

1 BRANCART & BRANCART
Christopher Brancart (CBN 128475)
2 cbrancart@brancart.com
Elizabeth Brancart (CBN 122092)
3 ebrancart@brancart.com
Liza Cristol-Deman (CBN 190516)
4 lcristoldeman@brancart.com
P.O. Box 686
5 Pescadero, CA 94060
Tel: (650) 879-0141
6 Fax: (650) 879-1103

7 Attorneys for Plaintiffs

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

11 **FAIR HOUSING COUNCIL OF**)
SAN FERNANDO VALLEY, et)
12 **al., etc.,**)

13 **Plaintiffs,**)

14 **vs.**)

15)
16 **ROOMMATE.COM, LLC,**)

17 **Defendant.**)
18 _____)

Case No. 03-CV-09386 PA (RZx)

**NOTICE OF MOTION AND MOTION
BY PLAINTIFFS FOR ENTRY
OF INJUNCTIVE RELIEF;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Hearing:

Date: January 12, 2009

Time: 1:30 p.m.

**Room: Courtroom of the
Hon. Percy Anderson**

19 Please take notice that on January 12, 2009, at 1:30 p.m., plaintiffs will move the
20 Honorable Percy Anderson, United States District Judge for the Central District of
21 California, for entry of injunctive relief prohibiting Roommate.com, LLC from
22 continuing to operate its website roommates.com in violation of the Fair Housing Act
23 and California Fair Employment and Housing Act (“FEHA”), following this Court’s
24 November 7, 2008, order finding defendant Roommate.com, LLC liable for violating
25 the Fair Housing Act and FEHA. (Doc. 183.) A proposed Order Granting Injunctive
26 Relief is filed herewith.

27 There is good cause to grant this motion because Roommate.com, LLC has been
28

1 found liable for violating those fair housing laws in the operation of its website
2 roommates.com, and continues to operate that website in a manner that violates the fair
3 housing laws.

4 This motion is based on this notice of motion, the memorandum of points and
5 authorities in support thereof, and the pleadings and other evidence of record in this
6 action, and upon such other matters as may be presented to the Court at the time of the
7 hearing.

8 This motion is filed pursuant to this Court's Order granting the parties'
9 Stipulation to Vacate Trial on Damages and Set Briefing Schedule on Motions for
10 Injunctive Relief and Attorneys' Fees filed November 20, 2008. (Doc. 188.)

11 Dated: November 24, 2008.

12 Respectfully submitted,
13 BRANCART & BRANCART

14
15 /s/ Christopher Brancart
16 Attorneys for Plaintiffs

TABLE OF CONTENTS

1

2 I. INTRODUCTION..... 1

3 II. RELIEF SOUGHT..... 1

4 III. ARGUMENT. 4

5 A. Injunctive Relief is Authorized by the Fair Housing Laws..... 4

6 B. Plaintiffs Have Met the Prerequisites for Entry of Injunctive Relief Under
7 the Fair Housing Act and FEHA.. 5

8 1. Proof of Defendant’s Violation of the Fair Housing
9 Statutes Establishes Irreparable Harm..... 6

10 2. The Supreme Court’s Decision in eBay, Inc. v.
11 MercExchange, L.L.C. Does Not Change the Analysis on
12 Whether to Enter Injunctive Relief in this Case.. 7

13 3. Injunctive Relief is Appropriate to Remedy Proven Fair
14 Housing Violations.. 9

15 4. Plaintiffs Have Shown Irreparable Injury and Inadequacy
16 of a Legal Remedy..... 11

17 5. Considering the Balance of Hardships, a Remedy in Equity
18 Is Warranted, and Is in the Public Interest.. 11

19 C. Section 17203 of the California Business & Professions Code Provides an
20 Additional Source for the Injunctive Remedy Sought Here.. 15

