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1 Gary W. Rhoades (SBN 166149)  
2 LAW OFFICE OF GARY RHOADES  
3 834 1/2 S. Mansfield Ave.  
4 Los Angeles CA 90036  
5 Telephone: (323) 937-7095  
6 Facsimile: (775) 640-2274

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CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

BY \_\_\_\_\_

7 Attorney for Plaintiffs

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 FAIR HOUSING COUNCIL OF SAN )  
11 FERNANDO VALLEY; FAIR )  
12 HOUSING COUNCIL OF SAN )  
13 DIEGO, individually and on behalf of )  
14 the GENERAL PUBLIC, )

15 Plaintiffs,

16 vs.

17 ROOMMATES.COM, LLC )

18 Defendants. )

CASE NO. CV03-9386 PA (RZx)

(Assigned to the Honorable Percy Anderson)

NOTICE OF MOTION IN  
SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION; POINTS AND  
AUTHORITIES

DATE: August 9, 2004  
TIME: 1:30 a.m.  
COURTROOM: 15

19  
20 Plaintiffs hereby move, pursuant to the Fair Housing Act, as amended, 42 U.S.C.  
21 §3613(c)(1) and California Business & Professions Code §17078, for the entry of a  
22 Preliminary Injunction to be issued in accordance with Fed. R. Civ. P. 65 and Local  
23 Rule 65-1. The hearing on this motion is scheduled for August 9, 2004 at 1:30 p.m.  
24 in the court of the Honorable Percy Anderson, Courtroom 15 at the federal courthouse  
25 on Spring Street in Los Angeles, California.

26 This motion seeks an order from the court that pending trial the defendant stop  
27 demanding or even requesting information about age, gender, sexual orientation,  
28 source of income and familial status from persons looking for a place to live through  
defendant's website. This motion also seeks orders to prohibit defendant from posting

1 countless discriminatory housing statements--the most egregious race and religion  
2 rental statements plaintiffs have seen--and from refusing to post fair housing resources  
3 and information on its website. This motion is made on the grounds that the acts  
4 sought to be prohibited are all violations of the state and federal fair housing laws and  
5 that they are causing irreparable harm to the plaintiffs and to members of the general  
6 public.

7 As grounds for this application, plaintiffs submit the accompanying  
8 Memorandum in support thereof, as well as the sworn declarations and other  
9 documents attached hereto.

10 As shown in the Declaration of Gary Rhoades, plaintiffs contacted defense  
11 counsel Timothy Alger and began the meet-and-confer process for this motion on June  
12 7, 2004. Rhoades Decl. ¶ 5. The meet-and-confer process did not produce any  
13 alternative to this motion. Id.

14  
15 DATED: 7-9-04

Respectfully submitted,

16  
17 By: Gary W Rhoades  
18 Gary W. Rhoades  
19 Attorney for Plaintiffs  
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**Honorable Percy Anderson**

TABLE OF CONTENTS

1		
2		
3	MEMORANDUM OF POINTS AND AUTHORITIES	1
4	SUMMARY	1
5	PARTIES	2
6	STATEMENT OF THE FACTS	2
7	A. Defendant Requires Members "Looking for a Place to	
8	Live" To Provide Details With Respect to Their Age,	
9	Profession (or lack thereof), Gender, Sexual Orientation	
	and Familial Status.	3
10	B. Defendant Provides Members With a Place Available	
11	For Rent With a Selection of "Preferences" With Respect	
12	to the Age, Gender, Sexual Orientation and Familial Status	
	of Persons Looking for a Place To Live.	4
13	C. Many Persons With Places Available to Rent Post	
14	Additional Preferences That Are Based on Race, National	
	Origin, Religion, and all the other protected classes.	5
15	D. Defendant's Efforts To Reduce or End Discrimination on Its	
16	Website	7
17	ARGUMENT	7
18	I. Legal Standards for Preliminary Injunctions	7
19	II. Defendants' Egregious Fair Housing Violations	
20	Justify an Injunction	8
21	A. Likelihood of Plaintiffs' Success on the Merits	8
22		
23	III. Plaintiffs Suffer Irreparable Injury and the Balance	
24	Of Hardships Tilts in Their Favor	14
25	Balance of Hardships	15
26	CONCLUSION	19
27		
28		

