reasonable accommodation for their handicaps under the FHAA. The landlord refused, and the Second Circuit held that the FHAA did not require the landlord to accept the certificates.

The court reasoned that "the duty to make reasonable accommodations is framed by the nature of the particular handicap," and that illustrative accommodations included providing a preferred park-

ing space for tenants with difficulty walking, or lifting a no-pets rule to allow the use of a service dog by a blind person. *Id.* at 301. The court concluded, however, that the tenants in *Salute* sought an accommodation to remedy economic discrimination "that is practiced without regard to handicap," and that the accommodation sought was not "necessary" to afford handicapped persons an "equal opportunity" to use and enjoy a dwelling. *Id.* at 302. The court emphasized that the FHAA "does not elevate the rights of the handicapped poor over the non-handicapped poor," and that "economic discrimination" is "not cognizable as a failure to make a reasonable accommodation" under the FHAA. *Id.*

In *Hemisphere Building Co. v. Village of Richton Park*, 171 F.3d 437 (7th Cir. 1999), a developer of a community designed for tenants using wheelchairs asked a municipality to grant a zoning variance to allow the construction of more structures on a plot of land. The developer argued that the proposed variance was necessary as a "reasonable accommodation" under the FHAA because it would reduce the cost of each housing unit, and thereby alleviate the economic impact of handicaps on prospective tenants who needed inexpensive housing. The village refused to grant a zoning variance, and the developer sued.

The Seventh Circuit concluded that the developer's position would lead to absurd results and rejected it. The court pointed out that if the reasonable accommodation provision required consideration of a tenant's financial situation, then the statute would allow developers not only to ignore zoning laws, but also to obtain a "reasonable accommodation" that suspended a local building code that increased the

cost of construction, or a minimum wage law, or regulations for the safety of construction workers. *Id.* at 440.

The statute did not call for these results, the court explained, because the duty of "reasonable accommodation" is limited to modifying rules or policies that hurt handicapped people *by reason of their handicap*, rather than by virtue of circumstances that they share with others, such as limited economic means. *Id.* The court believed, for example, that if the statute meant that a landlord or developer must accommodate poverty caused by handicaps, then it would allow handicapped persons "to claim a real estate tax rebate." *Id.* at 441. The court viewed this as a "radical result" that required "something more than a spinning out of the logical implications of 'reasonable accommodation.'" *Id.*

We conclude that the reasoning of these decisions is sound, and that it forecloses Klossner's claim here. The term "reasonable accommodation" is not defined in the statute, but it was adopted against the backdrop of a predecessor statute, and must be viewed in the context of a law that forbids discrimination "because of a handicap."

The predecessor statute, the Rehabilitation Act of 1973, provided that no otherwise qualified handicapped individual shall be subjected to discrimination under any federal program solely by reason of the person's handicap. 29 U.S.C. § 794 (1973) (current version at 29 U.S.C. § 794). By regulation, a recipient of federal funds was required to make "reasonable accommodation" to the known physical or mental limitations of an otherwise qualified handicapped applicant. 45 C.F.R. § 84.12(a). Congress

used equivalent statutory language in the anti-discrimination provision of the FHAA in 1988, and Congress also adopted the regulatory language of "reasonable accommodation." 42 U.S.C. § 3604(f). "[W]hen Congress uses the same language in two statutes having similar purposes, particularly when one is enacted shortly after the other, it is appropriate to presume that Congress intended that text to have the same meaning in both statutes." *Smith v. City of Jackson*, 544 U.S. 228, 233, 125 S.Ct. 1536, 161 L.Ed.2d 410 (2005) (plurality opinion); *see Northcross v. Bd. of Educ.*, 412 U.S. 427, 428, 93 S.Ct. 2201, 37 L.Ed.2d 48 (1973) (per curiam). Other decisions have recognized, therefore, that the term "[r]easonable accommodation is borrowed from case law interpreting the Rehabilitation Act of 1973." *City of Edmonds v. Wash. State Bldg. Code Council*, 18 F.3d 802, 806 (9th Cir. 1994); *see also* H.R. Rep. No. 100-711, at 25 (1988).

Under the Rehabilitation Act, reasonable accommodation was defined to include (1) making facilities accessible to and usable by handicapped persons, and (2) "job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions." 45 C.F.R. § 84.12(b). Judicial decisions preceding enactment of the FHAA established that reasonable accommodations could include such actions as providing an oral aptitude test in place of a written examination for a dyslexic job applicant, *Stutts v. Freeman*, 694 F.2d 666, 668-69 (11th Cir. 1983), allowing a teacher with tuberculosis to assume a job that did not threaten the health of susceptible students, *Arline v. Sch. Bd.*

of Nassau Cnty., 772 F.2d 759, 765 (11th Cir. 1985), or providing additional training, staff assistance, or scheduling flexibility for an employee with epilepsy, *Reynolds v. Brock*, 815 F.2d 571, 572 (9th Cir. 1987).

Consistent with the regulation promulgated under the Rehabilitation Act, these decisions called for accommodations that provided what one court later described as the "direct amelioration of a disability's effect." *Bryant Woods Inn, Inc. v. Howard Cnty.*, 124 F.3d 597, 604 (4th Cir. 1997). Nothing in the law suggested that the duty of "reasonable accommodation" extended to the dissimilar action of alleviating downstream economic effects of a handicap. When Congress adopted the FHAA in 1988, therefore, it acted against a background understanding that the concept of a "reasonable accommodation" was so limited.

Regulations adopted under the FHAA illustrate the same point: a landlord must make an exception to a no-pets policy for a blind person who requires assistance of a seeing eye dog; an apartment manager must modify a "first come first served" policy for allocating parking spaces to accommodate a tenant who is mobility impaired. 24 C.F.R. § 100.204(b). A landlord's duty to make reasonable accommodations extends to direct amelioration of handicaps, but does not encompass an obligation to accommodate a tenant's "shortage of money," *Salute*, 136 F.3d at 302, and the far-reaching implications that such an obligation would entail. *Hemisphere*, 171 F.3d at 440-41. Indeed, if Klossner's position were accepted, then we see no principled reason why a landlord could not be required in the name of "reasonable accommodation" to reduce monthly rent for an impecunious disabled

person. Accepting payment of five fewer dollars per month is no more "fundamental alteration" of a landlord's business than is assuming the cost and administrative changes that come with accepting government housing vouchers.

The district court found the reasoning of *Salute* "facially appealing, especially when it involves the voluntary housing voucher program," but concluded that the decision could not be reconciled with the Supreme Court's later decision in *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 122 S.Ct. 1516, 152 L.Ed.2d 589 (2002). We conclude that *Barnett* addressed a different question and does not supersede the holdings in *Hemisphere* and *Salute*.