21 IV. CONCLUSION..... 16

22

23

24

25

26

27

28

TABLE OF AUTHORITIES

Cases

1

2

3 Alabama-Tombigbee Rivers Coalition v. Department of Interior

4 26 F.3d 1103 (11th Cir. 1994). 14

5 Albemarle Paper Co. v. Moody

6 422 U.S. 405 (1975). 6, 13

7 Amoco Production Co. v. Village of Gambell, Alaska

8 480 U.S. 531 (1987). 8

9 Baltimore Neighborhoods, Inc. v. LOB, Inc.

10 92 F. Supp. 2d 456 (D. Md. 2000). 11

11 Bowles v. Huff, 146 F.2d 428 (9th Cir. 1944). 6

12 Bradford v. Securities and Exchange Commission

13 278 F.2d 566 (9th Cir. 1960). 6

14 Broughton v. Cigna Healthplans of Calif.

15 21 Cal.4th 1066 (1999). 13

16 Bruso v. United Airlines, Inc., 239 F.3d 848 (7th Cir. 2001).. . . . 7

17 Burlington Northern Ry. Co. v. Bair, 957 F.2d 599 (8th Cir.1992).. . . . 6

18 Burlington Northern R. Co. v. Department of

19 Revenue of State of Wash., 934 F.2d 1064 (9th Cir. 1991).. . . . 6

20 Caribbean Marine Services Co., Inc. v. Baldrige

21 844 F.2d 668 (9th Cir. 1988). 11

22 Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.

23 20 Cal.4th 163 (1999). 15

24 Cortez v. Purolator Air Filtration Products Co.

25 23 Cal.4th 163 (2000). 15

26 Davis v. The Mansards, 597 F. Supp. 334 (N.D. Ind. 1984) 9

27 eBay, Inc. v. MercExchange, L.L.C. 547 U.S. 388 (2006).. . . . 5, 7, 8

28 Fair Housing Council of San Fernando Valley v. Roommates.Com, LLC

 521 F.3d 1157 (9th Cir. 2008) (en banc). 9, 11

Farmers Ins. Exchange v. Superior Court, 2 Cal.4th 377 (1992). 15

Gibson v. County of Riverside, 181 F. Supp.2d 1057 (C.D. Cal. 2002). 4-5

Gresham v. Windrush Partners, Ltd., 730 F.2d 1417 (11th Cir. 1984). 9

Harris v. Investor’s Business Daily, Inc., 138 Cal.App.4th 28 (2006).. . . . 15

1	<u>Hewlett v. Squaw Valley Ski Corp.</u> , 54 Cal. App.4th 499 (1997).	15
2	<u>Housing Rights Center v. Donald Sterling Corp.</u>	
3	274 F. Supp.2d 1129 (C.D. Cal. 2003).	9
4	<u>Metro. Hous. Dev. Corp. v. Arlington Heights</u>	
	616 F.2d 1006 (7th Cir.1980).	5
5	<u>Parkview Heights Corporation v. City of Black Jack</u>	
6	605 F.2d 1033 (7th Cir. 1979).	4
7	<u>People v. McKale</u> , 25 Cal.3d 626 (1979).	15
8	<u>People v. Mel Mack Co.</u> , 53 Cal. App.3d 621 (1975).	6, 13
9	<u>Porter v. Fiske</u> , 74 Cal. App.2d 332 (1946).	6
10	<u>Rogers v. Windmill Pointe Village Club Ass’n, Inc.</u>	
	967 F.2d 525 (11th Cir. 1992).	9, 11
11	<u>Sandford v. R.L. Coleman Realty Co., Inc.</u> , 573 F.2d 173 (4th Cir. 1978).	10
12	<u>Silver Sage v. City of Desert Hot Springs</u> , 251 F. 3d 814 (9th Cir. 2001).	6
13	<u>Smith v. Pacific Prop. and Dev. Corp.</u> , 358 F.3d 1097 (9th Cir. 2004).	11
14	<u>Smith v. Town of Clarkton</u> , 682 F.2d 1055 (4th Cir. 1982).	12
15	<u>Southern California Housing Rights Center v. Los Feliz Towers</u>	
16	<u>Homeowners Ass’n</u> , 426 F. Supp.2d 1061 (C.D. Cal. 2005).	16
17	<u>Trailer Train Co. v. State Bd. of Equalization</u>	
	697 F.2d 860 (9th Cir. 1983).	6
18	<u>TVA v. Hill</u> , 437 U.S. 153 (1973).	12
19	<u>United States v. Oakland Cannabis Buyers’ Co-op.</u>	
20	532 U.S. 483 (2001).	13
21	<u>Virginian Ry. Co. v. System Federation No. 40</u>	
	300 U.S. 515 (1937).	12
22	<u>Weinberger v. Romero-Barcelo</u> , 456 U.S. 305 (1982).	8, 13
23	<u>Winter v. NRCD, Inc.</u> , __ U.S. __, 2008 WL 4862464 (Nov. 12, 2008).	8
24	<u>Zach v. Hussey</u> , 394 F. Supp. 1028 (E.D. Mich. 1975).	5
25		
26	Statutes	
27	35 U.S.C. § 283.	5
28		