1 TABLE OF AUTHORITIES

2 CASES

3 Fair Housing Congress v. Weber, 993 F. Supp. 1286 (C.D. Cal. 1997).....9

4 Gresham v. Windrush Partners, Ltd., 730 F.2d 1417 (11th Cir. 1984).....8

5 Housing Rights Center et al. v. The Donald Sterling Corporation,

6 274 F. Supp. 2d 1129 (C.D. Cal. 2003) (aff'd, 2003 U.S. App. LEXIS

7 25266 (9th Cir. 2003) .....8, 9, 11

8 Jancik v. Dept. of Housing and Urban Development,

9 44 F. 3d 553 (7<sup>th</sup> Cir.1995).....11

10 Morton v. Mancari, 417 U.S. 535, 537-45 (1974)..... 13

11 Ragin v. New York Times Co., 923 F. 2d 995 (2d Cir. 1991).....9

12 Silver Sage Partners, LTD v. City of Desert Hot Springs,

13 251 F.3d 814 (9<sup>th</sup> Cir. 2001) .....8, 14

14 Soules v. Dept. of Housing and Urban Development,

15 967 F. 2d 817(2d Cir. 1992) .....11

16 Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972).....12

17 United States v. Hunter, 459 F. 2d 205, 215 (4th Cir. 1972).....9

18 Walczak v. EPL Prolong, Inc., 198 F. 3d 725, 731 (9th Cir. 1999).....8

19

20 STATUTES

21 42 U.S.C §3603(c).....11

22 42 U.S.C §3604(c).....8, 9

23 47 U.S.C.A. §230(c)(1).....12

24 Cal. Civil Code § 51.2.....9

25

26 Cal. Govt. Code § 12955 .....9

27

28

REGULATIONS

24 CFR §109.30(a)(as referenced by 24 CFR §100.75(d)).....18

24 C.F.R. § 110.10(d) .....18

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18 SUMMARY

19 Plaintiffs respectfully submit this Memorandum in support of their motion for  
20 Preliminary Injunction pursuant to Rule 65, Fed. R. Civ. P. Their motion addresses  
21 numerous violations of the Fair Housing Act, the California Fair Employment and  
22 Housing Act, and the Unruh Civil Rights Act. Specifically, from its prominent rental  
23 website Defendant Roommate.com makes several unlawful inquiries into the personal  
24 characteristics of persons looking for a place to live information. Defendant also  
25 makes and publishes discriminatory statements that indicate preferences based on race,  
26 religion, national origin, gender, familial status, age, sexual orientation, source of  
27 income, and disability. This motion also addresses the particularized, continuing and  
28 irreparable injuries caused by defendants' unlawful acts and practices.

1 PARTIES

2 Defendant Roommates.com, LLC operates a rental website at  
3 <http://www.roommates.com>. (Declaration of Michael Peters ¶ 3.) This website is  
4 open to persons "looking for a place to live" and to persons who "have a place  
5 available for rent."

6 Plaintiff Fair Housing Council of San Fernando Valley is a private non-profit  
7 organization committed to promoting fair housing work and working to implement  
8 programs designed to further equal housing so that all residents have the opportunity  
9 to secure the housing they desire and can afford, regardless of race, color, religion,  
10 national origin, familial status, disability, marital status, ancestry, age, sexual  
11 orientation, income source, and gender. Bruno Decl. ¶ 4. FHC/SFV must cover a  
12 vast territory, providing services to residents of San Fernando Valley, Simi Valley,  
13 Santa Clarita, North Los Angeles County (excepting Lancaster and Palmdale), and  
14 Burbank. Id. FHC/SFV serves a population of 2.5 million people. Id.

15 Plaintiff Fair Housing Council of San Diego is a non-profit organization whose  
16 mission is to eliminate housing discrimination so that all residents have the  
17 opportunity to secure the housing they desire and can afford, regardless of race, color,  
18 religion, national origin, familial status, disability, marital status, ancestry, age, sexual  
19 orientation, income source, gender or other characteristics protected. FHC/SD covers  
20 all of the cities of San Diego and San Diego County, serving a population of over two  
21 million.. Knoll Dec. ¶ 5.

22 Declarant and member of the General Public Housing Rights Center is a fair  
23 housing council in Los Angeles with a mission similar to those of the plaintiffs.  
24 Espinoza Decl. ¶ 5.

25 STATEMENT OF THE FACTS

26 Through its rental website, Defendant offers services to members who are  
27 "looking for a place to live" and members who "have a place available to rent." Ex.  
28 5, Initial Membership Application (requiring users to choose between "I'm looking for



1 a place to live" and "I have a place available for rent." All members are required to  
2 provide dates of birth, name, and email address. Id.

3 Members are also required to create a nickname. Id. The nicknames  
4 Roommate.com allowed to be posted in June of 2004 include the following:  
5 ChristianGrl, CatholicGirl, ChristianGuy, Christianhme, ChristianLdy, Asianpride,  
6 AsianAmrican, Asianmale, Whitehme, Whiteguy, Whiteguy97, whitekenneth,  
7 Whiteboy, Whiteboy23, Whiteboy73, Whiteboy80, Whiteboy 84, Whiteboy696,  
8 Chinesegirl, Latinpride, Latina03, Latina32, Latino22, Latino29, Latino78, Latin,  
9 Blackguy, Blackboi, Blackman, and Blackmale. Ex. 15 , Nickname Search on June  
10 20, 2004.