Barnett concerned a different statute, the Americans with Disabilities Act, and its prohibition on discrimination in employment. The ADA dictates that an employer may not "discriminate against a qualified individual" with a disability, 42 U.S.C. § 12112(a), and defines a "qualified" person as one who, "with or without reasonable accommodation," can perform the essential functions of the relevant job, *id.* § 12111(8). The statute further provides that "discrimination" includes "not making reasonable accommodations," unless the accommodation would impose an undue hardship on the employer. *Id.* § 12112(b)(5)(A).

Barnett held that the duty of reasonable accommodation under the ADA may require an employer to make an exception to a seniority rule that ordinarily is used to allocate employment opportunities. 535 U.S. at 406, 122 S.Ct. 1516. In that case, a disabled worker injured his back while working in a cargo-handling position, and he sought a less physically

demanding job in the mailroom. When he learned that two employees senior to him intended to seek the mailroom position, the disabled worker argued that the employer was required to make an exception to the seniority rule as a reasonable accommodation.

The Court rejected the company's position that there was no duty to consider an exception to a "disability-neutral" seniority rule, and that an employer has no obligation to prefer applicants with disabilities over other applicants. *Id.* at 397-98, 122 S.Ct. 1516. *Barnett* explained that by definition, a special "accommodation" requires an employer to treat an employee with a disability differently and preferentially: "The simple fact that an accommodation would provide a 'preference'—in the sense that it would permit the worker with a disability to violate a rule that others must obey—cannot, *in and of itself*, automatically show that the accommodation is not 'reasonable.'" *Id.* at 398, 122 S.Ct. 1516.

Barnett, however, does not resolve whether a landlord is obliged under the FHAA to "accommodate" a tenant's lack of sufficient money to pay rent. We do not conclude that preferential treatment for a handicapped tenant, in and of itself, takes a proposed accommodation outside the scope of what the FHAA may require. Consistent with *Barnett*, there is no dispute here that the FHAA sometimes requires a landlord to provide preferential treatment: a disability-neutral rule on pets or parking spaces must yield when a tenant requires a service dog or proximity to an entrance.

The issue here, like in *Salute* and *Hemisphere*, is whether the duty of reasonable accommodation goes

further and extends to measures that would alleviate a disabled tenant's impoverished economic circumstances. *Barnett* did not address that question. That case involved a potential accommodation that would have directly ameliorated an employee's inability to work in cargo-handling by placing him in a mailroom job, and it addressed a different statute outside the context of housing. We think the Ninth Circuit in *Giebeler v. M & B Associates*, 343 F.3d 1143 (9th Cir. 2003), overstated the meaning of *Barnett* by presuming that it dictates the ambitious interpretation of the FHAA that was rejected in *Hemisphere* and *Salute*, despite what *Giebeler* termed the "facial appeal" of those decisions. *Id*. at 1154.

* * *

For these reasons, we vacate the injunction ordered by the district court. R. Doc. 82, at 24. The cross-appeal is dismissed for lack of jurisdiction.

STRAS, Circuit Judge, concurring in the judgment.

Sometimes simpler is better, and this is one of those times. *See* Paul Vincent Spade & Claude Panaccio, *William of Ockham*, The Stanford Encyclopedia of Philosophy § 4.1 (Spring 2019 ed.) (describing Ockham's Razor). The court makes multiple assumptions on the way to holding that a housing voucher is not an "accommodation" under the Fair Housing Amendments Act of 1988. I would take a simpler route and just conclude that the request is unreasonable. *See* 42 U.S.C. § 3604(f)(3)(B) (requiring any "accommodation[ ]" in "rules, policies, practices, or services" to be "reasonable").

Complying with regulations can be a burden. To participate in the housing-voucher program, landlords must be willing to *guarantee* "certain housing[-]quality standards," sign a contract containing "restrictions on rent amounts and lease terminations," and keep an entirely separate set of books. *Ante*, at 351-52. For those already willing to take housing vouchers, accepting a few more is not a big deal. But for those that are not, like IADU and Impact, it is unreasonable to force the regulatory burdens on them. *See* 42 U.S.C. § 3604(f)(3)(B); *see also Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293, 297–98, 300 (2d Cir. 1998) (explaining why it is "unreasonable").

The burdens here are even greater than usual. Typically, a landlord owns *both* the unit and the piece of land underneath it. But mobile homes are different. The tenant purchases the trailer and then parks it in a space owned by the landlord.

When it comes to housing vouchers, the split in ownership has real consequences. The quality standards apply primarily to the home itself. *See* 24 C.F.R. § 982.401(c)(2)(i), (f)(1), (g)(2)(i), (m)(1) (requiring, for example, a "sanitary" unit free from "serious defects" that has all "fixtures" and "equipment" in "proper operating condition"). And as its owner, Klossner recognizes that it is her obligation to "complete [the] necessary repairs." But if she falls short, it is IADU and Impact that will bear the brunt of the harm by not getting paid, regardless of who is to blame. *See* 24 C.F.R. § 982.404 (explaining that payments will be "terminate[d]"). Requiring a landlord to shoulder the financial risk in these circumstances is a "major adjustment" to the landlord-tenant relationship. *Se.*

Cmty. Coll. v. Davis, 442 U.S. 397, 412–13, 99 S.Ct. 2361, 60 L.Ed.2d 980 (1979) (concluding that "major adjustments" are "unreasonable"); *see Ala. Ass'n of Realtors v. DHS*, —— U.S. ——, 141 S. Ct. 2485, 2489, 210 L.Ed.2d 856 (2021) (noting that the right to exclude—especially those who cannot pay rent—is a "fundamental element[ ] of property ownership"); *Heights Apartments, LLC v. Walz*, 30 F.4th 720, 735 (8th Cir. 2022) (same).

It is true that landlords can try to evict residents who neglect their units. But going to court costs time and money. *See* 24 C.F.R. § 982.310(f) ("The owner may only evict the tenant from the unit by instituting a court action."). And the housing-voucher regulations may make that option even more burdensome and unpredictable than usual. Eviction is only for "good cause," meaning that severing ties with residents is not always easy. *Id.* § 982.310(a), (d). "[D]epriving [landlords like IADU and Impact] of rent payments with no guarantee of eventual recovery" is a significant and unreasonable risk to place on them. *Ala. Ass'n of Realtors*, 141 S. Ct. at 2489.

Klossner cites nothing suggesting otherwise. In *Giebeler v. M & B Associates*, for example, the requested accommodation was allowing a resident's mother, who possessed "significant assets," to cosign on the lease as a way of meeting a minimum-income requirement. 343 F.3d 1143, 1144–45, 1158 (9th Cir. 2003). Waiving the no-cosigners policy was a "reasonable accommodation" because it did not "alter the essential obligations" of the relationship or create "substantial financial ... risk." *Id.* at 1157–58. Not true here.

Schaw v. Habitat for Humanity of Citrus County, Inc., is no different. 938 F.3d 1259 (11th Cir. 2019). The question there was whether a landlord had to count monthly payments from family and food stamps as income. *Id.* at 1268. The court concluded that the answer was yes, but it also explained, in a passage that is relevant here, that the forced acceptance of housing vouchers is an example of an *unreasonable* accommodation. *Id.* at 1267. Faced with that precise situation today, I agree.

