

CLAIM

BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF CONTRA COSTA COUNTY

BOARD ACTION: Mar 12, 2019

Claim Against the County, or District Governed by )
the Board of Commissioners, Routing Endorsements,)
and Board Action. All Section references are to )
California Government Codes. )

NOTICE TO CLAIMANT

The copy of this document mailed to you is your
notice of the action taken on your claim by the
Board of Commissioners. (Paragraph IV below) given
Pursuant to Government Code Section 913,
915.2. and 915.4 Please note all "Warnings".

RECEIVED

FEB 04 2019

COUNTY COUNSEL
MARTINEZ, CALIF.

AMOUNT: Greater than \$10,000.00

CLAIMANT: Eboni Green

ATTORNEY: Brian D. Sudano, Esq.

BY DELIVERY TO CLERK ON:

BY MAIL POSTMARKED: January 30, 2019

ADDRESS: 540 Lennon Lane
Walnut Creek, CA 94598

FROM: The Board of Commissioners TO: County Counsel
Attached is a copy of the above-noted claim.

Dated: 2/4/2019 By: Deputy David Twa, Clerk [Signature]

II. FROM: County Counsel TO: The Board of Commissioners

- (x) This claim complies substantially with Sections 910 and 910.2.
( ) This Claim FAILS to comply substantially with Sections 910 and 910.2, and we are so notifying claimant. The Board cannot act for 15 days (Section 910.8).
(x) Claim is not timely filed. The Clerk should return claim on ground that it was filed late and send warning of claimant's right to apply for leave to present a late claim (Section 911.3).
( ) Other:

Dated: 2/7/19 By: [Signature] Deputy County Counsel

III. FROM: The Board of Commissioners TO: County Counsel (1) County Administrator (2)
( ) Claim was returned as untimely with notice to claimant (Section 911.3).

IV. BOARD ORDER: By unanimous vote of the Commissioners present:
(x) This Claim is rejected in full.
( ) Other:

I certify that this is a true and correct copy of the Board's Order entered in its minutes for this date.

Dated: 3/12/19 David Twa, CLERK, By [Signature], Deputy Clerk

WARNING (Gov. code section 913)

Subject to certain exceptions, you have only six (6) months from the date this notice was personally served or deposited in the mail to file a court action on this claim. See Government Code Section 945.6. You may seek the advice of an attorney of your choice in connection with this matter. If you want to consult an attorney, you should do so immediately. \*For Additional Warning See Reverse Side of This Notice.

AFFIDAVIT OF MAILING

I declare under penalty of perjury that I am now, and at all times herein mentioned, have been a citizen of the United States, over age 18; and that today I deposited in the United States Postal Service in Martinez, California, postage fully prepaid a certified copy of this Board Order and Notice to Claimant, addressed to the claimant as shown above.

Dated: 3/12/19 David Twa, CLERK By [Signature] Deputy Clerk

This warning does not apply to claims which are not subject to the California Tort Claims Act such as actions in inverse condemnation, actions for specific relief such as mandamus or injunction, or Federal Civil Rights claims. The above list is not exhaustive and legal consultation is essential to understand all the separate limitations periods that may apply. The limitations period within which suit must be filed may be shorter or longer depending on the nature of the claim. Consult the specific statutes and cases applicable to your particular claim.

The County of Contra Costa does not waive any of its rights under California Tort Claims Act nor does it waive rights under the statutes of limitations applicable to actions not subject to the California Tort Claims Act



# OFFICE OF THE COUNTY COUNSEL CONTRA COSTA COUNTY

SHARON L. ANDERSON  
COUNTY COUNSEL

CHIEF ASSISTANT  
MARY ANN MCNETT MASON

ASSISTANTS  
MONIKA L. COOPER  
THOMAS L. GEIGER  
STEVEN P. RETTIG

## NOTICE OF UNTIMELINESS AS TO A PORTION OF THE CLAIM

February 11, 2019

TO: Brian D. Sudano, Esq.  
SUDANO LAW FIRM  
540 Lennon Lane  
Walnut Creek, CA 94598