1	The Fair Housing Act	
2	42 U.S.C. § 3604(a).....	1
3	42 U.S.C. § 3604(c).....	1
4	42 U.S.C. § 3613(c)(1).....	4
5	Cal. Bus. & Prof. Code §17200.....	15, 16
6	§ 17203.....	15, 16
7	§ 17204.....	15, 16
8	Cal. Govt. Code § 12920.....	14
9	§ 12955(a).....	1
10	§ 12955(c).....	1
11	§ 12955(g).....	1, 4
12	§ 12955(k).....	1
13	§ 12989.2(a).....	4
14	Other Authorities	
15	D. Farber, “Equitable Discretion, Legal Duties,	
16	and Environmental Injunctions,” 45 U. PITT. L. REV. 513 (1984).....	14
17	7 Wright & Miller, Federal Practice and Procedure, § 1771 (1972).	10
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I. INTRODUCTION

Plaintiffs Fair Housing Council of San Fernando Valley and Fair Housing Council of San Diego seek entry of injunctive relief following this Court’s November 7, 2008, order finding that defendant Roommate.com, LLC is liable for violating the federal Fair Housing Act and California Fair Employment and Housing Act (“FEHA”). (Doc. 183.) This motion is filed pursuant to the Court’s Order re Stipulation to Vacate Trial on Damages and Set Briefing Schedule on Motions for Injunctive Relief and Attorneys’ Fees filed November 20, 2008. (Doc. 188.) The parties have reached a settlement on the issue of monetary damages.

Plaintiffs seek issuance of an injunction prohibiting Roommate.com, LLC from continuing to operate its website roommates.com in violation of the Fair Housing Act and FEHA as determined by the Court in its November 7, 2008, order. Pursuant to that order, this Court found that defendant Roommate.com, LLC violates the Fair Housing Act and FEHA “in prompting its users to provide information about their personal characteristics, publishing those personal characteristics, and matching potential roommates with available dwellings based on those characteristics,” by “otherwise making unavailable or denying . . . a dwelling” based on sex or familial status and making, printing, or publishing, “or causing to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on sex [and] familial status, or an intention to make any such preference, limitation, or discrimination.” 42 U.S.C. §§ 3604(a), (c). (Doc. 183 at 6-7.) The Court also found that those same practices based on sexual orientation, as well as sex and familial status, violate the California FEHA. Cal. Govt. Code § 12955(a), (c), (g) & (k). (Doc. 183 at 9-10.)

II. RELIEF SOUGHT

Plaintiffs seek issuance of an order enjoining defendant from continuing to commit any of the unlawful practices this Court has found to violate the Fair Housing

1 Act and FEHA in its November 7, 2008, order. None of the relief sought by plaintiffs
2 applies to the “Additional Comments” portion of the roommates.com website, for
3 which Roommate.com, LLC has CDA immunity.

4 Roommate.com, LLC is a national housing information vendor covering all 50
5 states, but state and local fair housing laws providing for protections beyond those
6 provided in the federal Fair Housing Act vary. Accordingly, plaintiffs seek a two-part
7 injunction: One part prohibiting Roommate.com, LLC from further violations of the
8 Fair Housing Act, and another part prohibiting Roommate.com, LLC from violating
9 additional protections provided in state and local laws including California’s FEHA.
10 Specifically, plaintiffs seek an order, applicable nationwide:

- 11 1. Prohibiting Roommate.com, LLC from making inquiries into the
12 sex and familial status of users seeking housing in violation of the Fair
13 Housing Act. 42 U.S.C. § 3604(c). (Order at 4, 6-7.)
- 14 2. Prohibiting Roommate.com, LLC from causing users offering
15 housing to express statements indicating preferences for users seeking
16 housing on the basis of sex and familial status in violation of the Fair
17 Housing Act. 42 U.S.C. § 3604(c). (Order at 4, 6-7.)
- 18 3. Prohibiting Roommate.com, LLC from steering users seeking
19 housing to particular housing opportunities on the basis of those users’ sex
20 and familial status in violation of the Fair Housing Act. 42 U.S.C. §
21 3604(a). (Order at 4, 6-7.)
- 22 4. Prohibiting Roommate.com, LLC from performing any matching
23 function based on sex and familial status, including My Matches,
24 “Roommail” and “Power Search” functions, and requiring that those
25 functions be disabled and prohibited from filtering based on sex and
26 familial status, even if the user completed a questionnaire prior to the
27 resolution of the case that contained such inquiries and preferences. 42
28