In the end, Klossner simply asks too much of IADU and Impact. Forcing them to accept a housing voucher is not a "reasonable" accommodation. 42 U.S.C. § 3604(f)(3)(B). I would not say "a single word more," *United States v. Treanton*, 57 F.4th 638, 643 (8th Cir. 2023) (Stras, J., concurring), particularly if it means undertaking the needlessly complicated task of trying to evaluate how tight the fit is between a disability and an accommodation, *see Rotkiske v. Klemm*, —— U.S. ——, 140 S. Ct. 355, 361, 205 L.Ed.2d 291 (2019) (decrying "[a]textual judicial supplementation" of a statute).

APPENDIX B

565 F.Supp.3d 1118

United States District Court,
N.D. Iowa, Eastern Division.

Suellen KLOSSNER, Plaintiff,
v.
IADU TABLE MOUND MHP, LLC and Impact MHC Management, LLC, Defendants.

No. 20-CV-1037-CJW-KEM
Signed 10/05/2021

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

C.J. Williams, United States District Judge

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I. INTRODUCTION

This matter is before the Court after a bench trial on plaintiff's Fair Housing Amendments Act ("FHAA") claim as pled in Count I of her complaint. On August 2–3, 2021, the Court held a bench trial on that claim. On August 24, 2021, the parties submitted simultaneous post-trial briefs. (Docs. 79 & 80). Also before the Court and related to the bench trial are defendants' Motion to Take Judicial Notice of Certain Adjudicative Facts (Doc. 61), defendants' Renewed Motion in Limine in which defendants seek to strike plaintiff's expert evidence (Doc. 65), and plaintiff's Motion in Limine in which she seeks to strike defendants' expert evidence (Doc. 66). For the following reasons, the **Court grants in part and denies in part** defendants' Motion to Take Judicial Notice, **denies** defendants' Motion in Limine, **denies** plaintiff's Motion in Limine, and **finds in favor** of plaintiff on plaintiff's FHAA claim.

II. PROCEDURAL HISTORY

On September 8, 2020, plaintiff filed her complaint against defendants in this Court. (Doc. 3). Plaintiff asserts claims for (1) violation of the FHAA, Title 42, United States Code, Section 3604(f)(3)(B), (2) violation of the Iowa Civil Rights Acts, (3) use of an illegal lease in violation of Iowa Code Section 562B.11(1), and (4) violation of the Consumer Fraud Act, Iowa Code Section 714H. (*Id.*, at 13–19). Plaintiff demanded a jury trial. Subsequently, the parties agreed to an expedited bench trial only on plaintiff's FHAA claim. (Docs. 21; 33-1, at 3–4).

As noted, in connection with the bench trial, defendants filed a Motion to Take Judicial Notice of Certain Adjudicative Facts (Doc. 61), and a Renewed Motion in Limine (Doc. 65), and plaintiff filed a Motion in Limine (Doc. 66). The Court will first rule on these pending motions, before turning to making findings of fact and conclusions of law.

III. MOTION TO TAKE JUDICIAL NOTICE

Defendants ask this Court to take judicial notice of three facts.

> Fact A: Former City of Dubuque Housing Commissioner and current Dubuque City Council member, Brad Cavanaugh, and former Dubuque City Council member, Brett Shaw, have expressed a willingness to reassess whether a source-of-income protection ordinance might be warranted, citing a newspaper article.
>
> Fact B: Jerry Maro, president of the Dubuque Area Landlords Association, and David Resnick, Dubuque City Councilmember, have ex-

> pressed criticisms about a source-of-income ordinance, citing another newspaper article.
>
> Fact C: On April 30, 2021, Iowa Governor Kim Reynolds signed Senate File 252 into law, enabling landlords to refuse to lease or rent to a person because of their use of a Section 8 housing choice voucher, citing a letter signed by Governor Reynolds.

(Doc. 61, at 1–2).

Federal Rule of Evidence 201 provides in pertinent part:

> (b) **Kinds of Facts That May Be Judicially Noticed.** The court may judicially notice a fact that is not subject to reasonable dispute because it:
>
> (1) is generally known within the trial court's territorial jurisdiction; or
>
> (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
>
> (c) **Taking Notice.** The court:
>
> (1) may take judicial notice on its own; or
>
> (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

Fed. R. Evid. 201(b)–(c). It is well-established that the rule applies only to "adjudicative" facts. As the Advisory Committee Notes explain, "[n]o rule deals with judicial notice of 'legislative' facts." *Id.*

> The omission of any treatment of legislative facts results from fundamental differences between adjudicative facts and legislative facts.

> Adjudicative facts are simply the facts of the particular case. Legislative facts, on the other hand, are those which have relevance to legal reasoning and the lawmaking process, whether in the formulation of a legal principle or ruling by a judge or court or in the enactment of a legislative body.

Id.; *see Qualley v. Clo–Tex Int'l, Inc.*, 212 F.3d 1123, 1128 (8th Cir. 2000); *United States v. Gould*, 536 F.2d 216, 219–220 (8th Cir. 1976) (citing the Advisory Committee Notes to Rule 201 with approval). Rule 201 is not the only way courts may take judicial notice, however. Courts may also take judicial notice of statutes and administrative regulations. *See, e.g., Roemer v. Bd. Pub. Works*, 426 U.S. 736, 742 n.4, 96 S.Ct. 2337, 49 L.Ed.2d 179 (1976); *Holst v. Countryside Enter. Inc.*, 14 F.3d 1319, 1322 n.4 (8th Cir. 1994) ("Ordinarily, codes, regulations, and statutes are, if relevant, established through judicial notice."); *Newcomb v. Brennan*, 558 F.2d 825, 829 (7th Cir. 1977) ("[M]atters of public record such as state statutes, city charters, and city ordinances fall within the category of 'common knowledge' and are therefore proper subjects for judicial notice.").

Here, defendants first ask the Court to take judicial notice of Facts A and B, based on newspaper articles. Courts may properly take judicial notice of newspapers and other publications as evidence of what was in the public realm at the time, but not as evidence that the contents in the publication were accurate. *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010); *Alliance Premier Growth Fund v. Alliance Capital Mgmt.*, 435 F.3d 396, 401 n.15 (3d Cir. 2006). De-

fendants are not asking the Court to take judicial notice of what was in the public realm, but rather, of the facts reported in the newspaper articles. This the Court cannot do. Thus, the Court denies defendants' motion to take judicial notice of Facts A and B.

In contrast, the Court will take judicial notice of the new Iowa law. That law appears to apply to residential dwellings, however, and not to manufactured home lot rentals. Thus, the fact may not be relevant under Federal Rules of Evidence 401 and thus barred under Rule 402. Here, defendants have failed to show how a change in the Iowa law pertaining to housing choice vouchers applicable to residential dwellings is relevant to the issue being tried, that is whether defendants' failure to accept a housing choice voucher from the City of Dubuque for plaintiff's lot rental constitutes discrimination based on disability under the FHAA. Thus, the Court will take judicial notice but not consider Fact C in ruling on the merits of this trial on the FHAA claim.

