

TENTATIVE Order Regarding Defendant Wood’s Motion to Dismiss

Brandon Wood (“Wood”) filed his motion to dismiss for failure to state a claim upon which relief can be granted as to Turning Point Treatment Inc (“Turning Point”) and Jeffrey Benon (“Benon”) and for lack of subject matter jurisdiction as to Benon. Dkt. No. 44. Turning Point and Benon opposed the motion. Dkt. No. 46. Wood replied. Dkt. No. 47.

For the following reasons, the Court **GRANTS** the motion. The Court dismisses with thirty days to replead.

I. BACKGROUND

1. Factual Background

Beginning around March 2015 until October 2019, Turning Point, owned by Jeffrey Benon, operated a state-licensed detoxification facility (the “Group Home”) at 28111 Somerset, Mission Viejo, CA 92692. Compl. ¶¶ 10, 16, Dkt. No. 17. The Group Home is located in an area governed by a Homeowners Association (“HOA”). Id. ¶ 17. It is fully licensed by the relevant state authorities. Id. ¶¶ 18-22. Turning Point does not own the house, but rather leases it from Hanadah Natour. Id. ¶ 7.

Until October 2018, Turning Point had not received any complaints regarding the Group Home. Id. ¶ 17. In fact, it had no issues with Natour or the HOA until that point. Id. ¶ 29-30. It only began to received complaints when Grace moved into the home next door, approximately in mid-2017. Id. ¶¶ 13, 28. Wood had lived next door since September, 2016. Id. ¶ 15.

Around mid-2018, the HOA began targeted enforcement of community guidelines and rules motivated by complaints received by Grace and Wood. Id. ¶ 31. The Complaint also notes that prior to Grace moving in, in approximately mid-2017, Turning Point received no complaints from the HOA. Id. ¶ 28.

Grace and Wood “began a concerted effort to drive Turning Point out neighborhood [sic] through intimidation and harassment, using alleged [] [guideline] violations as a pretext.” Id. ¶ 32. As a result, the HOA began citing Turning Point and Natour with violations of the relevant guidelines at an increased frequency. Id. ¶ 34. For example, on October 26, 2018, Grace and Wood issued correspondence regarding excessive smoking, threatening to file a lawsuit against Turning Point and others for creating a dangerous condition on the premises. Id. ¶ 35. The correspondence was allegedly issued by a member of the HOA board on behalf of Wood. Id. ¶ 37. As a result of the correspondence, Natour threatened Turning Point with eviction. Id. ¶ 38.

Two weeks later, on November 7, 2018, Turning Point “constructed a cabana with air ventilation in the backyard” to address the issues raised by Grace and Wood. Id. ¶ 39. It also instituted a new smoking policy. Id. ¶ 40. Unsatisfied, Grace and Wood requested that residents walk away from the home to a park nearby. Id. ¶ 41. According to the Complaint, Grace and Wood began to film or video tape the residents, at times yelling at them over the fence. Id. ¶¶ 41, 42, 44. Wood in particular “continued to harass and intimidate the residents of Turning Point at the subject property by (1) video-taping the residents, (2) coercing the HOA Board..to intimidate, threaten or interfere with Plaintiffs’ residents’ use and enjoyment of the property.” Id. ¶ 49.

On April 14, 2019, Natour informed Turning Point’s representatives that the HOA reported 22 complaints against Natour since mid-2018 and that if Turning Point did not agree to stop the activity, he would evict it and its residents. Id. ¶¶ 51-52. Eventually, “after relentless pressure,” Natour evicted Turning Point. Id. ¶¶ 51 (p. 9).¹

Turning Point and Benon eventually filed suit, alleging violations of the Federal Fair Housing Act (“FHA”) and the California Fair Employment and Housing Act (“FEHA”). Id. ¶¶ 67-70.

¹Turning Point’s Complaint suffers from formatting errors, specifically, that the numbering of the Complaint restarts at paragraph 51 on page 9. To avoid confusion, the Court has added page number and paragraph references in certain areas.

2. Allegedly Discriminatory Practice

Turning Point alleges that Grace and Wood engaged in a variety of allegedly discriminatory practices. It alleges that Wood “exhibited hostile conduct toward the residents of Turning Point” and that conduct “was motivated by a discriminatory motivation toward the disabled residents.” Id. ¶ 59. The same paragraph, however, adds “which Grace exhibited through written email communications, harassing texts and complaints to the HOA.” Id. Turning Point then lists a series of policies or practices of discrimination. Id. ¶ 63.

II. LEGAL STANDARD

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim has “facial plausibility” if the plaintiff pleads facts that “allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

To resolve a Rule 12(b)(6) motion under Twombly, a court must follow a two-pronged approach.

First, a court must accept all well-pleaded factual allegations as true; but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Iqbal, 556 U.S. at 678. Hence, a pleading must allege facts that permit “the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. Courts “are not bound to accept as true a legal conclusion couched as a factual allegation.” Id. (quoting Twombly, 550 U.S. at 555). So a court considering a motion to dismiss may “begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth.” Iqbal, 556 U.S. at 679.