1 U.S.C. § 3604(a). (Order at 4, 6-7.)

2 5. Prohibiting Roommate.com, LLC from making statements that
3 indicate an intention to steer users seeking housing on the basis of those
4 users' sex and familial status in violation of the Fair Housing Act. 42

5 U.S.C. § 3604(c). (Order at 4, 6-7.)

6 6. Prohibiting Roommate.com, LLC from screening users seeking
7 housing on the basis of those users' sex and familial status in violation of
8 the Fair Housing Act. 42 U.S.C. § 3604(a). (Order at 4, 6-7.)

9 7. Prohibiting Roommate.com, LLC from making statements that
10 indicate an intention to screen users seeking housing on the basis of those
11 users' sex and familial status in violation of the Fair Housing Act. 42

12 U.S.C. § 3604(c). (Order at 4, 6-7.)

13 8. Prohibiting Roommate.com, LLC from printing and publishing
14 profiles of users offering housing that indicate a preference, limitation, or
15 discrimination on the basis of sex and familial status in violation of the
16 Fair Housing Act. 42 U.S.C. § 3604(c). (Order at 4, 6-7.)

17 Plaintiffs also seek an order applicable to all housing opportunities located in
18 California and all other state or local jurisdictions prohibiting housing discrimination
19 on the basis of sexual orientation¹:

20 9. Prohibiting Roommate.com, LLC from committing any of the
21 discriminatory housing practices described above on the basis of sexual
22 orientation. Cal. Govt. Code § 12955(a), (c) and (k). (Order at 9-10.)

23 Plaintiffs also seek an order applicable to all housing opportunities located in

24 _____
25 ¹As of this date, in addition to California, the state of Connecticut, the District of
26 Columbia, Hawaii, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey,
27 New Mexico, Rhode Island, Vermont, and Wisconsin, along with the cities of Atlanta,
28 Chicago, Detroit, Miami, New York, Pittsburgh, St. Louis, and Seattle, prohibit housing
discrimination on the basis of sexual orientation.

1 California only:

2 10. Prohibiting Roommate.com, LLC from aiding users offering
3 housing in the violation of FEHA, Government Code §12955(k)
4 (screening users seeking housing on the basis of sex, sexual orientation,
5 and familial status) and §12955(c) (making statements indicating
6 preferences for users seeking housing on the basis of sex, sexual
7 orientation, and familial status). Cal. Govt. Code §12955(g). (Order at 9-
8 10.)

9 **III. ARGUMENT**

10 **A. Injunctive Relief is Authorized by the Fair Housing Laws.**

11 Both the Fair Housing Act and FEHA authorize injunctive relief. The Fair
12 Housing Act provides:

13 In a civil action [by a private plaintiff], if the court finds that a
14 discriminatory housing practice has occurred or is about to occur, the court
15 may award to the plaintiff actual and punitive damages, and . . . may grant
16 as relief, as the court deems appropriate, any permanent or temporary
17 injunction, temporary restraining order, or other order (including an order
18 enjoining the defendant from engaging in such practice or ordering such
19 affirmative action as may be appropriate).

20 42 U.S.C. § 3613(c)(1). California’s FEHA also provides for “issuance of a temporary
21 or permanent injunction, or temporary restraining order, or other order, as [the court]
22 deems appropriate to prevent any defendant from engaging in or continuing to engage
23 in an unlawful practice.” Cal. Govt. Code § 12989.2(a).

24 In fair housing cases, “the court has not merely the power but the duty to render
25 a decree which will so far as possible eliminate the discriminatory effects of the past as
26 well as bar like discrimination in the future.” Parkview Heights Corporation v. City of
27 Black Jack, 605 F.2d 1033, 1035-36 (7th Cir. 1979). “Generally, and particularly in a
28

1 fair housing situation, the existence of a federal statutory right implies the existence of
2 all measures necessary and appropriate to protect federal rights and implement federal
3 policies.” Metro. Hous. Dev. Corp. v. Arlington Heights, 616 F.2d 1006, 1011 (7th
4 Cir.1980) (citation omitted). See also Gibson v. County of Riverside, 181 F. Supp.2d
5 1057, 1096 (C.D. Cal. 2002) (court permanently enjoined discriminatory conduct that
6 violated FEHA’s prohibition on housing discrimination).