11 Once members complete the initial membership form at Ex. 5, Roomate.com  
12 separates those that "have a place available for rent" from those who are "looking for  
13 a place to live," requiring both groups to fill out different and more detailed fields.

14  
15 A. Defendant Requires Members "Looking for a Place to Live" To Provide Details  
16 With Respect to Their Age, Profession (or lack thereof), Gender, Sexual Orientation,  
17 and Familial Status.

18 If a person "looking for a place to live" (defendant's words) wished to be  
19 considered by the many persons on the website who have a place available, the person  
20 must provide a profile. Plaintiffs' Ex. 18 , *About Me*. The *About Me* page shows what  
21 criteria Roomate.com has chosen to demand, including Age, Gender, Sexual  
22 Orientation, Occupation, Pets, and Children. Persons looking for a place to live are  
23 not allowed to leave any of these questions blank. Bruno Declaration ¶ 18. If they  
24 attempt to do so, the screen is frozen with a "Age is Required" Internet Explorer  
25 warning box. Id.

26 As another example, if a person looking for a place to live does not want to  
27 disclose their sexual orientation and tries to leave it blank and then submit their  
28 "About Me" profile, the warning box pops up in the middle of the screen stating

1 "Internet Explorer, Sexual Orientation is Required." Bruno Decl. ¶ 18. The person  
2 must return to the profile and select one of two choices: 1) "Straight" or 2)  
3 "Gay/Lesbian." With regard to Familial Status, "children selection is required" pops  
4 up unless the person discloses whether or not "children will be present." Id.; See also  
5 Knoll Decl. ¶ 21 (FHC'SD staff found the same problem).

6 These requirements are similar to what property management companies do for  
7 their client-landlords when they screen landlords. Bruno Decl. ¶ 18. However,  
8 while questions about pets are allowed and may be typical, and even Gender to a lesser  
9 extent, the Executive Director of Plaintiff FHC/SFV has never seen such  
10 comprehensive demands for Age, Sexual Orientation, Occupation, and Children. Id.  
11 Also, there is no evidence on the website that these "lifestyle" criteria required by R  
12 have been requested by persons with places available to rent.

13 The lifestyle criteria Age, Gender, Sexual Orientation, Occupation, and Children  
14 required by R match the fair housing protected classes of persons that the plaintiffs and  
15 also other fair housing councils strive to assist. Bruno Decl. ¶ 4 (explaining mission  
16 and listing classes as age, sexual orientation, source of income and familial status); See  
17 also Knoll Decl. ¶ 5; Espinoza Decl. ¶ 5.

18  
19 B. Defendant Provides Members With a Place Available For Rent With a Selection  
20 of "Preferences" With Respect to the Age, Gender, Sexual Orientation and Familial  
21 Status of Persons Looking for a Place To Live.

22 When a member who has a place available to rent attempts to post this rental  
23 opportunity on the website, Roomate.com requests in rather mandatory language,  
24 "Select the criteria by which we should match your potential roommate." Ex. 20,  
25 *Preferences*. The criteria match what was demanded of the persons looking for a place  
26 to rent, and they include age, gender, profession, sexual orientation and children. Id.  
27 This symmetry enables Roomate.com to create matches based on these categories.  
28 As shown by Ex. 23 (*Quick Tour*), Roomate.com emails these matches to both sets of

1 members. It encourages members to prioritize " according to age . ." Ex. 23. Again,  
2 these are categories that match the protected fair housing and civil rights categories  
3 of persons and communities that the plaintiffs and at least one other member of the  
4 general public strive to protect from discrimination, segregation, and alienation.

5  
6 C. Many Persons With Places Available to Rent Post Additional Preferences That  
7 Are Based on Race, National Origin, Religion, and all the other protected classes.

8 As already shown above in the discussion of the nicknames R allows to be used  
9 on its website, members of R face no restraints when it comes to making statements  
10 showing preferences based on race, national origin and religion. For example, the  
11 person who identified herself this month (June 2004) with the nickname *ChristianGrl*  
12 has a "big" place available to rent in Hollywood, "near everything." However,  
13 persons looking for a place to live in Hollywood will have to be Christian as  
14 *ChristianGrl* is "looking for a Christian roommate." Ex. 15, p.2.<sup>1</sup>

15 The defendant has admitted that its members use an open-ended section on its  
16 website "to indicate racial or religious preferences." Peters Decl. ¶ 7. Defendant  
17 states these are on "rare occasion." *Id.* However, with limited search capabilities,  
18 and focused on two cities, and in a short periods of time, dozens of such race and  
19 religion statements can be found in the rental property listings on defendant's website.