Second, assuming the veracity of well-pleaded factual allegations, the Court must “determine whether they plausibly give rise to an entitlement to relief.” Id. at 679. This determination is context-specific; the Court must draw on its experience and common sense, but there is no plausibility where the court cannot “infer more

than the mere possibility of misconduct.” Id.

III. DISCUSSION

A. FHA and FEHA Claims²

Under the FHA, it is unlawful “[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap[.]” 42 U.S.C. § 3604 (f)(1). The FHA applies to individuals in recovery for alcohol or drug abuse. See 42 U.S.C. §§ 3602(h), 3604, 12102(1), 12132; Pac. Shores Properties, LLC v. City of Newport Beach, 730 F.3d 1142, 1156 (9th Cir. 2013). A group home such as the one at issue here is a “dwelling[.]” under 42 U.S.C. § 3602(b), and therefore the FHA prohibits discriminatory actions that adversely affect the availability of such group homes. See, e.g., Schwarz v. City of Treasure Island, 544 F.3d 1201, 1213–16 (11th Cir.2008); Lakeside Resort Enters., LP v. Bd. of Supervisors of Palmyra Twp., 455 F.3d 154, 160 (3d Cir. 2006).

A plaintiff may state a claim for a violation of the FHA by showing (1) disparate treatment, (2) disparate impact, or (3) failure to provide reasonable accommodation. See Gamble v. City of Escondido, 104 F.3d 300, 304-05 (9th Cir. 1997).

Wood argues that Turning Point’s first claim for relief fails to state a plausible claim against him because it completely fails to state which provisions of the statutes were violated by Wood or whether those violations were in his capacity as an individual neighbor as a member of the HOA board of directors. Mot. at 9, Dkt. No. 44. Wood argues that these are allegations are conclusory and are insufficient to provide him with notice as to which specific provisions he allegedly violated. Id. In its Opposition, Turning Point argues that it did allege a claim under both the FHA and FEHA as evidenced by Wood’s joining the board of the HOA and the HOA’s subsequent increased frequency of issuing violations. Opp’n at 5, Dkt. No. 46.

²Wood claims that FEHA claims are analyzed under the same standards as FHA claims, and reiterates his arguments made. Mot. at 13, Dkt. No. 44. Turning Point agrees.

Wood also argues that regardless of the above, Plaintiffs could allege a claim against him by showing his conduct resulted in disparate treatment, disparate impact, or a failure to provide reasonable accommodation. Mot. at 9, Dkt. No. 44. He argues, however, that Plaintiffs have failed to do so. Id. Beyond these generic claims, it is unclear to the Court how Wood or the HOA's actions were in violation of the FHA or FEHA, as discussed below.

i. Facial Claim / Disparate Treatment

“A facially discriminatory policy is one which on its face applies less favorably to a protected group.” Cnty. House, Inc. v. City of Boise, 490 F.3d 1041, 1048 (9th Cir. 2007). To allege a claim of disparate treatment, Plaintiffs must allege that they were treated differently than other similarly-situated individuals because of their protected status. See Budnick v. Town of Carefree, 518 F.3d 1109, 1114 (9th Cir. 2008). Otherwise, “in lieu of satisfying the elements of a prima facie case, a plaintiff may also ‘simply produce direct or circumstantial evidence demonstrating that a discriminatory reason more likely than not motivated’ the challenged decision.” Budnick, 518 F.3d at 1114 (quoting MiGinest v. GTE Serv. Corp., 360 F.3d 1103, 1122-23 (9th Cir. 2004)).

Wood argues that Turning Point failed to allege that the HOA's no smoking policy was facially discriminatory or resulted in disparate treatment of the plaintiffs. Mot. at 10, Dkt. No. 44. Specifically, Turning Point does not allege a claim for facial discrimination because it does not allege how the no smoking rule enforcement was different from how the HOA would treat any other member who had tenants actively violating the HOA's rules and Turning Point does “not even allege that these rules were not enforced against other residents.” Id. at 11.

In its Opposition, Turning Point discusses a series of cases regarding proving disparate treatment, and then argues that the Complaint alleges sufficient facts to plausibly state claims against Wood. Opp'n at 3-4, Dkt. No. 46. Specifically, it argues that “Turning Point diligent attempted to comply” with the targeted notices of violations and attempted to mitigate any of the alleged nuisances. Id. at 5. However, “when mitigation efforts failed” and the HOA increased the frequency of notices of violations of the guidelines, Wood then joined the HOA board to further this campaign of harassment, using the HOA to

further his goals. Id. Turning Point alleges that Wood even enlisted other HOA members to send threatening correspondence. Id. at 5.

In his Reply, Wood reasserts that he cannot be held liable as a neighbor for violating either the FHA or FEHA. Reply at 2, Dkt. No. 47. Wood also claims that Turning Point fails to demonstrate how enforcement of the Association's guidelines applied less favorably to Turning Point, even though they generally allege that the Association and Wood had a discriminatory motive for enforcing the documents. Id. at 3.