Defendants also ask the Court to "exclude any testimony by Cavanaugh and Shaw as irrelevant," citing Federal Rules of Evidence 201(c)(2) and 402. Rule 201(c)(2) does not provide any basis to exclude testimony or other evidence. Even if a Court takes judicial notice of fact, that does not bar other evidence on that same fact. In any event, plaintiff did not call Cavanaugh as a witness at trial, and thus defendants' motion is moot as to him. Plaintiff did call Shaw to testify and the Court allowed his testimony over defendants' objection. Shaw testified about a number of matters, some of which the Court found relevant and helpful and others that were not helpful. Defendants objected to some of his testimo-

ny as irrelevant and the Court sustained defendants' objections in part. Defendants' attempt to seek a blanket exclusion based on relevance as part of their motion to take judicial notice, however, is too broad and failed to be tailored to any specific evidence. Thus, to the extent defendants are maintaining this request to exclude the entirety of Shaw's testimony, the request is denied.

In short, the Court grants in part and denies in part defendants' Motion to Take Judicial Notice of Certain Adjudicative Facts.

IV. DEFENDANTS' MOTION IN LIMINE

Defendants filed a motion in limine to bar the testimony of plaintiff's expert, Douglas L. Major-Ryan ("Ryan"). (Doc. 33). The Court granted in part and denied in part defendants' motion. (Doc. 47). Specifically, the Court granted defendants' motion to the extent that it barred Ryan from opining that plaintiff's requested accommodation was reasonable, finding it to be a legal conclusion. (Doc. 47, at 14). The Court denied defendants' motion to the extent defendants sought to bar Ryan from opining about whether the requested accommodation constituted an undue burden. (*Id.*, at 14, 16). Following the Court's ruling, defendants deposed Ryan. (Doc. 65, at 2).

On the eve of trial, defendants filed a Motion to Renew Their Motion to Strike or Exclude Expert Ryan's Opinions and Testimony. (Doc. 65). At the start of the trial, the Court announced that it would take that motion under advisement and rule upon it as part of its ruling on the merits of the claim. In their renewed motion, defendants argue that wheth-

er the requested accommodation could constitute an undue burden "pertains directly to one of the elements required to establish Plaintiff's failure-to-accommodate claim" and therefore concludes Ryan's opinions on this issue "are inadmissible legal conclusions as to a particular element of Plaintiff's failure-to-accommodate claim, in particular, and whether Defendants violated the [FHAA], in general." (Doc. 65, at 3). Defendants did not cite any caselaw in which a court barred an expert from opining on whether a requested accommodation constituted an undue burden.

That Ryan's opinion pertains to an element of the claim does not mean it is a legal conclusion. Indeed, if his opinion did not pertain to an element of the claim it would likely be irrelevant. Whether the requested accommodation would constitute a significant burden is a question of fact. It requires an understanding of how the accommodation may impact the landlord financially and otherwise. At trial, Ryan testified as a factual matter about the obligations of a housing provider participating in the Housing Choice Voucher Program. (Tr., at 107–109). Ryan did not opine that the Housing Choice Voucher Program created an "undue" burden for housing providers; rather, he opined that it was "not burdensome." (*Id.*, at 109–110). He then went on to explain facts and data that led him to that opinion. (*Id.*, at 110–13). Last, Ryan applied factors considered by the Department of Housing and Urban Development as it related to this case as further support for his opinion that it would not be burdensome for defendants to participate in the Housing Choice Voucher Program for plaintiff. (*Id.*, at 113–23). Whether the accommoda-

tion was reasonable given that burden is for the Court to decide.

Thus, the Court denies defendants' motion in limine seeking to bar Ryan's testimony.

V. PLAINTIFF'S MOTION IN LIMINE

Plaintiff sought to bar the testimony of defense expert Robert S. Griswold ("Griswold") asserting that he was "not qualified to opine about the housing discrimination issue in this case," and that his opinions did "not adhere to the standards of reliability mandated by the Federal Rules of Evidence, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), or the Federal Rules of Civil Procedure." (Doc. 66-1, at 1). Specifically, plaintiff argues that "Griswold's experience in the mobile home sector is sparse, he has no property management experience in Iowa, and he is unfamiliar with the Dubuque Housing Authority." (*Id.*, at 5). Plaintiff further argues that Griswold's opinion is based on "speculation" without reference to the standard of care, and "lack[s] foundation" because he "ignores facts that undercut his analysis." (*Id.*, at 7–11). Finally, plaintiff argues that Griswold's opinions are irrelevant. (*Id.*, at 12–15).

There is little purpose in bench trials for so-called *Daubert* motions to bar admission of expert testimony because "[t]he main purpose of *Daubert* exclusion is to protect juries from being swayed by dubious scientific testimony." *In re Zurn Pex Plumbing Prods. Liab. Litig.*, 644 F.3d 604, 613 (8th Cir. 2011). *See also David E. Watson, P.C. v. United States*, 668 F.3d 1008, 1015 (8th Cir. 2012) (stating that when a court sits as the finder of fact "there is less need for

the gatekeeper to keep the gate") (alteration and citation omitted). Moreover, as the Supreme Court made clear in *Daubert*, "[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence." *Daubert*, 509 U.S. at 596, 113 S.Ct. 2786. *See also Hose v. Chicago Nw. Transp. Co.*, 70 F.3d 968, 974 (8th Cir. 1995) ("[I]t is up to the opposing party to examine the factual basis for [an expert's] opinion in cross-examination. Only if the expert's opinion is so fundamentally unsupported that it can offer no assistance to the jury must such testimony be excluded.") (internal quotation marks and citation omitted).

Here, plaintiff argues that Griswold's opinions are irrelevant because they pertain to burdens on property owners not applicable to plaintiff, relate to financial burdens when defendants are not claiming financial burden, and for other reasons. (Doc. 66-1, at 12–15). In her motion in limine, plaintiff did not challenge Griswold's qualifications, his methodology, or the basis for his opinions. At trial, plaintiff did not object once to Griswold's testimony on the ground that it was irrelevant. Although perhaps part of his report was irrelevant to the issues at trial, the testimony at trial was relevant.

Thus, the Court denies plaintiff's motion in limine seeking to bar Griswold's testimony.

VI. FINDINGS OF FACT

Plaintiff is a resident of Iowa, defendant IADU Table Mound MHP, LLC ("IADU Table Mound") is a Colorado limited liability company, and defendant

Impact MHC Management, LLC ("Impact MHC") is a Wyoming limited liability company. IADU Table Mound, which is controlled by Impact MHC, owns and operates a mobile home park named Table Mound ("the Park") in Dubuque, Iowa. IADU Table Mound purchased the Park in June 2017.