7 **B. Plaintiffs Have Met the Prerequisites for Entry of Injunctive Relief**
8 **Under the Fair Housing Act and FEHA.**

9 In eBay, Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391 (2006), the Supreme
10 Court reiterated the traditional four-factor test for entry of permanent injunctive relief:
11 “A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that
12 remedies available at law, such as monetary damages, are inadequate to compensate for
13 that injury; (3) that, considering the balance of hardships between the plaintiff and
14 defendant, a remedy in equity is warranted; and (4) that the public interest would not be
15 disserved by a permanent injunction.” Id., 547 U.S. at 391.² The eBay opinion
16 involved issuance of a permanent injunction under the Patent Act, which provides that
17 injunctive relief may be granted “in accordance with the principles of equity” to
18 prevent violation for any right secured by patent. 35 U.S.C. § 283.

19 Plaintiffs do not dispute that under the fair housing laws the court retains
20 discretion to determine whether to issue an injunction and the scope of any injunction –
21 there is no “per se” rule requiring or prohibiting issuance of an injunction. However,
22 unlike cases involving solely the private interests of the parties, like eBay, the decision
23 on equitable relief must be informed by stated legislative policies of Congress (and the
24 California Legislature) to prohibit housing discrimination. In the context of statutory

25
26 ²In its order granting the parties’ stipulation to vacate the trial on damages and set a
27 briefing schedule on plaintiffs’ motion for injunctive relief, the Court advised that
28 “plaintiffs may wish to address the applicability, if any, of the Supreme Court’s decision
in eBay, Inc. v. MercExchange, L.L.C., 547 U.S. 388, 394 (2006).” (Doc. 188, p. 1, n.1.)

1 injunctions, the court’s freedom to make an independent assessment of the equities and
2 the public interest is informed to the extent that Congress has already made such
3 assessments with respect to the statutory violation before the court. When Congress
4 provides an equitable remedy for a violation of a statute, the district court must
5 determine the relief to be awarded consistent with the legislative purposes. Albemarle
6 Paper Co. v. Moody, 422 U.S. 405, 417 (1975).

7 **1. Proof of Defendant’s Violation of the Fair Housing Statutes**
8 **Establishes Irreparable Harm.**

9 Where a plaintiff has shown that the defendant is “engaged in, or about to be
10 engaged in, the act or practices prohibited by a statute which provides for injunctive
11 relief to prevent such violations, irreparable harm to the plaintiffs need not be shown.”
12 Burlington Northern R. Co. v. Department of Revenue of State of Wash., 934 F.2d
13 1064, 1074 (9th Cir. 1991). That rule is well-established. Burlington Northern Ry. Co.
14 v. Bair, 957 F.2d 599, 601 (8th Cir.1992). The Ninth Circuit has applied that rule to
15 the Fair Housing Act, stating that when a plaintiff has proven that a defendant has
16 violated the Fair Housing Act, the court should presume that the plaintiff has suffered
17 irreparable injury from the fact of the defendant’s violation. See Silver Sage v. City of
18 Desert Hot Springs, 251 F. 3d 814, 826-827 (9th Cir. 2001). See also Bradford v.
19 Securities and Exchange Commission, 278 F.2d 566, 567 (9th Cir. 1960), and Bowles
20 v. Huff, 146 F.2d 428, 430 (9th Cir. 1944) (no showing of irreparable injury or
21 inadequacy of a remedy at law is required in statutory actions for injunction); Trailer
22 Train Co. v. State Bd. of Equalization, 697 F.2d 860, 869 (9th Cir. 1983) (“[t]he
23 standard requirements for equitable relief need not be satisfied when an injunction is
24 sought to prevent the violation of a federal statute which specifically provides for
25 injunctive relief”). California law follows the same rule. People v. Mel Mack Co., 53
26 Cal. App.3d 621, 630 (1975) (where an injunction is authorized by statute, a violation
27 thereof is good and sufficient cause for its issuance); Porter v. Fiske, 74 Cal. App.2d
28

1 332, 338 (1946) (same).

