



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

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THOMAS ANDERSON ET AL VS. THOMAS AQUILINA ET AL

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THOMAS ANDERSON, ARTHUR  
LUCERO, GABRIELA ALONSO, ESTHER  
FLATTO, DIANA TAUTIVA, MARIA  
BARBARA HEREDIA, AUGUSTIN  
RAMIREZ, MAYRA ALVARADO and  
GARY HEATH,

Plaintiffs,

vs.

THOMAS AQUILINA, AQUILINA FAMILY  
2001 REVOCABLE TRUST, GERMAN  
MALDONADO,

Defendants.

Case No. CGC-14-542088

**[TENTATIVE] STATEMENT OF  
DECISION**

This court trial told a tawdry tale from the seamy side of San Francisco’s hyper-inflated housing market.

**FINDINGS OF FACT**

The case regards a rent-controlled apartment building on 26th Street in the Mission district. Tr. 22, 45. Owned by Thomas Aquilina via a trust, the building has six flats with six street addresses – 3150, 3152, 3154, 3156, 3158, 3160 – on three floors. Tr. 22, 167-70, 173. Each flat had six bedrooms (including a back room used as an *ersatz* bedroom) that were rented individually to tenants. Tr. 20-21, 69-70, 74-75, 146, 173. Residency in a room gave a tenant access to a common kitchen and bathroom with tenants from five other rooms. Tr. 19-20.

Conditions were squalid. Four people lived in one 11-by-12-foot room. Tr. 65, 126. Dysfunctional smoke detectors hung from ceilings. Tr. 31; Ex. 38. Electrical outlets were

exposed or had holes burned in them. Tr. 145-46, 221, 225-26; Exs. 33, 39. One oven “used to turn itself on without anyone getting near it.” Tr. 31. Another oven was mouse-infested and thus unusable. Tr. 116-18; *see also* Tr. 67, 69, 71, 222; Ex. 42. Dangerously dilapidated heating systems operated fitfully. Tr. 70-71, 144.

Toilets and pipes leaked raw sewage and often broke. Tr. 31, 225-27, 282. Black mold and cracked tiles predominated in bathrooms. Tr. 31, 143, 228, 282. Cockroaches and bedbugs bit children. Tr. 116-17; *see also* Tr. 59, 61-62, 67. A habitability expert testified that the apartments “are in a deplorable condition” and “have had very little maintenance work done to them for 20 to 30 years,” adding: “There were numerous code and safety violations throughout each unit.” Tr. 215.

Because the back rooms were rented as sixth bedrooms, doors leading to rear fire exits were locked. Tr. 21, 55, 217, 281-82. As the expert testified, “if a fire started in the front of the building, you would be trapped in the apartment.” Tr. 217; *see also* Tr. 21, 146. It is not hyperbolic to call the building a death trap.

Despite the conditions, tenants paid as much as \$800 a month for a room – they could afford nothing better in America’s most expensive rental market. *See* Ex. 8; Tr. 74, 142, 245. Most tenants were Latino/a, with English skills from limited to fluent. Other people in the San Francisco kaleidoscope of ethnicities lived in the building as well. Tr. 22.

In the early 2000s, Aquilina leased three of the six apartments – 3150, 3152 and 3154<sup>1</sup> – to German Maldonado, a longtime tenant who already leased 3158. Exs. 1-3; Tr. 162. Originally the monthly rent for each of these apartments was \$2,800; it was later lowered to \$2,050. *See* Exs. 1-3; Tr. 193, 198, 239.

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<sup>1</sup> This statement of decision uses “flats,” “apartments” and “units” interchangeably, as the parties did at trial. *See* Tr. 172. The individual rented rooms are referred to as “rooms.” *Id.*

Also, in 2001, Aquilina sought to enter a “Management Agreement” with Maldonado. Ex. 4. Maldonado says he never signed, but admits he did not object when Aquilina posted notices in the building: “Effective immediately, GERMAN MALDONADO has been appointed General Manager of the residential unit you now occupy.” Ex. 5; Tr. 176-80; *see also* Tr. 24, 48-49, 234.

Maldonado treated “his” units like a fiefdom, entering rooms without notice or permission, scaring children, threatening physical violence or to report tenants to immigration authorities, and using tenants’ rooms to smoke marijuana with his friends. Tr. 114-15, 117-21, 129-30, 145; *see also* Tr. 72-73, 92-93, 119.

When Maldonado rented a room in one of his units, he had the tenant sign a rental agreement. Exs. 8-12. Tenants testified that, based on what Maldonado told them, they believed he was forwarding their monthly rent money to Aquilina and that their tenancies were thus safe. Tr. 24-25, 92-93, 114-15, 119.

Maldonado made money on his room rentals, at times collecting more than \$4,000 a month in a unit while paying Aquilina \$2,050 of that. Tr. 73, 88-89, 181; *see also* Tr. 240-43. As Aquilina testified, “you don’t have to be a brain scientist to know he is taking units to make money.” Aquilina Dep. 201. Maldonado testified that he also worked in “[c]onstruction, pop-up wine bars, very odd jobs,” but much of his income came from renting out rooms in Aquilina’s building. *See* Tr. 331, 24.

