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96 MAR -5 PM 12:35

LELAND P. HAUGEN  
MERCED SUPERIOR COURT  
BY: ~~WALTER HARRISON~~  
DEPUTY

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MERCED

8 BERTHA ELIAS

9 Plaintiffs,

10 vs.

11 NHP PROPERTY MANAGEMENT  
12 INC.; and DOES I  
through XX inclusive,

13 Defendants.

No. 128866

COMPLAINT FOR  
INJUNCTIVE RELIEF,  
DAMAGES (CC 51 & 52;  
B & P 17200), AND  
DECLARATORY RELIEF  
(CCP 1060 ET SEQ.)

15 I. INTRODUCTION

16 1. This lawsuit alleges that the defendants have illegally  
17 discriminated against plaintiff on the basis of the fact that she  
18 had discharged debts in bankruptcy court prior to her application  
19 for governmentally subsidized housing at the Merced Commons, a  
20 complex run by the defendants. The result of this discrimination  
21 was to deny plaintiff the right to be on a waiting list for housing  
22 and a Section 2 subsidy,

24 II. DEFENDANTS

25 2. Defendant NNP Management, Inc. ("NHP") is, and at all  
26 times herein mentioned was, a company duly organized and existing  
27 under the laws of the State of California which conducts business in  
28 Merced County, California.

3. Defendants Doe I through XX, inclusive, are sued herein

1 under fictitious names. Their true names and capacities are unknown  
2 to plaintiff. When their true names and capacities are ascertained,  
3 plaintiff will amend this complaint by inserting their true names  
4 and capacities herein.

5 4. Plaintiff is informed and believes and thereon allege6  
6 that each of the fictitiously named defendant is responsible in some  
7 manner for the occurrences herein alleged, and that plaintiff's  
8 damages as herein alleged were proximately caused by those  
9 defendants.

10 5. Plaintiff is informed and believes and thereon alleges  
11 that, at all relevant times the non-parties mentioned in this suit,  
12 Mireya Johal and Jeff Lustig, were the agents of defendant Merced  
13 Commons Apartments and NHP and, in doing the things hereinafter  
14 alleged, were acting within the course and scope of such agency and  
15 with the permission and consent of NHP.

16 III. PLAINTIFF

17 6. Plaintiff Bertha Elias is a 66 year old woman, a resident  
18 of Merced County, who has an excellent history of rental payments,  
19 In 1994, she discharged debts as part of a bankruptcy action, She  
20 has never missed a rent payment in the period prior to or during her  
21 bankruptcy.

22 7. Plaintiff, for approximately ten of the last fifteen  
23 years, has been paying rent in a timely manner to NHP as a resident  
24 of Several of their complexes. Defendants never expressed any  
25 problems to her about her tenancies. Plaintiff has had at all  
26 relevant times and continues to have the ability to pay her rent at  
27 Merced Commons.

28 IV. STATEMENT OF FACTS

1 a. On information and belief, plaintiff alleges that  
2 Merced Commons is a complex in Merced, California, which is owned  
3 and operated by NHP.

4 9. plaintiff applied for an apartment at Merced Commons.  
5 At that time she informed NHP employee of her bankruptcy. She was  
6 put on a waiting list for an apartment and a subsidy.

7 10. In approximately June 1995, plaintiff was called by  
8 an employee of Merced Commons and told that an apartment was ready  
9 for her and that she could move in shortly, That employee said that  
10 Merced Commons would notify her very soon of exactly the day she  
11 could move in.

12 11. Based on that information, Plaintiff began to pack  
13 her belongings and moved,

14 12. Approximately June 12, 1995, not having heard from  
15 Merced Commons, plaintiff called them. At that time, she was told  
16 by an employee of Merced Commons, that she was ineligible because of  
17 her bankruptcy.

18 13. In June, 1995, defendant sent her the "Application  
19 Status Letter" from Mireya Johal ("Johal"), who was acting as an  
20 agent for NHP within the scope and authority of her position with  
21 NHP. This notice was dated May 8, 1995, but was postmarked in June  
22 1995. It confirmed that plaintiff was denied housing.

23 14. On information and belief, plaintiff alleges that Johal  
24 was, at all relevant times, a part of the management of Merced  
25 Commons and was acting within her scope and authority when she  
26 denied plaintiff and in representing to plaintiff that the reason  
27 for the denial was her bankruptcy,

28 15. Plaintiff, through her counsel, called Johal to determine

1 more exactly the reason **for** the denial. John informed plaintiff's  
2 counsel that the **sole reason** for the denial was that plaintiff had  
3 been in bankruptcy court recently.

4 16. Jeff Lustig of NHP, upon further inquiry by plaintiff's  
5 counsel, confirmed that the bankruptcy was the **sole reason** for the  
6 denial,

7 17. On information and belief, plaintiff alleges that Lustig  
8 is the vice-president of NHP and was acting within the scope and  
9 authority of that position when representing that the bankruptcy was  
10 the sole reason for the denial.

11 18. NHP, according to a letter written by their counsel in  
12 August 1995 to plaintiff's counsel, has a policy that "bankruptcies  
13 are not acceptable." That policy was used to deny plaintiff.

14 19. On information and belief, plaintiff alleges that Merced  
15 Commons is a "site-based Section 8 project." At such a project, all  
16 of the tenants receive, in addition to a leasehold on the residence,  
17 housing subsidies from the federal government's Department of  
18 Housing and Urban Development ("HUD").

19 20. These subsidies, known as "Section 8," work like this: 1)  
20 the tenant pays a portion of the fair market rent to the landlord;  
21 2) the tenant's portion of the rent normally cannot exceed 30% of  
22 the household's income; 3) HUD pays the landlord the difference  
23 between the tenant's share of the rent and the fair market value.