2 Under that well-established rule, plaintiffs have satisfied the prerequisites for
3 entry of injunctive relief in this case – they have shown that defendant is engaged in
4 discriminatory housing practices and the fair housing laws specifically provide for
5 injunctive relief to prevent such practices. In such instances, the “relevant inquiry” is
6 “whether the . . . discriminatory conduct could possibly persist in the future.” Bruso v.
7 United Airlines, Inc., 239 F.3d 848, 864 (7th Cir. 2001) (Title VII case). In this case,
8 there is no doubt that the discriminatory conduct will continue into the future unless
9 enjoined.

10 Defendant has operated and continues to operate its website roommates.com in
11 violation of the Fair Housing Act and FEHA. Throughout the almost five-year
12 duration of this litigation, Roommate has operated its website without any substantive
13 change relevant to the practices challenged here. (See Plaintiffs’ Statement of
14 Undisputed Facts in Support of Motion for Partial Summary Judgment [Doc. 119], Nos.
15 90, 94, 148, and defendants’ “undisputed” responses thereto [Doc. 135-2].) Those
16 practices arise out of the very design and function of the website, and will continue
17 unless this Court issues an injunction pursuant to its order entering partial summary
18 judgment in favor of plaintiffs. See, e.g., Fair Housing Council etc., et al. v.
19 Roommate.com, LLC, 521 F.3d 1157 (9th Cir. 2008), at 1166 (“Roommate makes
20 answering the discriminatory questions a condition of doing business”) and at 1169
21 (“Roommate designed its search and email systems to limit the listings available to
22 subscribers based on sex, sexual orientation and presence of children”).

23 **2. The Supreme Court’s Decision in eBay, Inc. v.**
24 **MercExchange, L.L.C. Does Not Change the Analysis on**
25 **Whether to Enter Injunctive Relief in this Case.**

26 Although written in broad and historical terms, it is important to recognize that
27 the Supreme Court’s eBay, Inc. v. MercExchange, L.L.C. case was decided to address a
28

1 narrow and modern problem: The perceived “holdup problem” created by the threat
2 of injunction in patent litigation brought by patent trolls, companies that seek to
3 enforce a patent that they are not using by threatening an injunction to gain a
4 bargaining advantage in litigation. eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388,
5 126 S. Ct. 1837, 1839, 1841-42. While the Supreme Court unanimously agreed that
6 equity vested discretion regarding the nature and scope of injunctive relief in district
7 judges, the Court split on how the four-factor test should be applied. That split
8 demonstrates that eBay is more about the role of injunctive relief in modern patent
9 litigation and less about the proper role of injunctive relief in traditional civil rights
10 cases.

11 Chief Justice Roberts, joined by Justices Scalia and Ginsberg, argued in eBay
12 that application of the four-factor test by district judges should be informed by
13 substantial Federal Circuit precedent that injunctions should issue absent exceptional
14 circumstances. eBay Inc., 126 S. Ct. at 1841 (Roberts, C.J., concurring). Justice
15 Kennedy, joined by Justices Stevens, Souter, and Breyer, argued that the historical
16 granting of injunctions needs to take into account the modern problem of patent trolls
17 seeking injunctions simply to extract negotiating advantages. eBay Inc., 126 S. Ct. at
18 1842 (Kennedy, J., concurring). There is nothing in eBay to suggest that the Court
19 intended to disturb the long line of cases holding that injunctive relief was a necessary
20 and appropriate remedy to stop ongoing violations of a civil rights statute found by a
21 district court.

22 Likewise, neither do the Supreme Court’s environmental compliance cases
23 Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982), Amoco Production Co. v.
24 Village of Gambell, Alaska, 480 U.S. 531 (1987), and most recently Winter v. NRCD,
25 Inc., __ U.S. __, 2008 WL 4862464 (Nov. 12, 2008), affect the analysis in this civil
26 rights case. In each of those cases, the plaintiffs sought to enjoin *procedural* violations
27 of the federal environmental laws. In each, the Supreme Court found that an injunction
28

1 was inappropriate to remedy those procedural violations. See Amoco, 480 U.S. at 544
2 (lower courts “erroneously focused on the statutory procedure rather than on the
3 underlying substantive policy”). Here, in contrast, plaintiffs seek to enjoin substantive
4 violations of the fair housing laws arising out of the very design of the roommates.com
5 website that contravene the underlying national and state policies prohibiting housing
6 discrimination.