For reasons not clear, Maldonado began failing to pay rent due Aquilina as early as 2005 – *e.g.*, he owed \$24,400 for 2006 and \$16,400 for 2010. Ex. 16; Tr. 335, 364; *see also* Tr. 301-03. Beginning in July 2013, the failures became acute again: Maldonado did not pay any of the

\$2,050 owed for 10 unit-months. Ex. 16; Tr. 364-65.<sup>2</sup> All the while, Maldonado never told the tenants that he was not paying Aquilina, though he continued to collect rent from them every month. Tr. 46, 49-50, 53, 119, 142, 146, 284, 337.

Where this tenant money went is also unclear. To put it charitably, Maldonado has been inconsistent. At trial, he testified variously that the money was (1) given to *other* tenants “if someone wanted to move,” (2) carried over to pay rent for subsequent months or (3) deposited in a trust account. Tr. 315-16, 352, 358, 364-65, 367-68, 376, 380-81.

In early 2014, Aquilina retained a management company for the building.<sup>3</sup> Tr. 308. This was shortly followed by three-day eviction notices to all tenants in 3150, 3152 and 3154 for failure to pay rent. *See id.*

Not to worry, Maldonado told the shocked tenants. He assured one “that he put our rent in an escrow account and that we would receive it back...that he had worked out a good deal with the landlord and everything was going to be okay.” Tr. 29. Maldonado told another tenant: “This is my eviction and you don’t have to worry about it.” Tr. 94. A third who approached Maldonado about the three-day eviction notice was assured it was a “misunderstanding” and “everything was going to be fine, and we just needed to keep paying our rent and we’ll be okay.” Tr. 285-86. A fourth reluctantly continued to pay her rent to Maldonado after he “sent me a photo of this check and [said] that he had paid and that everything was okay.” Tr. 151; Ex. 46.

Everything was not okay. All tenants in 3150, 3152 and 3154 were evicted, but Maldonado negotiated a deal with Aquilina that allowed him to stay in 3158. Tr. 27, 77, 286,

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<sup>2</sup> Those months were: July 2013, August 2013 and May 2014 for the unit where Maldonado lived (3158), as well as April 2014 and May 2014 for 3150, December 2013 and May 2014 for 3152, and July 2013, December 2013 and May 2014 for 3154. Exs. 16, 23; Tr. 313.

<sup>3</sup> It may not be coincidence that this retention happened at the same time rents in the Mission skyrocketed due to gentrification. *See* Tr. 163. Aquilina’s building was rent-controlled and he was thus strictly limited in how much he could raise rents so long as existing tenants remained.

370. None of the tenant rent had been “put in an escrow account” and they did not “receive it back,” despite Maldonado’s pledges. Tr. 28-29, 33, 53, 66, 99, 152; Ex. 49; *see also* Tr. 18.

Evicted after dutifully paying their rent every month, the tenants were distraught. *See, e.g.*, Tr. 66, 142, 146-47, 279. They suffered depression, hair loss, lack of sleep and appetite, and lost time from work. Tr. 25-27, 29, 52-53, 73, 75-77, 95-99, 115, 119, 147-49, 152-54, 287-90, Heredia Dep. 46. One tenant’s homelessness post-eviction affected her work performance so markedly that she was “asked to resign” and forced to move to Ohio. Tr. 95-96. Another tenant described in Spanish how, after being evicted, she was rejected for 50 apartments in San Francisco, because landlords saw she was “suing the same person who robbed [me].” Heredia Dep. 46. “I’m emotionally no longer present,” she testified. “Everything that happens to me feels like I’m watching a movie.” *Id.*

Aquilina’s apartment building is now being renovated, presumably for wealthier tenants. *See* Tr. 391-92.

## CONCLUSIONS OF LAW

Maldonado received rent from tenants, making him a “landlord” under San Francisco Rent Ordinance §37.2(h).<sup>4</sup> Maldonado also allowed Aquilina to hold him out as general manager of the building, so Maldonado was an agent and/or representative of the property owner, making him a “landlord” under §37.2(h) in a second way. Plaintiffs assert several claims against Maldonado.<sup>5</sup>

**Fraud.** As detailed above, Maldonado made at least two sets of knowing misrepresentations to the tenants. *See* California Civil Jury Instructions (CACI) 1900. Before the eviction notices, he told them he was forwarding their money to Aquilina and their tenancies

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<sup>4</sup> The rent ordinance’s full name is the Residential Rent Stabilization and Arbitration Ordinance; it is Chapter 37 of the San Francisco Administrative Code.

<sup>5</sup> Plaintiffs also sued Aquilina and his trust; they settled before trial.

were thus safe. *Id.* After the notices, Maldonado assured the tenants “everything was okay” and they should continue paying him rent. *Id.* Maldonado intended that the tenants rely on these falsehoods; they did so reasonably and the misrepresentations were a substantial factor in the tenants’ evictions and other harm. *Id.*

**Concealment.** By intentionally concealing the fact that he was not forwarding tenant rent money to Aquilina, Maldonado was also guilty of concealment. *See* CACI 1901.