The Court agrees with Wood – Turning Point has failed to demonstrate that other similarly situated members were treated differently. Turning Point does not demonstrate how Wood or the HOA's actions “single[d] out a protected group and applied different rules to them because of their protected trait.” Smith v. Cityfront Terrace Homeowners Ass'n, No. 15-CV-00427-BAS(WVG), 2016 WL 1450709, at *3 (S.D. Cal. Apr. 13, 2016). Moreover, Turning Point does not demonstrate how Wood or the HOA's actions, practices, or policies, although perhaps outwardly neutral had a significantly adverse impact on the disabled. Gamble, 104 F.3d at 305.

Therefore, Turning Point does not demonstrate that Wood's or the HOA's actions resulted in disparate treatment against its residents, and therefore, cannot make a facial claim against Wood or the HOA. Because the Court finds that Turning Point did not allege that its residents were treated differently than similarly situated individuals, the Court need not determine whether Wood in his personal capacity could be liable.

ii. Disparate Impact

To state a prima facie case under a disparate impact theory, a plaintiff must show that “(1) the occurrence of certain outwardly neutral practices, and (2) a significantly adverse or disproportionate impact on persons of a particular type produced by the defendant's facially neutral acts or practices.” Gamble, 104 F.3d at 306. This may be done through statistics or other proof demonstration that a defendant's behavior had a “significantly adverse or disproportionate impact” on a protected group. Id. “Courts must [] examine with care whether a plaintiff has made out a prima facie case of disparate impact and prompt resolution of these

cases is important. A plaintiff who fails to allege facts at the pleading stage or produce statistical evidence demonstrating a causal connection cannot make out a prima facie case of disparate impact.” Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc., 135 S. Ct. 2507, 2523 (2015).

Wood argues that Turning Point failed to allege a disparate impact by Wood is because, “as a neighbor to the Unit, he is not engaged in any practices which are actionable” and “to the extent that Wood is a member of the HOA, it is the HOA’s practices” and not his that affected Turning Point. Mot. at 12, Dkt. No. 44. According to Wood, “[o]ther than alleging that the HOA was motivated to enforce its [] [guidelines]” partially because of his complaints, “there are absolutely no allegations to support that Wood was in a position where he, by himself, could engage in any practice which would have a disparate impact” on Turning Point. Id.

The Opposition is silent in response. See generally, Opp’n, Dkt. No. 46.

iii. Failure to Provide Reasonable Accommodation

The FHA provides that “discrimination includes ... 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.” 42 U.S.C. § 3604(f)(3)(B).

Because the Complaint does not allege that Wood failed to provide a reasonable accommodation, the Court need not discuss it here.

Therefore, because Turning Point fails to address whether it seeks redress under the FHA or FEHA as a result of disparate treatment, disparate impact, or a failure to provide reasonable accommodation, and only in its Opposition does it address disparate treatment and even then, fails to allege a claim, the Court GRANTS Wood’s motion to dismiss for both the FHA and FEHA claims.

B. Whether Plaintiff Benon Has Standing

In addition, Wood requests that the claims against him by Plaintiff Benon be dismissed because Benon is not an aggrieved person under the FHA, and therefore

lacks standing to assert claims against Wood. Mot. at 13, Dkt. No. 44. Specifically, Wood claims that there are no allegations to support a claim that Benon, who is the lessee of the unit and the sole owner of Turning Point, was aggrieved and therefore within the zone of interests covered by the FHA. Id.

The Court disagrees. The Ninth Circuit has found that the FHA does not restrict the right to bring actions to persons associated with individuals aggrieved under the FHA, but rather allows any individuals sustaining an actual injury to commence a suit. San Pedro Hotel Co. v. City of Los Angeles, 159 F.3d 470, 475 (9th Cir. 1998). For example, in San Pedro Hotel Co., the Court found that potential sellers of a property rendered unable to sell their property to a buyer because of improper interference with a loan could bring suit. Id. The Court finds that Benon, as the sole owner of Turning Point and lessee of the property, subsequent to the allegedly wrongful eviction, could similarly bring suit.

However, because the Court has found that Turning Point fails to allege a violation of the FHA or FEHA, it **DISMISSES** Benon's claims against Wood as well.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** the motion. The Court dismisses with thirty days to replead.

IT IS SO ORDERED.

Effective immediately all oral arguments are VACATED. The Court will continue to post tentatives in the afternoon of the Court day prior to the scheduled hearing (e.g., Friday afternoon for Monday hearings). Any party may file a request for hearing of no more than five pages no later than 5:00 p.m. the day following the scheduled hearing (e.g., Tuesday 5:00 p.m. for a Monday hearing) stating why oral argument is necessary. If no request is submitted, the matter will be deemed submitted on the papers and the tentative will become the order of the Court. If the request is granted, the Court will advise the parties when and how the hearing will be conducted. The Court asks for the parties' understanding and patience in these difficult times.