20 With respect to race or national origin, the following statements appeared on the  
21 website in November 2003: "I'm looking for an ASIAN FEMALE OR EURO GIRL"  
22 (Los Angeles apartment); "\*\*\*Asian preferred\*\* . . . . "\*\*\*Asian preferred\*\* (Los  
23 Angeles area house); "I am seeking a single Asian Male or Female student or working  
24 professional . ." (Los Angeles area townhouse); "Asian preferred" (Los Angeles area  
25 4-bedroom house); "prefer 18-25 (year-old) white males" (San Diego apartment); "I  
26 am looking for Asian/Spanish persons to share the apartment" (Los Angeles area

---

27  
28 <sup>1</sup>Plaintiffs also note that *ChristianGrl* uses defendant's preference fields to further  
limit this rental opportunity to persons aged 18-35 who are straight and have no children.  
*Id.*

1 apartment); "I am a 29 year-old Asian-American professional looking for the same to  
2 share a fully-furnished 2-bedroom, 2-bathroom apartment in a beautiful gated hilltop  
3 community." (Los Angeles); "The person applying for the room MUST be a BLACK  
4 GAY MALE!" (Los Angeles) "I love Asian females" (male landlord offering room for  
5 \$1 "for the right woman"); "looking for gay white or latin guy who is responsible."  
6 See Plaintiffs' Exhibit 9, pages 1-16. In December 2003: "Pref white Male  
7 roommates," "PLEASE NO WHITE TRASH," "I'm looking for a straight Christian  
8 male, who is serious about his Christian walk with God to fill an empty house," "I am  
9 NOT looking for black muslims." Ex. 9, pages 16-24.

10 With respect to religion, the following statements are among those that appeared  
11 in November and December 2003: "Looking for a Christian guy to take a room  
12 immediately" (Los Angeles area townhouse); "Please only Christian or strong moraled  
13 need inquire" (Los Angeles area house); "This is a Christian home and we are looking  
14 for a Christian female to rent a downstairs room" (Los Angeles area house); "I am  
15 NOT looking for black muslims" (Los Angeles area 2-bedroom apartment); "prefer a  
16 Catholic or Christian" (San Diego area 5-bedroom house); "it is important to us that  
17 our third roommate be a Christian as well" (San Diego area 3-bedroom townhouse);  
18 "I am looking for a neat freak, christian, non smoking, straight, friendly female to  
19 share 2 bedroom apartment with. I am all of the above." (Los Angeles area apartment).  
20 "I prefer a Christian male, no women allowed in home, living for Christ is the main  
21 thing. (Los Angeles area house). Please see Plaintiffs' Exhibit 10.

22 And in June 2004 without the benefit of the Keyword search feature<sup>2</sup>: "Looking  
23 for a Christian roommate." (Los Angeles apartment); "Looking in particular for a  
24 Christian roommate." (Los Angeles apartment); "Looking for a employed Christian  
25 male."  
26

---

27  
28 <sup>2</sup>After defendant realized that plaintiffs were monitoring their website easily using  
the Keyword Search feature on the website, defendant simply removed the feature. Ex.  
17

1 Roommate.com has published testimonials that appear throughout the pages of  
2 the website and which show alleged statements by members showing a focus on  
3 protected classes. One testimonial alleged by defendant is by a repeat customer-  
4 landlord who found a "perfect" match. "He is Christian as I and a conservative as I,"  
5 reads the testimonial. Bruno Decl. ¶ 19. Other testimonials discuss the virtues of  
6 being able to screen for sexual orientation, "locals with no jobs and trashy people"  
7 verses "professionals." *Id.*

8 There are also men who offer their apartment and rooms solely to women only,  
9 several of which would require sexual favors from those women. Ex. 11.

10 There are gay and lesbian landlords who make their units available only to other  
11 gay or lesbian persons looking for a place to live. Ex. 12 (including "I am looking for  
12 a cool, masculine gay white or latin guy.").

13 There are landlords making it clear that forms of public assistance are  
14 unacceptable and defendant has marketed this benefit using testimonials. Ex 13.

15 Finally, there are person with places to rent who state that certain disabilities are  
16 unacceptable, such as HIV and mental disabilities ("unmedicated"). Ex. 14.

17  
18 **D. Defendant's Efforts To Reduce or End Discrimination on Its Website**

19 Defendant's website contains no information about fair housing. Rhoades Decl.  
20 ¶ 18. Defendant conducts no monitoring whatsoever for fair housing violations. *Id.*

21  
22 **ARGUMENT**

23 **I. Legal Standards for Preliminary Injunctions**

24 A flexible standard governs the grant of preliminary injunction. A preliminary  
25 injunction may be granted when plaintiffs demonstrate a likelihood of success on the  
26 merits and the possibility of irreparable injury if relief is not granted. Alternatively,  
27 plaintiffs are entitled to a preliminary injunction if they show the existence of serious  
28 questions going to the merits and that the balance of hardships tilts sharply in their

1 favor. See Walczak v. EPL Prolong, Inc., 198 F. 3d 725, 731 (9th Cir. 1999). (use  
2 HRC v. Sterling cites, too). These standards are not separate tests but the extremes of  
3 a single continuum which require that the trial court balance the equities in the  
4 exercise of its discretion. Id.