For several years in the mid-2000s, plaintiff lived in an eight-unit apartment. (Tr., at 13, 28). Plaintiff described her apartment as being located in a bad area of town where she felt unsafe. (Tr., at 13–14). In 2009, plaintiff purchased a mobile home at the Park. (Tr., at 13–14). Plaintiff owns her home, but rents the land beneath it. (Tr., at 8–9, 12).

In 2009, plaintiff paid $235 a month in rent to the Park's prior owner. (Tr., at 15). Her rent increased until 2017 when she was paying $280 a month in rent to the prior owner with water, sewer, and trash included. (Tr., at 15–16). When defendants purchased the Park in 2017, they increased plaintiff's lot rent to $320 a month. (Tr., at 16, 196). In 2018, defendants increased plaintiff's lot rent again and began separately charging plaintiff for water, sewer, trash, and meter rental expenses. (Tr., at 16–17). In September 2019, defendants increased plaintiff's lot rent to $380 a month and increased the trash collection fee.[1] (Tr., at 16–17, 198).

Decades ago, plaintiff was employed, but has since developed both psychiatric and physical impair-

[1] Although the implication is that defendants have unfairly or unreasonably increased plaintiff's rent and expenses, plaintiff's witnesses testified that the charges are consistent with the market rate in the Dubuque area. (Tr., at 196, 202). Plaintiff concedes "[t]here is no evidence in the record to suggest that Table Mound is not charging a reasonable rent." (Doc. 79, at 9).

ments that prevent her from working, at least full-time. (Tr., at 11–12, 38, 51, 58). Plaintiff apparently worked some after she was declared disabled in 1993. (Tr., at 27–28). Plaintiff presented no evidence at trial about her income before she became disabled or her income from part-time employment after she became disabled. Plaintiff is able to live independently, however, and receives income from Social Security and food assistance benefits. (Tr., at 9, 12, 16, 27). Plaintiff is a person with a "handicap" as defined by Title 42, United States Code, Section 3602(h). Defendants have been aware of plaintiff's disabilities. (Tr., at 24).

In late 2019, plaintiff had a plumbing problem, compelling her to seek financial assistance from the St. Vincent de Paul Society, which paid part of her rent for one month. (Tr., at 17–18). Defendants accepted that assistance payment. (Tr., at 17–19).

In November 2019, the City of Dubuque approved a measure allowing the Dubuque Housing Authority ("DHA") to issue housing choice vouchers to residents of the Park to assist them in paying their rent and utilities. (Tr., at 140–42). The housing choice voucher program is federally funded but administered by local housing authorities like the DHA. (*Id.*, at 142). In January 2020, plaintiff applied and was approved for a housing choice voucher through the DHA. (Tr., at 142–43). If accepted by defendants, the voucher would limit plaintiff's rent obligation to 30% of her income with the remainder paid by DHA. (Tr., at 144, 207–208).

Plaintiff asked defendants to accept the housing choice voucher. (Tr., at 23–24). That is the only accommodation she requested. (Tr., at 29). Defendants

declined to accept the voucher, asserting that they refused to accept Section 8 housing. (Tr., at 23). Defendants offered to provide plaintiff with a referral to other mobile home parks in the area that did accept housing choice vouchers and to locate a moving company for her. (Exhibits 10 & 11). Plaintiff continued to pay her rent through November 2020 without the voucher assistance and despite being unemployed due to her disability. (Tr., at 206–207; Exhibit D).[2]

Plaintiff testified that she is not able to move her mobile home due to its age and condition, that she has been unsuccessful in finding a buyer for her home, and that her disabilities and the COVID-19 pandemic have hindered her efforts to find another suitable residence. As for moving her home, plaintiff testified that in her opinion it was too old to move. (Tr., at 31–33). But plaintiff did not actually have anyone tell her that or evaluate the ability to move her home, and offered no other evidence at the trial to prove that the home could not be moved. (Tr., at 32–33). Dave Reynolds, President and CEO of defendant Impact, testified that it is possible to move a home as old as plaintiff's home to another mobile home park. (Tr., at 220). Other mobile home parks in the Dubuque area accept housing choice vouchers. (Tr., at 72–73, 161, 164). As to the cost of moving her home, at trial both parties presented some evidence that it would cost approximately $10,000. (Tr., at 122, 214). As to selling her home, plaintiff briefly listed her home for sale. (Tr., at 29–30). She received two or three calls, including from someone interested

[2] In November 2020, the parties reached an agreement that would allow plaintiff to afford her rent for the pendency of the litigation. (Doc. 79, at 11).

in buying it "right away," but plaintiff "couldn't come up with a price for it." (*Id.*). Plaintiff admitted that, "the bottom line is, I really didn't want to sell my home." (Tr., at 30). Last, as for looking for alternative housing, plaintiff's mental health nurse practitioner, Elizabeth Brimeyer, testified that plaintiff's condition was "severe" and "not stable" and that plaintiff "would not do well" living in a multi-family housing setting. (Tr., at 40, 48). Plaintiff also testified that she quit looking for alternative housing because of her fear of the COVID-19 pandemic. (Tr., at 21).

The Dubuque Housing and Community Development Department, the local public housing agency ("PHA"), is in charge of administering the housing choice voucher program in Dubuque. (Tr., at 139–40, 157, 270–71). It must comply with the Housing and Urban Development ("HUD") requirements for the program, including those contained in the Housing Assistant Payment Contracts ("HAP contract") entered into between the PHA and a landlord participating in the program. (Tr., at 145–56, 158). There is an HAP contract specifically drafted for manufactured home lot rental agreements. (Exhibit 7). The PHA must inspect the property, ensure it meets the housing quality standards, and determine that the rent and expenses are reasonable. (Tr., at 143–44, 148, 164–65). When a mobile home is involved, if the renter fails to maintain the home as required by HUD regulations, the landlord's voucher payment may be in jeopardy. (Tr., at 134, 160–61). The HAP contract requires a year-long lease. (*Id.*, at 275, 276–78). They also do not allow rent to increase during the lease period. (Tr., at 278). Defendants also inter-

pret the contract as limiting the ability of a landlord to terminate or not renew a lease except for good cause. (Tr., at 281, 283–84).

Defendant Impact has a policy of not participating in housing choice voucher programs except in states where it is required to do so by law, or when it has purchased properties in which prior owners accepted such vouchers and defendant has "grandfathered in" such tenants. (Tr., at 208–12, 281–94). Iowa has no such law requiring landlords to accept vouchers. Defendant Impact owns mobile home parks in two states that require landlords to accept housing choice vouchers. (Tr., at 118, 208, 210). Of the more than 20,000 tenants defendant Impact manages, approximately 40 are Section 8 voucher participants. (Tr., at 210–11).