7 **3. Injunctive Relief is Appropriate to Remedy Proven**
8 **Fair Housing Violations.**

9 Issuance of injunctions following trial or adjudication on the merits is common
10 in fair housing cases. Cases brought by a non-profit fair housing council are no
11 different. See, e.g., Housing Rights Center v. Donald Sterling Corp., 274 F. Supp.2d
12 1129 (C.D. Cal. 2003) (“HRC v. Sterling”); Davis v. The Mansards, 597 F. Supp. 334,
13 348 (N.D. Ind. 1984).

14 In HRC v. Sterling, the plaintiffs – a fair housing organization and several
15 current tenants – moved for a preliminary injunction to stop defendant from, among
16 other things, using the term “Korean” in the names of its apartment buildings and
17 inquiring into tenants’ national origins and birth places. 274 F. Supp.2d at 1134. The
18 Court found that plaintiffs were likely to prevail on their Fair Housing Act claims on
19 those factual allegations. Id. at 1138-39. Based on that finding and the Ninth Circuit
20 opinion in Silver Sage, 251F.3d 814, the Court presumed irreparable injury and issued
21 a preliminary injunction. See also Gresham v. Windrush Partners, Ltd., 730 F.2d 1417,
22 1424 (11th Cir. 1984).

23 In Davis v. The Mansards, the Court held a bench trial and found in favor of
24 plaintiffs, two African American couples who were denied rentals at defendant’s
25 apartment complex based on their race, and the fair housing agency within that
26 jurisdiction. After determining the amount of damages to be awarded to each plaintiff,
27 the Court did not hesitate to issue the injunction requested by plaintiffs, enjoining
28

1 further discrimination and compelling defendants to take other affirmative steps: “The
2 public interest in abolishing racial discrimination dictates that the defendants be held to
3 a continuing high standard of fair dealing.” (Citing Gresham, 730 F.2d 1417.) See
4 also Rogers v. Windmill Pointe Village Club Ass’n, Inc., 967 F.2d 525, 529 (11th Cir.
5 1992) (issuing preliminary injunction because public interest in stopping housing
6 discrimination outweighs any injury to defendants).

7 Similarly, courts have issued injunctions in other fair housing cases where the
8 plaintiff is not the direct target of the challenged discrimination. In Zach v. Hussey,
9 394 F. Supp. 1028, 1052 (E.D. Mich. 1975), the court issued a preliminary injunction
10 after an evidentiary hearing in which it heard evidence that the defendants, who were
11 all real estate firms, engaged in steering and blockbusting based on race. Plaintiffs
12 resided in the area where defendants’ firms operated, but most had not been personally
13 steered or targeted by defendants’ discriminatory housing practices. The court found,
14 however, that the plaintiffs’ community, and the public interest as a whole, would be at
15 risk of “further exploitation” if an injunction did not issue. Id. The Court further noted
16 that, based on its finding that the plaintiffs were likely to succeed on the merits of their
17 Fair Housing Act claims, it was nearly certain that “irreparable harm” would ensue in
18 the absence of an injunction. Id.

19 Here, the Court has already found in favor of plaintiffs on the merits of
20 plaintiffs’ fair housing claims. A finding of discrimination under the Fair Housing Act,
21 such as the Court’s order on the parties’ motions for summary judgment here, clearly
22 warrants injunctive relief. See Sandford v. R.L. Coleman Realty Co., Inc., 573 F.2d
23 173, 178-79 (4th Cir. 1978) (reversible error to refuse to grant injunction after
24 defendant real estate firm found liable under FHA for racial coding and denials). An
25 appropriate injunction after a finding of liability “generally will benefit not only the
26 claimant but all other persons subject to the practice or the rule under attack.”
27 Sandford, 573 F.2d at 178, quoting 7 Wright & Miller, Federal Practice and Procedure,
28

1 § 1771 at 663-664 (1972).

2 **4. Plaintiffs Have Shown Irreparable Injury and**
3 **Inadequacy of a Legal Remedy.**