5 With respect to a discriminatory housing act, it is reasonable to presume that  
6 irreparable injury flows from the discrimination. Silver Sage Partners, LTD v. City  
7 of Desert Hot Springs, 251 F.3d 814, 821 (9<sup>th</sup> Cir. 2001); Gresham v. Windrush  
8 Partners, Ltd., 730 F.2d 1417, 1423 (11th Cir. 1984) (stating that "irreparable injury  
9 may be presumed from the fact of discrimination and violations of fair housing  
10 statutes"); Housing Rights Center et al v. Donald Sterling Corp. et al, 284 F. Supp. 2d  
11 1129 (C.D. Cal. 2003).

12 The federal fair housing laws expressly authorize issuance of an injunction "if  
13 the court finds that a discriminatory housing practice has occurred or is about to  
14 occur"; i.e. no additional showing of injury is required. 42 U.S.C. § 3613(c)(1).

## 15 16 **II. Defendants' Egregious Fair Housing Violations Justify an Injunction**

### 17 **A. Likelihood of Plaintiffs' Success on the Merits**

18 The federal and state statutes prohibit the making or publishing of  
19 discriminatory housing statements. The federal Fair Housing Act as amended in 1998  
20 (FHAA) provides in part, that:

21 [I]t shall be unlawful . . .  
22 To make, print, or publish, or cause to be made, printed, or published any  
23 notice, statement, or advertisement, with respect to the sale or rental of  
24 a dwelling that indicates any preference, limitation, or discrimination  
25 based on race, color, religion, sex, handicap, familial status, or national  
26 origin, or an intention to make any such preference, limitation, or  
27 discrimination." 42 U.S.C. §3604 (c).

25 The California Fair Employment and Housing Act (FEHA) as amended in 2000  
26 adds several protected classes, providing in part that:

27 "[I]t shall be unlawful . . .

28 For any person to make, print, or publish, or cause to be made, printed, or

1 published any notice, statement, or advertisement, with respect to the sale or  
2 rental of a housing accommodation that indicates any preference, limitation, or  
3 discrimination based on race, color, religion, sex, sexual orientation, marital  
4 status, national origin, ancestry, familial status, source of income, or disability  
5 or an intention to make any such preference, limitation, or discrimination. Cal.  
6 Govt. Code §12955 (c).

7 Finally, the California Unruh Civil Rights Act (Unruh) adds "age" as a protected  
8 class for purposes of all housing. Cal. Civil Code § 51.2.

9 In prohibiting advertisements, statements, inquiries or other notices which  
10 indicate a discriminatory preference in the context of selling or renting of a dwelling,  
11 § 3604(c) does not require evidence of discriminatory intent. Fair Housing Congress  
12 v. Weber, 993 F. Supp. 1286, 1290 (C.D. Cal. 1997). An oral or written statement  
13 violates §3604(c) if it suggests a preference, limitation or discrimination to the  
14 "ordinary listener" or reader. United States v. Hunter, 459 F. 2d 205, 215 (4th Cir.  
15 1972); see also Ragin v. New York Times Co., 923 F. 2d 995, 999 (2d Cir. 1991) ("we  
16 read the statute to be violated if an ad for housing suggest to an ordinary reader that  
17 a particular race is preferred or dispreferred for the housing in question"); see also  
18 Housing Rights Center, 274 F. Supp. 2d at 1142. Furthermore, the Hunter and Ragin  
19 decisions make it clear that §3604(c) applies to publishers of such statements, even  
20 when the statement are originally made by a third party, and that this prohibition does  
21 not violate any free speech or free press protections. Hunter at 210-11.

22 Finally, §3604(c) and §12955.5 apply to all types of housing including rooms  
23 and shared living quarters. This is evident by comparing these statutes with the  
24 preceding statutes which limit applicability of refusal to rent and differential  
25 treatment to all housing beyond owner-occupied housing (the "Mrs. Murphy"  
26 exemption). The Mrs. Murphy exemption does not apply to statements and inquiries.  
27 The only exception that's ever been articulated in the law is for persons who want to  
28 share rooms with persons of the same gender. See 54 Fed. Reg. 3309 (Jan. 23, 1989).

The statements such as "Asian preferred," "Looking for a Christian," and the

1 defendant's "property manager" inquiries into age, sexual orientation, familial status,  
2 and profession on defendant's website deserve little discussion here because one after  
3 another they all clearly indicate to any reader absolute preferences, biases, and  
4 discrimination based on the federal and state protected classes.