Defendant Impact has a policy against accepting vouchers because of the burdens defendant believes participation in the program carries. Dave Reynolds testified that he believed participating in the program involves administrative duties and burdens, such as (1) additional contracts; (2) extra administrative work; (3) inefficiencies of recordkeeping, tracking multiple rent payments, imposing late fees, raising rents, and enforcing rules; (4) difficulties working with multiple housing authorities in different locations; (5) the need to enforce two contracts (the HAP contract and the tenant's lease contract) which may be in conflict; (6) decreased control over ensuring the home is maintained and incurring expenses of moving the home if the resident loses the voucher assistance because the house was not maintained; (7) an additional $50 to $100 expense of keeping track of the two contracts; and (8) the lim-

ited "for cause" termination limitation in the HAP contract. (Tr., at 209–10, 212–18, 234–36, 251–53). Defendants' expert, Robert Griswold, also identified as additional burdens (1) the significant delay in voucher payments during the pandemic, (2) the difficulty of scheduling inspections with housing authorities, and (3) the requirement of a landlord to treat equally every resident asking for the same accommodation if the landlord grants the accommodation to one resident. (Tr., at 274, 288–89, 291–92, 296).

VII. CONCLUSIONS OF LAW

The FHAA prohibits housing discrimination on the basis of an individual's "handicap." 42 U.S.C. § 3604(f). Under the FHAA, it is unlawful "[t]o 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 ... that person." 42 U.S.C. § 3604(f)(2). A plaintiff may prove a violation of the FHAA under three theories of discrimination: "intentional discrimination, discriminatory impact, or refusal to make reasonable accommodation." *Hevner v. Village East Towers, Inc.*, 06 Civ. 2983 (GBD) (FM), 2010 WL 11680173, at *6 (S.D.N.Y. Dec. 17, 2010) (internal quotation marks omitted). Under the reasonable accommodation theory, a landlord may not "refus[e] to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such [handicapped] person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). The federal regulations provide, as examples of reasonable accommodation, providing an

exception to a "no pets" policy to allow a blind tenant to have a seeing-eye dog, or exempting a disabled person from a "first-come, first-serve" parking policy to permit the disabled person to park near the entrance. 24 C.F.R. § 100.204(b). "[A] 'necessary' accommodation is one that alleviates not 'handicaps' *per se*, but rather 'the *effects* of' those handicaps." *Schaw v. Habitat for Humanity of Citrus Cnty, Inc.*, 938 F.3d 1259, 1269 (11th Cir. 2019) (first and third quoting *Bhogaita v. Altamonte Heights Condo. Assoc.*, 765 F.3d 1277, 1288 (11th Cir. 2014)). In other words, in the example above it is not the blindness that the landlord would be accommodating, it is the effect of that blindness—the need for a seeing-eye dog as an exception to the rule barring pets—that the landlord would be accommodating.

To make a failure-to-accommodate claim under a Section 3602(a) of the FHAA, plaintiff must prove four things: (1) she is handicapped within the meaning of the FHAA and defendants were aware of the handicap; (2) her requested accommodation is necessary for her to use and enjoy the dwelling; (3) her accommodation request is reasonable; and (4) defendants refused to make the requested accommodation. *Fair Hous. of the Dakotas, Inc. v. Goldmark Prop. Mgmt.*, 778 F. Supp. 2d 1028, 1034 (D. N.D. 2011); *see also Edwards v. Gene Salter Props.*, No. 4:15CV00571, 2019 WL 2651109, at *3 (E.D. Ark. June 27, 2019) (stating elements of Section 3602(a) claim). Here, the parties agree that plaintiff has presented evidence that met the first and last elements of the claim, but dispute whether plaintiff has proved the second and third elements. Plaintiff bears the burden of showing her requested accommodation

is necessary for her to use and enjoy the dwelling. *See Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir. 1995) (stating that plaintiff has the burden of "showing that the desired accommodation will affirmatively enhance a disabled plaintiff's quality of life by ameliorating the effects of the disability"). Plaintiff also has the burden to show the accommodation is reasonable on its face. *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 401–402, 122 S.Ct. 1516, 152 L.Ed.2d 589 (2002). If plaintiff makes such a prima facie showing, then defendants have the burden of proving the accommodation is unreasonable or would impose an undue hardship. *Id.*, at 402, 122 S.Ct. 1516. The Court will address each of the disputed elements in turn.

A. Whether the Accommodation is Necessary

An accommodation is "necessary" within the meaning the FHAA if it provides a "direct amelioration of a disability's effect." *Lapid-Laurel, L.L.C. v. Zoning Bd. of Adjustment of Tp. of Scotch Plains*, 284 F.3d 442, 460 (3rd Cir. 2002) (quoting *Bryant Woods Inn, Inc. v. Howard County, Md.*, 124 F.3d 597, 604 (1997)). Here, plaintiff's disabilities prevent her from working. As a result, she is on a fixed income limited to government aid that is insufficient to pay the market rent from her own resources. The requested accommodation is that defendants be required to accept the housing choice vouchers so as to make up the shortfall between her income and her rent obligation.

Defendants argue that the accommodation is not necessary to directly ameliorate plaintiff's disability but, rather, to ameliorate her lack of income. De-

fendants rely primarily on decisions from the Second and Seventh Circuit Courts of Appeals, while plaintiff relies primarily on a decision by the Ninth Circuit Court of Appeals. In *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293, 302 (2d Cir. 1998), the court held that a landlord's refusal to accept housing vouchers did not violate the FHAA because "[e]conomic discrimination—such as the refusal to accept Section 8 tenants—is not cognizable as a failure to make reasonable accommodations, in violation of § 3604(f)(3)(B)." In *Hemisphere Bldg. Co. v. Vill. of Richton Park*, 171 F.3d 437, 440 (7th Cir. 1999), the court held that a municipality did not have to "accommodate" a builder who wanted a variance from zoning laws to build housing for disabled people when the basis was to provide less expensive housing for them. In *Giebeler v. M & B Assocs.*, 343 F.3d 1143, 1154–55 (9th Cir. 2003), the court rejected the reasoning in *Salute* and *Hemisphere*, holding that a landlord must accommodate a disabled person's request to allow his mother to co-sign the lease when his disability prevented him from working and therefore prevented him from meeting the landlord's minimal income requirement. The parties have cited a number of additional out-of-circuit and district court decisions pro and con that have directly or indirectly addressed the fundamental question of whether an accommodation is "necessary" when the effect of the disability prevents a tenant from working and thus affording the rent without assistance or some other type of accommodation.[3] In other words, these cases address with varying degrees of clarity the question of whether an accommodation may be

[3] *See* Doc. 79, at 14–15; Doc. 80, at 12 & n.2.

required to remedy the economic impact of a disability. The Eighth Circuit Court of Appeals, however, has never addressed this issue.

The limited case law in this area reflects a tendency to meld the analysis of economic accommodation between the elements of "necessity" and "reasonableness." For example, the *Salute* court appears to have rejected the accommodation as not necessary because it did not directly address a disability, but then went on to note in support of its ruling the unreasonable burdens facing a landlord participating in a voucher program. *Salute*, 136 F.3d at 301. The parties have similarly melded the analysis in their briefing.