Re: *Claim of Eboni Green*

Please Take Notice as Follows:

In regards to the above-referenced Housing Authority claim you submitted on January 30, 2019, portions of the claim are timely and portions are untimely. The portions of the claim prior to July 30, 2018, that you presented to the County of Contra Costa, governed by the Board of Supervisors, fail to comply substantially with the requirements of California Government Code sections 901 and 911.2 because they were not presented within six months after the event or occurrence as provided by law. Because the portions of the claim prior to the aforementioned date were not timely presented, no action was taken on those portions of your claim. The claim was forwarded to the Board for action only on the timely portions of the claim.

If your claim is required to be presented within six months after the event or occurrence, your only recourse at this time is to apply without delay to the County of Contra Costa, governed by the Board of Supervisors, for leave to present a late claim as to the untimely portions of the claim. (Gov. Code, §§ 911.4 to 912.2 and § 946.6.) Under some circumstances, leave to present a late claim will be granted. (Gov. Code, § 911.6.)

SHARON L. ANDERSON, County Counsel

By:   
Patrick L. Hurley  
Deputy County Counsel

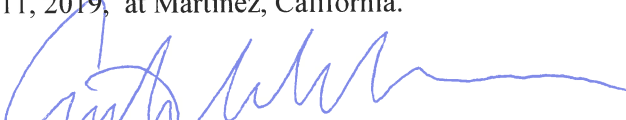
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CERTIFICATE OF SERVICE BY MAIL  
(Code Civ. Proc., §§ 1012, 1013a, 2015.5; Evid. Code, §§ 641, 664)

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Office of the County Counsel, 651 Pine Street, 9th Floor, Martinez, CA 94553-1229. On the date below, I served a true copy of this Notice of Untimeliness as to a Portion of the Claim by placing the document in a sealed envelope with postage thereon fully prepaid, in the United States mail at Martinez, California addressed to Brian D. Sudano, Esq., as set forth above. I am readily familiar with Office of County Counsel's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct. Executed on February 11, 2019, at Martinez, California.

  
\_\_\_\_\_  
Erik Schlenker

cc: Clerk of the Board of Supervisors (original)  
Risk Management

Claim to: **BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY  
OF THE COUNTY OF CONTRA COSTA  
INSTRUCTIONS TO CLAIMANT**

- A. Claims relating to causes of action for death or for injury to person or to personal property or growing crops and which accrue on or before December 31, 1987, must be presented not later than the 100th day after the accrual of the cause of action. Claims relating to causes of action for death or for injury to person or to personal property or growing crops and which accrue on or after January 1, 1988, must be presented not later than six months after the accrual of the cause of action. Claims relating to any other cause of action must be presented not later than one year after the accrual of the cause of action. (Govt. Code §911.2.)
- B. **Claims must be filed with the Clerk of the Board at its office in Room 106, County Administration Building, 651 Pine Street, Martinez, CA 94553, either by mail or in person.**
- C. If the claim is against more than one public entity; separate claims must be filed against each public entity.

D. Fraud. See penalty for fraudulent claims, Penal Code Sec. 72 at the end of this form.  
\*\*\*\*\*

RE: Claim By: \_\_\_\_\_ ) Reserved for Clerk's filing stamp

Eboni Green  
\_\_\_\_\_  
Name )  
)



Against: The Housing Authority of the County of Contra Costa

The undersigned claimant hereby makes claim against the Housing Authority of the County of Contra Costa in the sum of Greater than \$10,000 and in support of this claim represents as follows: This is an unlimited civil action.

1. When did the damage or injury occur? (Give exact date and hour)

Ongoing and continuing harm since February 2018.

2. Where did the damage or injury occur? (Include city and county)

103 Dempsey Way, Rodeo CA, 94572

3. How did the damage or injury occur? (Give full details; use extra paper if required)

See attached demand letter.