5 Defendant's various practices

6 Defendant is doing three things that independently violate the fair housing laws  
7 and cause monthly cascades of violations: First, defendant is causing its members who  
8 have places available to rent to make many of these preferential statements. Second,  
9 the defendant itself is asking the prohibited questions of renters and forcing the renters  
10 to answer those questions. Third, defendant is allowing with no restrictions  
11 whatsoever the posting of numerous and egregious statements regarding race, color,  
12 national origin, religion and sexual harassment.

13 a. Causing landlords to select and make discriminatory statements.

14 The fields under "Renting out a room" are shown at Exhibit 20. The instructions  
15 which have been written by defendant have a mandatory read to them: "Select . . ."  
16 If a landlord had just read the fair housing advertisement in the *Los Angeles Times*  
17 shown at Plaintiffs' Exhibit 27 she would know that this was illegal. However, when  
18 she is encouraged by a prominent source like Roommates.com to make such  
19 preferences known, any fair housing education is lost. This results in the undermining  
20 of the council's education and marketing work and it results in hundreds of  
21 discriminatory statements every day in each city of Los Angeles and San Diego.  
22 ~~Rhodes Decl.~~ Therefore, not only is the defendant liable here in the strict  
23 sense as under Hunter and its progeny, but since the defendant is actually developing  
24 the content, it is taking a more active role than most advertisers or newspaper. The  
25 defendant cannot blame this on "formatting" because it is doing the formatting.

26 b. Demanding information from renters about their gender, sexual orientation,  
27 age, and familial status.

28 Defendant is taking money in order to provide the service that many property



1 managers provide in Los Angeles and San Diego. They are screening the renters. The  
2 renter has to answer a lot of questions about themselves before they can post their  
3 notice of interest. The questions are written by the defendant. No third party is  
4 involved.

5 The question of whether inquiries into a renter's membership in a protected class  
6 was very recently decided in a published decision out of this federal district. In  
7 Housing Rights Center et al. v. The Donald Sterling Corporation, 274 F. Supp. 2d  
8 1129 (C.D. Cal. 2003) (aff'd, 2003 U.S. App. LEXIS 25266 (9th Cir. 2003), the  
9 plaintiffs, including a fair housing council, moved for a preliminary injunction to stop  
10 defendants from, among other things, asking for information about renters' and  
11 applicants' birthplace on an application for a remote control device for an apartment  
12 tower's garage door. The court ruled that such questions violated § 3604 (c). Housing  
13 Rights Center at 1148. In reaching this conclusion, the district court relied upon the  
14 decisions of the Second and the Seventh Circuits in Soules v. Dept. of Housing and  
15 Urban Development, 967 F. 2d 817, 824 (2d Cir. 1992) and Jancik v. Dept. of Housing  
16 and Urban Development, 44 F. 3d at 557, which held that questions about protected  
17 classes suggested a racial screening process in violation of the fair housing laws.

18 Also, the fair housing laws would identify the defendant as something apart  
19 from a publisher. At § 3603 (c) there is independent liability created for the defendant  
20 because "a person shall be deemed to be in the business of selling or renting dwellings  
21 if:

22  
23 (2) he has, within the preceding twelve months, participated as agent, other than  
24 in the sale of his own personal residence in providing sales or rental facilities  
25 or sales or rental services in two or more transactions involving the sale or  
26 rental of any dwelling or any interest therein. §3603(c).  
27  
28

1 In sum, the defendant is taking on an even more active role in the discrimination  
2 when it screens every person looking for a place to live. Defendant's anticipated  
3 arguments that the Communication Decency Act (CDA), 47 U.S.C.A. §230(c)(1)  
4 (West 2003) have absolutely no applicability here because an immunity applied to  
5 "publisher" of a third party's content, even if it trumped the civil rights laws (which is  
6 doesn't), clearly does not apply to a defendant who is writing the impermissible  
7 questions based on protected classes.  
8  
9

10  
11 c. Publishing egregious race, national origin, color and religion statements  
12

13 The experienced executive directors of the plaintiff fair housing councils have  
14 not seen anything like the defendant in terms of the sheer numbers and egregiousness  
15 of the statements published on Roommates.com. Bruno Decl. ¶ 20. Defendant's only  
16 defense for this conduct (and therefore for each and every violation found in Plaintiffs'  
17 Exhibits 9-14 and those others that will be found in discovery) is that it is immune  
18 from the fair housing laws by virtue of the aforementioned Communication Decency  
19 Act.  
20  
21

22 Plaintiffs can find no authority in the CDA or cases interpreting the CDA that  
23 Congress intended for it to trump the fair housing laws. The Supreme Court has stated  
24 that the Fair Housing Act must be given a "generous construction" in order to carry  
25 out a "policy that Congress considered to be of the highest priority." Trafficante v.  
26 Metropolitan Life Ins. Co., 409 U.S. 205, 211, 212 (1972). Even if there was a  
27  
28