The Court finds that the question of whether the accommodation is one addressing an economic disadvantage versus an economic effect of a disability to fall squarely under the "necessity" element. It is here that a plaintiff must show a nexus between a disability and the accommodation. Only if that nexus is shown does the Court address the question of whether the accommodation is reasonable.

Here, the Court finds that plaintiff has met her burden of showing that the accommodation is necessary to ameliorate the effect of her disability. That is, she has shown a nexus between her disability and the accommodation that the landlord accept supplemental funds from another source, so she can afford her rent. Plaintiff has proved that her disability has prevented her from working. Her inability to work limits her income. Her limited income prevents her from paying her entire rent from her own limited resources. Thus, an accommodation that would allow her to supplement her rent payments through an-

other funding source is necessary to ameliorate the effect of her disability; her inability to work to earn enough money to pay her rent.

In reaching the legal conclusion that plaintiff has carried her burden of showing a nexus between her requested accommodation and the effect of her disability, the Court relies on the Supreme Court's reasoning in *Barnett* and its implied rejection of Justice Scalia's "but for" nexus he proposed in his dissenting opinion. Although *Barnett* involved the Americans With Disabilities Act ("ADA"), the legal reasoning regarding accommodations of disabilities is the same. *See Schaw*, 938 F.3d at 1265 n.2 (noting that the caselaw addressing reasonable accommodations under the FHAA is "rather thin," the court can look to the caselaw under the ADA for guidance). In *Barnett*, the Supreme Court held that accommodations (1) may require providing preferential treatment to disabled people over those similarly situated but not disabled and (2) are not limited only to lowering barriers created by the disability itself. *Barnett*, 535 U.S. at 395–98, 122 S.Ct. 1516. Here, what that means is that defendants must accommodate plaintiff's disability by accepting a voucher although there may be other nondisabled people unable financially to pay rent at the Park who would similarly benefit from defendants' acceptance of vouchers. It also means that plaintiff need not show that the requested accommodation lowers a barrier created by her disabilities itself so long as she can show that it lowers a barrier created by the effect of her disability; that is, her inability to work. In short, the Court finds "that the FHAA allows consideration of a disabled person's financial circumstances when deter-

mining whether an accommodation is legally necessary, not that the FHAA required financial accommodations for disabled tenants." *Fair Hous. Rights Cent. in Se. Pa. v. Morgan Props. Mgmt. Co.*, No. 16-4677, 2018 WL 4489653, at *3 (E.D. Pa. Sept. 19, 2018).[4]

The Court makes its factual finding of necessity with some hesitancy, though. Plaintiff's evidence on the issue of her ability to pay was weak. Plaintiff did not present evidence of how much money she earned when she was employed prior to her disability. Thus, it is theoretically possible that she could not have afforded the current rent even if she was fully employed in her prior profession. Nor did plaintiff present evidence of how much money she earned when she worked part-time after she was declared disabled, or why she is currently unable to work part-time. Additionally, plaintiff was able to pay her increased rent through November, despite her inability to work due to her disability. Nevertheless, plaintiff presented enough evidence—and there was no evidence to the contrary—for the Court to find by a preponderance of the evidence—that is, it is more likely true than not—that but for plaintiff's disability she could work and earn enough money to pay her rent.

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[4] Although the reasoning of *Salute*—"that the law addresses the accommodation of handicaps, not the alleviation of economic disadvantages that may be correlated with having handicaps"—is facially appealing, especially when it involves the voluntary housing voucher program, *Salute* was decided before *Barnett* and its broad holding appears to this Court to be inconsistent with *Barnett's* holding. *Salute*, 136 F.3d at 301.

Thus, the Court finds plaintiff has proved by a preponderance of the evidence that her requested accommodation is necessary to ameliorate the effect of her disability.

B. Whether the Accommodation is Reasonable

Having found that plaintiff has proved the second element of her claim, the Court now turns to whether she has presented a prima facie case that her requested accommodation is reasonable and whether defendants have proven that it would be an undue hardship.[5] An accommodation is reasonable if it seems reasonable on its face or in the mine run of cases. *Barnett*, 535 U.S. at 401, 122 S.Ct. 1516. A landlord can show an otherwise reasonable accommodation to constitute an undue hardship by proving it would impose an "undue burden" or result in a "fundamental alteration" of its program. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1220 (11th Cir. 2008). Determining whether a requested accommodation is reasonable requires a weighing of the respective costs and benefits flowing from the accommodation, "a balancing of the parties' needs." *Bhogaita*, 765 F.3d at 1288 (citation omitted).

On its face, plaintiff's requested accommodation seems reasonable. The landlord will be paid rent and expenses in full, under plaintiff's requested accom-

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[5] As the Eleventh Circuit Court of Appeals has noted, although there is overlap in this burden-shifting analysis, it remains that plaintiffs must make a prima facie showing of reasonableness, while showing that the accommodation is an undue hardship is an affirmative defense for which defendants bear the burden of proof. *Schaw*, 938 F.3d at 1265 n.3 (citations omitted).

modation, but only part of the payment will come from plaintiff while the rest comes from another source. Under plaintiff's proposed accommodation, the landlord need not decrease the rent or incur any obvious expenses.[6] The requested accommodation would not commit the landlord to offer Section 8 housing to anyone who asked, but only to others, like plaintiff, who could show that it would accommodate the effects of a legitimate disability. Plaintiff's expert, Mr. Ryan, testified that the costs of accepting vouchers in the manufactured home setting are minimal, based on his study of other states where the voucher program is required, and would be so for defendants given their financial position. (Tr., at 111, 114–16, 120). Thus, the Court finds plaintiff has carried her initial burden of showing the requested accommodation is reasonable in the mine run of cases.

In turning to whether the accommodation imposes an undue hardship, and particularly whether it would fundamentally alter defendants' policy of not accepting Section 8 vouchers, the Court begins by focusing on the fundamental nature of the housing choice voucher program and the reasons why landlords may choose not to participate in such programs. It is important to recognize as an initial matter that Congress chose to make the voucher program voluntary for landlords. In that congressional decision lies a recognition that participation in the program carries burdens that landlords may find too significant to overcome the benefits of participation. Although Congress has amended the housing vouch-

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[6] Defendants claimed that the cost of processing two contracts instead of one would cost $50 to $100 a year, but presented no evidence of how they arrived at this costs estimate.

er program to remove some of the more burdensome provisions (for example, the take-one, take-all provision), the voucher program nevertheless remains a voluntary program in which landlords need not participate.