4. What particular act or omission on the part of county or district officers, servants or employees caused the injury or damage?

See attached demand letter.

5. What are the names of county or district officers, servants or employees causing the damage or injury?

Nancy Garcia

6. What damage or injuries do you claim resulted? (Give full extent of injuries or damages claimed. Attached two estimates for auto damage.)

See attached demand letter.

7. How was the amount claimed above computed? (Include the estimated amount of any prospective injury or damage.)

See attached demand letter.

8. Names and addresses of witnesses, doctors and hospitals.

See attached demand letter.

9. List the expenditures you made on account of this accident or injury:

See attached demand letter.

<u>DATE</u>	<u>ITEM</u>	<u>AMOUNT</u>
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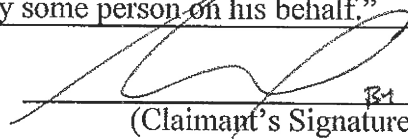
\*\*\*\*\*

SEND NOTICE TO: (Attorney)  
Name and Address of Attorney

Brian D. Sudano, Esq.  
Sudano Law Firm  
540 Lennon Lane  
Walnut Creek, CA 94598  
Email: bsudano@sudanolaw.com  
Fax: (925) 849-4183

Telephone No. 925-357-3213

Gov. Code Sec. 910.2 provides:  
"The claim must be signed by the claimant  
or by some person on his behalf."

  
(Claimant's Signature)

103 Dempsey Way  
(Address)

Rodeo, CA 94572

Telephone No.

\*\*\*\*\*

### NOTICE

Section 72 of the Penal Code provides:

"Every person who, with intent to defraud, presents for allowance or for payment to any state board or officer, or to any county, city or district board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is punishable either by imprisonment in the county jail for a period of not more than one year, by a fine of not exceeding one thousand (\$1,000), or by both such imprisonment and fine, or by imprisonment in the state prison, by a fine of not exceeding ten thousand dollars (\$10,000) or by both such imprisonment and fine."



540 Lennon Lane  
Walnut Creek, CA 94598  
Tel 925 849 4183 Fax 925 849 4185

January 30, 2019

Contra Costa Housing Authority  
Bayo Vista/PH Waitlist  
651 Pine Street  
Martinez, CA 94553

*Sent Via Priority Mail*

**Re: My Client: Eboni Green**  
**Property: 103 Dempsey Way**  
**Rodeo, CA 94572**

To Whom It May Concern:

Please consider this my client's formal demand letter in connection with her living conditions at the above-referenced property. I was informed that this is the appropriate government entity for the Bayo Vista apartment complex. Please let me know if this is incorrect.

#### STATEMENT OF FACTS

On February 13, 2018, Ms. Green complained of water intrusion due to a roof leak. The leak allowed water into the kitchen, causing a mold spell. She also complained of a mouse infestation, informing the property manager that she's had nine mice caught at the time of the complaint.

On May 23, 2018, Ms. Green wrote another report to complain of the mice problem, which had been ongoing since January 2018.

On August 9, 2018, Ms. Green wrote a report stating that she wanted a meeting to discuss the issues she was having with her apartment. She raised the concern about the trash around the complex that she was cleaning as well as the ongoing mice infestation.

Approximately a week later, Ms. Green went into the office and said she wanted to follow-up on the meeting she never heard back about. Nancy Garcia said she was busy and said they would deal with in the next week.

The following week, she went into the office and spoke with Ms. Garcia about the trash that had been there for months, the mice, the cockroaches, the complaints about the neighbors marijuana smoke, and the neighbors arguing and yelling. Ms. Garcia indicated that the policy of Bayo Vista was not to get involved in tenant disputes. Ms. Green told her about the anxiety she was having about the situation, including her need for a therapist and medications because of the anxiety. She gave her paper to have her reasonable accommodation. Ms. Garcia said to be specific and that she could be outside because they could get her out of the county.