1 conflict between a fair housing law and a law intended to deal with pornography and  
2 defamation, it is well-settled that in cases of such conflicts, both statutes must be given  
3 effect if possible. See Morton v. Mancari, 417 U.S. 535, 537-45 (1974). Here, where  
4 the defendant has placed itself between persons looking for housing and persons with  
5 place available to rent, it's become a crucial intermediary in a housing transaction.  
6  
7 See Fair Housing Council of Bergen County, Inc. v. Eastern Bergen County Multiple  
8 Listing Service, Inc., 422 F. Supp. 1071, 1075 (D.N.J. 1976)(court noting that such  
9 services may serve as "crucial intermediaries" between buyers and sellers of residential  
10 real estate). This larger role and the Fair Housing Act's high priority ranking makes  
11 §3604(c) a much broader statute regarding publications than what the CDA  
12 encompasses with respect to pornography and defamation. Therefore, plaintiffs have  
13 a stronger argument for a reading of the statutes that still gives §3604(c) effect and  
14 makes defendant liable for each race and religion statement it publishes.  
15  
16  
17  
18

19 In sum, Congress never intended for the Internet to be a place where housing  
20 providers and their advertisers and agents could sneak back to the early part of the last  
21 century and begin posting "signs" that state "Whitehme" or "White males only" or  
22 "Asian Preferred" or "I prefer a Christian male, no women allowed in home." that so  
23 obviously offend, alienate and humiliate persons who are just looking for a place to  
24 live in cities where it is already very difficult to find homes. The CDA is not about  
25 free speech, and it does not trump the civil rights laws.  
26  
27  
28

1 **III. Plaintiffs Suffer Irreparable Injury and the Balance Of Hardships Tilts**  
2 **in Their Favor**

3 Irreparable harm can be presumed from fair housing violations. See Silver Sage  
4 Partners, LTD v. City of Desert Hot Springs, 251 F. 3d 814, 821 (9th Cir. 2001).  
5  
6 Nonetheless, plaintiffs' declarations and evidence include proof of specific irreparable  
7 harm caused by defendant's unlawful discrimination.  
8

9 For the plaintiffs, the organizations has suffered and continues to suffer harm to  
10 its resources (Bruno Decl. ~~20-25~~) and its mission Bruno Decl. 23. The organizations  
11 continue to spend numerous hours, postage (Bruno Decl. ¶ 22), where she describes  
12 sending a comprehensive mailing to 64 advertisers), and travel (Knoll Decl. ¶ 26,  
13 where she describes flying a nationally renowned fair housing expert to San Diego for  
14 the purpose of discussing these issues) and shifting resources from other programs to  
15 spend more time in workshops, etc. on this issue.  
16  
17  
18

19 Clearly, their previous and considerable work on Advertising Task Forces,  
20 publishing ads in papers and rental website, and workshops is being undermined by  
21 these practices, especially as they come from one of the nation's prominent housing  
22 sources. Many members of the general public are also harmed, including the tens of  
23 thousands of persons using the website and also the Housing Rights Center, which has  
24 a very large education and marketing campaign in the *Los Angeles Times* and *LA*  
25 *Weekly* that is jeopardized by defendant's acts. Espinoza Decl. ¶ 14; see also ¶¶ 22-28  
26  
27  
28

1 (describing the impact of the defendant's website on HRC's clients, community and  
2 mission). Read as whole, the declarations by Ms. Bruno, Ms. Knoll, and Ms.  
3 Espinoza, who all clearly leaders in the field of fair housing, show that the defendant's  
4 act are creating a climate of exclusion that results in severe harm to many people,  
5 communities and organizations.  
6  
7

8 Also, in the short period of time in which Plaintiffs have been trying to get the  
9 Defendant to comply with fair housing laws (and to encourage their many members  
10 to comply), Defendant has increased membership from 112,000 monthly members to  
11 over 150,000 monthly members.  
12

#### 13 **Balance of Hardships**

14  
15 The continuing harm and hardships faced by plaintiffs and the general public  
16 pending trial are much greater than those faced by defendants if the preliminary  
17 injunction is granted.  
18

19  
20 The injunction proposed by Plaintiffs has three simple components: 1)  
21 Defendant would monitor its website for obvious discriminatory statements, 2)  
22 Defendant would remove the mandatory fields on the initial questionnaires for  
23 persons "looking for a place to live," and, 3) Defendant would add fair housing  
24 information and resource links to its website.  
25  
26  
27  
28

1) Monitoring of Roommates.com's website for fair housing violations

This is relatively easy for the defendant. Given the "ordinary reader" aspect of §3604(c), there is no need for factual research into listings to determine fair housing problems. Accordingly, and in order to assist advertising media in screening discriminatory housing advertisements, the Dept. of Housing & Urban Development (HUD) has published advertising guidelines that describe the kinds of words and phrases that would likely be deemed to violate §3604(c). The HUD guidelines include a nonexclusive list of specific words or phrases that ordinarily would be considered discriminatory. See Plaintiffs' Exhibit 27; see also 54 Fed. Reg. 3308-10 (Jan. 23, 1989). Regarding California's additional protected classes, the experts on Plaintiffs' staffs and those at the DFEH can provide the watchword lists to Defendant.