The burdens of participating in the program can be substantial. Or, as the Second Circuit Court of Appeals observed, "the burden of participating in the Section 8 program" does not involve "only reasonable costs or insubstantial burdens." *Salute*, 136 F.3d at 301. The *Salute* court noted that participation in the program may entail "financial audits, maintenance requirements, inspection of the premises, reporting requirements, [and an] increased risk of litigation." *Id.* Here, defendants presented proof that accepting vouchers for plaintiff could impose significant burdens on them. Among them is the requirement that defendants enter into a separate contract with the public housing authority with material terms (such as the length of the lease) that conflict with the contract they entered into with plaintiff. So, too, the provision in the HAP contract that requires defendants to renew the lease absent good cause is significant. The so-called administrative burdens defendants identified (keeping track of two rent payments, for example) are vague and insignificant in nature. Others are at best speculative or temporary, such as the possible difficulties in scheduling inspections of the property and the delays in voucher payments some landlords apparently experienced during the COVID-19 pandemic. The Court recognizes that defendants also identified some risks that the voucher program could impose on a landlord that would be out of the landlord's control. In particular, the evi-

dence showed that if the tenant failed to keep the mobile home repaired in the manner required by the voucher program, the public housing authority could cease payments even though the landlord would have no ability to remedy the problem. Thus, defendants have identified some burdens of participating in the program.

In considering whether these burdens create an undue hardship, the Court cannot ignore that defendants operate properties in which they accept vouchers, albeit very few. Defendants operate properties in which they accept vouchers when required by law, and when they have purchased properties where the prior owners allowed vouchers and defendants have continued to accept them from the tenants considering them "grandfathered in" despite defendants' policy not to accept vouchers. Thus, defendants have shown themselves capable of participating in housing voucher programs. Defendants presented no evidence that doing so under these other exceptions created undue hardship upon them. Here, plaintiff is seeking another exception for a disabled person unable to work and pay the rent. The Court also notes that defendants' ability and willingness to accept a check from the St. Vincent de Paul Society on behalf of plaintiff shows that accepting more than one check for rent does not pose a significant burden on defendants.

In looking at the balance of the costs and benefits of the requested accommodation, the Court must also consider the alternatives and their costs and benefits. Here, plaintiff presented only her uncorroborated, but controverted, testimony that her home is too old to move. Nevertheless, the largely uncontest-

ed estimate of $10,000 to move her home to another park that accepted vouchers appears to be a sufficiently significant economic hurdle that it does not appear feasible for plaintiff given that her disability prevents her from working to pay such a large sum.[7] Plaintiff also presented virtually no evidence that she ever seriously attempted to sell her home or find alternative housing. Her attempts to sell her home were not conducted in good faith or with an effort to sell; plaintiff even admitted she had no intention of selling her home. As to finding alternative housing, plaintiff cited her fear of the COVID-19 pandemic and testimony by her nurse practitioner that plaintiff is currently in an unstable mental state such that moving would be difficult.

Last, in weighing the costs and benefits of granting plaintiff's requested accommodation, the Court must consider whether doing so would open the floodgates and subject defendants to a flood of voucher requests. Mr. Reynolds testified that "if you are doing one thing for one person, then you have to do it for everyone per, you know, the Fair Housing guidelines." (Tr., at 227). Similarly, defendants' expert Robert Griswold testified that when a landlord allows one resident to use a Section 8 housing choice voucher as an accommodation, the landlord must treat any other tenant requesting the same accommodation in the same manner. (Tr., at 291–92). In Mr. Griswold's opinion, "you are either in the pro-

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[7] Indeed, defendants consider the costs of moving a mobile home from the park to be a burden for them, let alone for a disabled person with limited income. *See* Doc. 80, at 10 (listing cost of moving mobile home among burdens of participating in the voucher program).

gram or you're not in the program." (Tr., at 292). But later he testified that he could not opine on whether accommodating plaintiff would require defendants to accommodate others with similar claims. (Tr., at 296–97). Plaintiff points out, however, that the so-called "take one, take all" requirement provision in the FHAA was repealed in 1996. *See* Doc. 79, at 22 (citing Publ. L. No. 104-134, § 203(a), (d), 110 Stat. 1321 (1996)). Relying on this change in the law, plaintiff's witnesses rejected the notion that defendants would be obligated to accept voucher requests for other tenants simply as a result of accepting a voucher for plaintiff. (Tr., at 85, 152). The Court is persuaded that granting plaintiff's requested accommodation here would not obligate defendants to accept vouchers for any tenant who requested one any more than accepting vouchers for those defendants grandfathered in when they purchased other parks obligated them to accept vouchers for any tenant who requested one. To be sure, if another tenant who is disabled and unable to work requests an accommodation under similar circumstances, defendants will have to consider whether the FHAA requires it to grant the accommodation. That determination will turn on the facts of each case, just as this determination has. In short, the Court finds no basis to conclude that granting plaintiff's accommodation here will subject defendants to a flood of tenants for whom they must accept vouchers.

Having considered the burdens of accommodating plaintiff by accepting a housing voucher for part of her rental payment, and weighing the costs and benefits of defendants participating in the program to this limited extent and under this exceptional situa-

tion, the Court finds that defendants have failed to show that doing so will create an undue hardship. Thus, the Court finds in favor of plaintiff on her FHAA claim.

VIII. DAMAGES

Having found in favor of plaintiff on her FHAA claim, the Court must now consider the relief to which she is entitled. The Court's finding mandates that at the very least the Court order defendants to accept plaintiff's housing choice voucher for so long as she is unable to work because of her disability. Plaintiff also seeks compensatory damages as well, however. She seeks "$35,000 for the emotional distress she has experienced as a result of Defendants' unlawful refusal to reasonably accommodate her." (Doc. 79, at 28). Defendants point out that plaintiff failed to present evidence that her mental distress was related to the refusal to grant her requested accommodation. (Doc. 80, at 26). The Court agrees. Plaintiff presented evidence through her healthcare provider that plaintiff suffered emotional distress because of the increase in rents and the pandemic, and that she is in an unstable mental state and that moving would cause her to get worse, but provided no testimony that defendants' refusal to accommodate her caused her additional emotional distress. Even if plaintiff had presented such evidence, the Court would not award damages for emotional distress. Defendants here have acted in good faith. The law in this area is far from clear—as noted in this opinion there is a circuit split on the issues before the Court—and defendants reached an agreement with plaintiff about rent pending trial in this matter.

Thus, the Court will enjoin defendants by ordering them to accept plaintiff's housing choice voucher, but will not award plaintiff compensatory damages.

IX. CONCLUSION

For the reasons stated, the Court:

1. **Grants in part and denies in part** defendants' Motion to Take Judicial Notice of Certain Adjudicative Facts (Doc. 61);

2. **Denies** defendants' Renewed Motion in Limine in which defendants seek to strike plaintiff's expert evidence (Doc. 65);

3. **Denies** plaintiff's Motion in Limine in which she seeks to strike defendants' expert evidence (Doc. 66);

4. **Finds in favor of plaintiff** on her FHAA cause of action. Defendants are **ordered** to accept plaintiff's housing choice voucher, but plaintiff is not awarded money damages on this claim.

5. **Orders** the parties to submit, within 14 days of this Order, a proposed scheduling order and discovery plan on the remaining Iowa causes of action.

IT IS SO ORDERED this 5th day of October, 2021.