On or about September 1, 2018, Ms. Green went into the office to pay rent and complained about the ongoing mouse infestation. She was told that the policy of Bayo Vista was not to contact pest control services unless a new tenant was moving in.

On September 7, 2018, Ms. Green's daughter called her terrified, asking if Ms. Green would leave work early to pick her up from the bus stop after school. Her daughter stated that their neighbor, Tiffany, came to the bus stop and confronted a 2<sup>nd</sup> graders with her sister and boyfriend (both who she reported were living at Bayo Vista illegally) in an intimidating manner.

That evening, the mother of the 2<sup>nd</sup> graders went to Tiffany's home and began yelling back and forth for 15-20 minutes.

On September 8, 2018, the woman returned with her boyfriend and began yelling and were about to fight with Tiffany and her boyfriend. The man then opened his trunk and pulled out a gun. Ms. Green and her kids got on the floor. They heard both parties threatening to shoot one another. Ms. Green expressed how this was affecting her health and that there was nothing being done about this, the mice, or the trash that was littered around the complex.

Ms. Green outlined this information in a report to Nancy Garcia on September 8, 2018. Again, there was no resolution to this issue, and it was not addressed in any manner.

On September 19, 2018, Ms. Green filed a request for accommodation due to increased anxiety caused by the living situation at Bayo Vista. The specific request for accommodation was to transfer to Alameda.

On September 25, 2018, Ms. Garcia submitted the request for accommodation.

On September 27, 2018, Ms. Garcia responded that the reasonable accommodation request to move to Alameda County has been denied. There was no further discussion with Ms. Green about the option for other possible accommodations.

On October 10, 2018, Ms. Green contacted Vector Control to complain of the mice and the cockroach issues.

On October 12, 2018, Ms. Green called Ms. Garcia and left message stating that she was denied her accommodation and wanted to know what other option were available. Ms. Garcia did not return her call or discuss other options for accommodation with her.

On October 15, 2018, Vector Control inspected the premises and indicated that measures needed to be taken to including, but not limited to, sealing all pipes and wiring that enter through



exterior walls, sealing all holes and gaps around pipes located under sinks in the kitchen, bathrooms, and utility rooms, clean up the debris piles.

On October 18, 2018, Ms. Green reported to Ms. Garcia that her neighbors were smoking marijuana which was a significant issue for her son that has severe asthma. His asthma results in monthly trips to the emergency room. Ms. Green requested that Ms. Garcia send a reminder to her neighbor. In the past when she complained, she was told to light a candle in her home to get rid of the smell.

On the same day, she complained about the ongoing mouse infestation that had been ongoing since January 2018 as well as cockroaches. She continued to complain about the trash from the neighbors and personally delivered a copy of the Vector Control report to the office. There was still no action taken.

On October 29, 2018, Ms. Green reported to Ms. Garcia that her she now was unable to stay at her home due to a dispute with her neighbor. At 9:15 p.m., she heard her neighbor swearing and yelling in the parking lot. Her children woke up crying and scared and got into bed with her.

Ms. Green opened the window and asked them to please be quiet as they were scaring her children. They then started to verbally attack Ms. Green. Ms. Green was reaching out to Ms. Garcia to have something done, but again this fell on deaf ears. Despite reaching out for options to get out of the situation to help with her anxiety, Ms. Garcia would not return her phone calls.

On November 15, 2018, Vector control returned to the apartment for a follow-up inspection and no changes had been corrected from the first report. Mr. Fischer told Ms. Green that action would be taken immediately because he was going to email it to the office. Yet, nothing has been done to date.

On December 12, 2018, Ms. Green complained of the mold growing on her windows and in particular, in her bathroom, with a smell.

On December 27, 2018, Ms. Green submitted a reasonable accommodation seeking to move to another unit given the issues with habitability and neighbor disputes. The request sought to have her move to another community.

On January 1, 2019, Ms. Green called Rescue Rooter about the mold smell in her house. The service person stated that the pipe needed to be replaced. Ms. Green contacted the afterhours line because of the holiday.