24 21. With Site-based Section 8, the tenant applies with a  
25 landlord, in this case NHP, for housing, NHP's decision in this  
26 case to accept the application puts the tenant on a waiting list for  
27 a subsidized residence.

21 22. NHP screens applicants for their eligibility for the

1 Section 8 HUD subsidy. NHP also decides whether or not they will  
 2 place the person on a waiting list as a potentially suitable tenant.  
 3 The decision of NHP to accept the tenant means that they will also  
 4 receive the governmental subsidy when a place opens for them at the  
 5 complex.

6 23. NHP conducted such an application process with plaintiff,  
 7 rejecting her,

8 24. At all relevant times, NHP was acting as an agent for HUD  
 9 in the application screening process.

10 25. As a result of defendant's conduct, plaintiff was not  
 11 placed on the waiting list for a residence and a subsidy.

12 26. By being rejected from placement on the waiting list,  
 13 plaintiff loses any chance whatsoever to receive a residence or a  
 14 federal subsidy at Merced Commons. Conversely, placement on the  
 15 waiting list means that, eventually, plaintiff would receive both a  
 16 leasehold and a HUD subsidy.

17 27. Title 11, Section 525 of the federal Bankruptcy Code  
 18 prohibits discrimination against bankrupts because of their status  
 19 by governmental entities. This prohibition extends to the actions  
 20 of the agents of governmental entities.

23 28. Bankrupts are a cognizable class of individuals against  
 22 whom there has been, historically, discrimination. The existence of  
 23 such discrimination is evinced, in part, by the federal anti-  
 24 discrimination rules of the Bankruptcy code.

25 V. EQUITABLE RELIEF

26 23. No adequate remedy exists at law for the denial of  
 27 plaintiff's application, She desires and is entitled to reside at  
 28 Merced!! Commons, a unique piece of real estate. Unless defendant is

1 enjoined from continuing to do so, she will continue to be  
2 discriminated against illegally and will not be able to reside at  
3 Merced Commons nor receive her federal subsidy. Injunctive relief  
4 is specifically authorized by the Unruh Civil Rights' Act and the  
5 Unfair Businesses Act, violations of which are alleged in this  
6 complaint.

7 **FIRST CAUSE OF ACTION -**  
8 **VIOLATION OF FEDERAL ANTI-DISCRIMINATION**  
9 **AGAINST BANKRUPTS**

10 30. Acting as an agent for HUD, defendant, through its conduct  
11 as alleged above, improperly discriminated against plaintiff by  
12 denying her placement on the waiting list for HUD Section 8  
13 subsidies on the basis of her bankruptcy.

14 **SECOND CAUSE OF ACTION -**  
15 **CALIFORNIA CIVIL CODE SEC. 51 AND 52**  
16 **UNRUH CIVIL RIGHTS ACT**

17 31. Defendants are in the business of supplying accommodations,  
18 facilities, privileges and services within the state of California.

19 32. Defendant's conduct, as alleged in this complaint,  
20 discriminated against her illegally based on the basis of her status  
21 as a bankrupt, a member of a cognizable class which has historically  
22 been subject to discrimination. Such conduct was arbitrary and  
23 capricious.

24 **THIRD CAUSE OF ACTION -**  
25 **UNLAWFUL PRACTICE, BUSINESS & PROFESSIONAL**  
26 **CODE SECTION 17200, ET SEQ.**

27 33. The conduct of defendants, as alleged in this complaint,  
28 are unlawful and unfair business acts,

34. Plaintiff was born on January 1, 1930, and was over 65  
years old at the time she applied for and was denied housing by

1 defendants, She was a senior citizen as defined by BUS. & Pro. Code  
2 Sec. 17206.1(b)(1).

3 35, On information and belief, plaintiff alleges that  
4 defendants knew or should have known that plaintiff was a senior  
5 citizen.

6 36. As a result of defendants' conduct, plaintiff has lost a  
7 Valuable asset and resource: her leasehold at Merced Commons and its  
8 accompanying Section 8 subsidy.

9 37. Plaintiff has suffered or will suffer actual emotional  
10 damage as a result of the conduct of defendants in the form of the  
11 loss of her Section 8 subsidy.

12 **FOURTH CAUSE OF ACTION -**  
13 **DECLARATORY RELIEF**

14 38. An actual controversy exists between the parties as the  
15 application of the Unruh Civil Rights Act, Civil Code Sec. 53,  
16 whether defendants' conduct violates that Act. The correct  
17 interpretation is that it does apply to defendants' conduct and  
18 prohibits discrimination on the basis of bankruptcy,

19 **WHEREFORE**, Plaintiff prays for Judgment as follows:

- 20 1, Actual damages as proved at trial;
- 21 2. Treble and statutory damages pursuant to Civ. Code Sec. 52(a);
- 22 3. An injunction requiring defendant to reconsider plaintiff's  
23 application and put her on the waiting list effective the date of  
24 her original application;
- 25 4. Civil penalties pursuant to B & P Code Sec. 17200.1 and Civ. Code  
26 Sec. 3345;
- 27 5. A declaratory judgment declaring that the Unruh Civil Rights Act  
28 and the federal prohibition against discrimination of bankrupts

1 applies to defendants' conduct and. prohibits the denial of housing  
 2 and subsidies solely on the basis of bankruptcy;  
 3 6. Attorney fees for the prosecution of this base;  
 4 7. Such other relief as to which plaintiff may be justly entitled,

5  
 6 DATE: 2/5, 1996

*Jack Daniel*  
 7 **CENTRAL CALIFORNIA LEGAL SERVICES**  
 8 **By: Jack Daniel**  
 9 **Plaintiff's Attorney**

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