It will be extremely easy for defendant to search for these key words and phrases. Defendant has already admitted that it screens postings by members "to ensure that members do not post personal phone numbers or email addresses in circumvention<sup>3</sup> of its terms." Peters Decl. ¶ 10. In the Terms of Service between defendant and every member, it has already been agreed that defendant has the right to "refuse, move, or remove any content on the site" for any reasonable reason. Ex. 6, Terms of Service (middle of page 3).

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<sup>3</sup>In other words, circumvent the defendant's fees by making contact with another member without paying for the Choice Membership upgrade needed to contact others.

1 Also, Defendant had a Keyword search feature late last year provided, in the  
2 website's own word, to help members search for additional "preferences." See Ex. 17.

3  
4 Just after the defendant learned that plaintiffs were using the Keyword search feature  
5 to find discriminatory statements, and in a demonstration of how easy it is to make  
6 changes to the website, the defendant removed the feature. See Ex. 17, p. 3, Email  
7 from Gary Rhoades to defendant's prior counsel. In addition to staff spot-checks or  
8 even replacing such spot-checks, Defendant has expertise with websites and software  
9 and can easily acquire search engine technology and filtering technology needed to  
10 find and remove discriminatory listings. Finally, if the defendant would care to give  
11 its users another "resource", this could be links to information about fair housing  
12 issues (such as at [www.fairhousing.com](http://www.fairhousing.com)), the members themselves could help  
13 defendant monitor its website.  
14  
15  
16  
17

18 Therefore, requiring the defendant to monitor its own website does not impose  
19 a hardship. The HUD guidelines and available blocking technology make monitoring  
20 a minimal task.  
21

## 22 2. Making the Questionnaire Voluntary

23  
24 Defendant can easily remove the mandatory nature of the questions put to  
25 persons seeking rooms by going to the Age, Sexual Orientation, and Familial Status  
26 fields and making these inquiries voluntary. While these fields may be permissible in  
27 other states, defendant should add a footer to this page informing users that some  
28

1 states such as California protect applicant of housing based on age, gender, source of  
2 income (inquiries permitted here under FEHA), sexual orientation, and familial status.

3  
4 3. Adding fair housing information and links as a resource

5  
6 The HUD Guidelines for the advertising media state that:

7 All advertising of residential real estate for sale, rent, or financing should  
8 contain an equal housing opportunity logotype, statement, or slogan as a means  
9 of educating the homeseeking public that the property is available to all persons  
10 regardless of race, color, religion, sex, handicap, familial status, or national  
11 origin. The choice of logotype, statement or slogan will depend on the type of  
12 media used (visual or auditory) and, in space advertising, on the size of the  
13 advertisement.

14 24 CFR §109.30(a)(Withdrawn from CFR by FR-4029-F-01, but still referenced  
15 in the regulations as 24 CFR §100.75(d)).

16 Also, 24 C.F.R. 110.10(d) requires that "All persons subject to section 806 of  
17 the Act, Discrimination in the Provision of Brokerage Services, shall post and maintain  
18 a fair housing poster at all their places of business.

19 Thus, while Plaintiffs agree with HUD guidelines that such advertising and that  
20 it would end the harm and reverse some of the mission harm, it is also clear that it  
21 implementing these practices would help the defendant and its customers avoid  
22 liability. Exhibit 25 shows that other rental websites such as Westside Rentals  
23 already post such information and avoid improper inquiries. Mary Knoll also points  
24 out in her declaration that other rental websites and newspapers are harmed members  
25 of the general public too because they are losing customers to defendant when they  
26 force compliance with the fair housing laws. Knoll Decl. ¶ 9. Defendant claimed in  
27 its previous motion that it had no advertisements on its website, only "resources." In  
28



1 terms of burden or effort, adding fair housing information would be just another  
2 resource defendant could list on its resource page. In terms of actual benefit, fair  
3 housing information is one of the most valuable resources the defendant could  
4 provide.  
5

6  
7 CONCLUSION

8 Given the likelihood of plaintiffs' success on the merits and the irreparable  
9 injuries continuing to mount, plaintiffs ask the court to grant this motion to reduce  
10 discriminatory acts and statements on defendant's website pending trial. Both  
11 organizations are non-profits and therefore request that the undertaking or bond be set  
12 at no more than \$1000.  
13  
14

15  
16 DATED: 7-9-04  
17

18 Respectfully submitted,

19  
20  
21 By: Gary W Rhoades  
22 Gary W Rhoades  
23 Attorney for Plaintiffs  
24  
25  
26  
27  
28