**Intentional Infliction of Emotional Distress.** Maldonado’s reckless conduct was outrageous. *See* CACI 1600. After the eviction notices, the tenants became aware of his conduct, which then continued. *See id.* As also detailed above, the tenants suffered severe emotional distress from Maldonado’s conduct. *Id.*

**Negligence.** Maldonado is liable as well for negligence. *See* CACI 400, 401. As a landlord and master tenant, he owed the tenants duties to exercise reasonable care in operating the units, effecting repairs and complying with laws – duties he failed to meet, to tenants’ detriment. *Id.*

**Implied Warranty of Habitability.** Under Civil Code §1941, a lessor like Maldonado must make the building fit for occupation and “repair all subsequent dilapidations.” This he failed abjectly to do.

**Rent Ordinance: Eviction (§37.9).** Plaintiffs contend that Maldonado violated San Francisco’s Rent Ordinance by evicting them without just cause. However, Aquilina, not Maldonado, did the evicting.

**Rent Ordinance: Access/Quiet Enjoyment (§37.10).** Plaintiffs did prove that Maldonado violated Rent Ordinance §37.10 by abusing a landlord’s right to access rental units

(*id.* at (a)(4)) and by renting out the backrooms, thus blocking access to emergency exits and garbage receptacles (*id.* at (a)(9)).

**Rent Ordinance: “Profiteering” (§37.3(c)).** Plaintiffs also proved that Maldonado charged tenants more rent than Aquilina was charging him – another violation of the rent ordinance. *See id.*

In sum, the Court finds Maldonado liable to each of the nine plaintiffs for: fraud, concealment, intentional infliction of emotional distress, negligence, breach of the implied warranty of habitability and violating §§37.10 and 37.3(c) of the San Francisco Rent Ordinance. Maldonado is not liable under Rent Ordinance §37.9.

Plaintiffs also asserted several damage claims against Maldonado.

**Loss of Rent-Controlled Units.** A tenant benefits economically when living in a rent-controlled unit at below-market rent. This financial benefit is lost when the tenant is evicted into the open rental market. Assuming five additional years of residency, expert Richard Devine testified to the following damages: Thomas Anderson, \$35,321.99; Arthur Lucero, \$51,905.25; Gabriela Alonso, \$45,405.84; Esther Flatto, \$48,646.98; roommates Maria Barbara Heredia and Diana Tautiva, \$35,321.99 (divided 50/50); roommates Mayra Alvarado and Augustin Ramirez, \$52,818.29 (divided 50/50) and Gary Heath, \$35,038.05. Tr. 258-71; *see also* Pltf. Brf. 3:25-4:28, Tr. 53, 291. Finding Devine knowledgeable and credible, the Court adopts these – his low-range – damage calculations.

**Lost Work Income.** Several plaintiffs gave evidence of losing pay due to the evictions – from time off to fight the evictions and resulting depression, to loss of jobs. Tr. 26, 97, 121-22, 297. The Court awards: Anderson, \$6,000; Lucero, \$3,000; Flatto, \$12,000; Alvarado, \$2,800 and Tautiva, \$3,000.



**Emotional Distress.** Plaintiffs seek \$50,000 each in emotional distress damages. Such noneconomic damages are difficult to quantify and no fixed standard exists for deciding their amount. *See, e.g.*, CACI 3905A. However, a 12-member jury in this Court recently considered similar (if not as compelling) emotional distress evidence in a housing case and used its judgment to decide the reasonable amount of \$50,000 per plaintiff. *See id.* The Court does the same here. The evidence from eight plaintiffs consistently showed severe emotional distress, so \$50,000 is also awarded to the one plaintiff, Heath, who did not testify at trial.


**Excess Rent Payments.** Plaintiffs adduced insufficient evidence of “excess rent payments” to enable quantification of damages. *See* Pltf. Brf. 18:26-19:2.

**Punitive Damages.** Plaintiffs also adduced insufficient evidence of Maldonado’s financial condition to allow an award of punitive damages. *See* CACI 3947.

**Trebling.** Plaintiffs seek to treble damages for an improper eviction under Rent Ordinance §37.9. Pltf. Brf. 19:21-20:17. However, as found above, Maldonado is not liable under §37.9, so trebling is not appropriate.

**Total Damages.** The damages awarded against Maldonado are as follows: Anderson, \$91,321.99; Lucero, \$104,905.25; Alonso, \$95,405.04; Flatto, \$110,646.98; Tautiva, \$70,661.00; Heredia, \$67,661; Ramirez, \$76,409.15; Alvarado, \$79,209.15 and Heath, \$85,038.05. Plaintiffs are the prevailing parties and may seek costs.

Dated: September 3, 2015

  
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Richard B. Ulmer Jr.  
Judge of the Superior Court