After she called, the walls started to leak and fall down. The water was also coming through the lights.

On January 2, 2019, a maintenance man from the apartment came and said they would get a plumber out the next day.

On January 3, 2019, the plumber came out and said they would need to replace the pipes and that they would start on January 7, 2019.

On January 7, 2019, the plumber came out and opened the walls. The smell of mold was overwhelming. Ms. Green asked Ms. Garcia if she could put them in a hotel while the repairs were taking place. She was told she would not. Ms. Green told her it was unsafe, unhealthy, and they had been in this situation since January 1<sup>st</sup>. Ms. Garcia repeated that she would not get her a hotel.

On January 7, 2019, Steve Fisher from Vector Control returned and inspected the interior and exterior and found that still no action was taken.

On January 8, 2019, Ms. Green complained of the construction happening in her apartment. She was unable to use her kitchen, there were fumes that affected her son.

As of January 30, 2019, Ms. Green still has not received a reply to her request for accommodation.

### LEGAL ARGUMENT

#### Failure to Provide Reasonable Accommodation

Under the FEHA, the ADA, and UNRUH, “disability” is an expressly protected classification. “Disability” is defined as any physical or mental disability. Mental disability includes any mental or psychological disorder that limits a major life activity. (Gov. Code 12926(j)(1).)

Under these statutes, reasonable accommodations are required for people with disabilities, such as Ms. Green’s. Refusal to make reasonable accommodations in rules, policies, practices or services when necessary to afford a disabled person “equal opportunity to use and enjoy a dwelling.” (Gov. Code 12927(c)(1). This includes accommodations such as moving to a quieter unit or building.

In this matter, Ms. Green supplied two separate requests for accommodation from her treating physician indicating a need to move to a new apartment. Ms. Green explained the issue concerning the violence she and her children were witnessing and reporting with nothing being done. Instead of attempting to provide some accommodation to Ms. Green, her first request was denied and she received no response to her second after over a month had passed.

Further, she complained and requested that something be done about her neighbors as it was causing her a great deal of anxiety as they were pulling guns out in public, smoking marijuana outside of her house, affecting her son’s health.

Despite frequent and numerous complaints, nothing has been done to date.

As a result of these violations, Ms. Green is entitled, under UNRUH, to recover actual damages as well as up to three times the actual damages, but no less than \$4,000.00. Under FEHA, ADA, and UNRUH, attorney fees and costs are also available.

### **Breach of Warranty of Habitability**

California Civil Code 1941 requires that a home must be habitable. Habitable is expressly held to include premises "free from all accumulations of debris, filth rubbish, garbage, rodents and vermin. (Civil Code Section 1941.1(a)(6)).

Ms. Green had complained about the mice, cockroaches, and trash continuously since January 2018. She even reported it to Vector control which provided a detailed list of the issues to be remedied. Despite complaints from Ms. Green and citation from Vector control, the issues still have not been addressed to date.

By failing to address the mice, cockroach and trash complained of for over a year, this has exposed the Contra Costa Housing Authority to a return of rent for all months my client stayed in the unit. Pain and suffering damages for the anxiety and distress are also available for the willfull failure to remedy the situation by implementing a policy that infestations will not be remedied unless there is a new tenant moving in.

### **Breach of Implied Covenant of Quiet Enjoyment**

The lease under which the tenancy was created states as follows:

Duty to make premises safe:

Section 11A(2): A transfer is necessary to protect the health and safety of the Household Member or another Authority resident.

Ms. Green has reported that her neighbors have threatened her, pulled out guns in front of her, and continue to smoke marijuana which causes her son to have asthma attacks. Further, she has told Ms. Garcia about her anxiety, provided a doctor's note, and requested to move, yet still no action.

Section 12: Authority Responsibilities:

- A. Authority will maintain the Residence and the Development in a decent, safe and sanitary condition.
- B. Authority will comply with applicable building and housing codes and Department of Housing and Urban Development regulations materially affecting health.
- C. Authority will make necessary repairs to the Residence.
- D. Authority will keep Development buildings, facilities and common areas, not otherwise assigned to Tenant for maintenance and upkeep, in a clean and safe condition.

Ms. Garcia has refused to provide Ms. Green with clean, safe conditions as outlined above. This not only applies to Ms. Green's apartment, but also to the surrounding areas that are inundated with trash.

Further, many of the issues Ms. Green has complained about concerning her neighbors violate the lease as well. The lease states in relevant part:

Tenant responsibilities:

13I. Tenant must use reasonable care to keep the Residence in such condition as to ensure proper health and sanitation standards for Tenant, household members, and neighbors. Tenant will notify Authority promptly of any needed repairs to the Residence, which include but are not limited to any infestation of pests or rodents, and any unsafe or unsanitary conditions in the Residence, common areas, and Development. Tenant's failure to report the need for repairs or infestation in a timely manner will be considered as contributing to any damages that occurs.

13N. Tenant must act in a manner that will not disturb the other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the Development in a decent, safe and sanitary condition.

13O. Tenant must assure that all Household Members, guests or persons under Tenant's control do no engage in any of the following:

- (1) The violation of any criminal or civil law, ordinance or statute in the use and occupancy of the residence;
- (2) Any illegal or other activity which threatens the physical or social environment of the development or which threatens the health, safety or the right to peaceful enjoyment of the Development by other residents, public or Authority employees; or
- (3) Any drug-related criminal activity in the Residence, in the Development, in the Vicinity of the Development, or any other location away from Authority property, whether or not in the vicinity of the development.

13P. Tenant may not have any illegal weapons...

13Q. Tenant may not create or permit any condition to exist that results in risk to the health or safety of any person or damage to property.

16. Termination by Authority

(A)(7): Authority has determined that a Household member has illegally used a drug or a Household Member has a pattern of illegally using a drug that interferes with the health, safety, or right to peaceful enjoyment of the Development by the other residents.

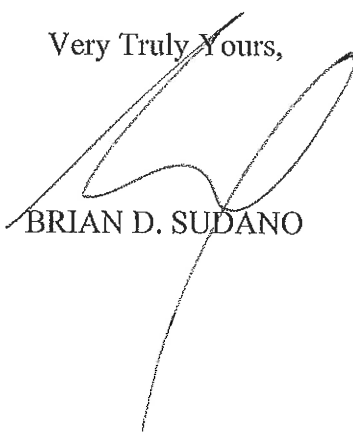
This are directly on point with the concerns she raised to Ms. Garcia about her neighbors throwing trash around the complex, having guns, disrupting her at all time of night, and threatening her.

**Maintenance of Nuisance/Breach of Quiet Enjoyment/ Negligent Maintenance of the Premises**

The refusal to make repair, correct tenant behavior, and clean up the units has resulted in the maintenance of a nuisance, negligent maintenance of the premises, and breach of the quiet enjoyment of the premises as outlined above.

If you would like to discuss this matter, please contact me at (925) 357-3213 or email me at [bsudano@sudanolaw.com](mailto:bsudano@sudanolaw.com).

Very Truly Yours,



BRIAN D. SUDANO

/BDS

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 HOUSING AUTHORITY OF THE COUNTY OF CONTRA  
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WALNUT CREEK CA 94598-2415			
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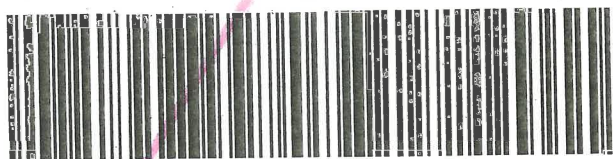
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BRIAN D SUDANO SUDANO LAW FIRM 540 LENNON LN WALNUT CREEK CA 94598-2415		Expected Delivery Date: 02/01/19  <b>0006</b>	
SIGNATURE REQUIRED		<div style="border: 1px solid black; padding: 2px; display: inline-block;"> <b>C001</b> </div>	
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