4 Assuming, however, that plaintiffs must make a separate showing of irreparable
5 injury and inadequacy of legal remedy, they do so in this case. The harm caused to
6 plaintiffs by defendant's continued operation of its website in violation of the fair
7 housing laws is irreparable and cannot be compensated by a purely monetary remedy.
8 Defendant's discriminatory housing practices have caused plaintiffs "injury to their
9 ability to carry out their purpose." (Doc. 183, p. 3.) Continued violation of the fair
10 housing laws will continue to frustrate plaintiffs' mission to stop discrimination. Smith
11 v. Pacific Prop. and Dev. Corp., 358 F.3d 1097, 1105 (9th Cir. 2004); Baltimore
12 Neighborhoods, Inc. v. LOB, Inc., 92 F. Supp. 2d 456, 465 (D. Md. 2000). Moreover,
13 by forcing users to express a discriminatory preference and forcing disclosure of
14 information that can form the basis of discrimination by others, Roommate causes
15 irreparable harm by "mak[ing] discrimination both possible and respectable." Fair
16 Housing Council of San Fernando Valley v. Roommates.Com, LLC, 521 F.3d 1157,
17 1170 n.26 (9th Cir. 2008) (en banc). These facts establish both irreparable injury and
18 inadequacy of monetary damages to compensate plaintiffs.

19 **5. Considering the Balance of Hardships, a Remedy in**
20 **Equity Is Warranted, and Is in the Public Interest.**

21 The threat of injury by continued discrimination in the operation of
22 roommates.com outweighs whatever hardship the proposed injunction may cause to
23 defendant Roommate.com, LLC. Moreover, the strong national policy against housing
24 discrimination supports enjoining defendant's discriminatory practices. See Rogers v.
25 Windmill Pointe Village Club Ass'n, Inc., 967 F.2d at 529 (11th Cir. 1992) (strong
26 national policy against housing discrimination supported enjoining defendant's age
27 policy during pendency of litigation).

1 In any case affecting the public interest, the district court must always consider
2 whether the public interest would be advanced or impaired by issuance of an
3 injunction. Caribbean Marine Services Co., Inc. v. Baldrige, 844 F.2d 668, 677 (9th
4 Cir. 1988). Granting the injunctive relief sought by plaintiffs will advance the public
5 interest. According to defendant, roommates.com receives over 40,000 visits and
6 700,000 pages views per day. (Defendant’s Statement of Uncontroverted Facts, Doc.
7 122-2, p. 2, ¶ 4.) Thus, the continuation of defendant’s discriminatory housing
8 practices will have a significant effect on the public.

9 When the public interest is involved, courts may go further in awarding relief
10 than they would if only private interests are involved. Virginian Ry. Co. v. System
11 Federation No. 40, 300 U.S. 515, 552 (1937). Here, in fashioning equitable relief for
12 the violation of the Fair Housing Act, trial courts are to be guided by its underlying
13 purposes. Smith v. Town of Clarkton, 682 F.2d 1055, 1068 (4th Cir. 1982). That
14 purpose, as declared by Congress, is “to provide, within constitutional limitations, for
15 fair housing throughout the United States.” 42 U.S.C. § 3601. Such a declared
16 Congressional purpose “is in itself a declaration of public interest and policy which
17 should be persuasive in inducing courts to give relief.” Virginian Ry. Co., 300 U.S. at
18 552.

19 This Court must consider that express public policy in determining the
20 appropriate remedy:

21 A court sitting in equity cannot “ignore the judgment of Congress,
22 deliberately expressed in legislation.” [Virginian Ry. Co., 300 U.S. at
23 551.] A district court cannot, for example, override Congress’ policy
24 choice, articulated in a statute, as to what behavior should be prohibited.

25 “Once Congress, exercising its delegated powers, has decided the order of
26 priorities in a given area, it is ... for the courts to enforce them when
27 enforcement is sought.” [TVA v. Hill, 437 U.S. 153, 194 (1973).] Courts
28

1 of equity cannot, in their discretion, reject the balance that Congress has
2 struck in a statute. [Id., at 194-195.] Their choice (unless there is
3 statutory language to the contrary) is simply whether a particular means of
4 enforcing the statute should be chosen over another permissible means;
5 their choice is not whether enforcement is preferable to no enforcement at
6 all. Consequently, when a court of equity exercises its discretion, it may
7 not consider the advantages and disadvantages of nonenforcement of the
8 statute, but only the advantages and disadvantages of “employing the
9 extraordinary remedy of injunction,” [Weinberger v. Romero-Barcelo, 456
10 U.S. 305, 312 (1982)], over the other available methods of enforcement.

11 ... To the extent the district court considers the public interest and the
12 conveniences of the parties, the court is limited to evaluating how such
13 interest and conveniences are affected by the selection of an injunction
14 over other enforcement mechanisms.

15 United States v. Oakland Cannabis Buyers’ Co-op., 532 U.S. 483, 497-498 (2001)
16 (footnote omitted).

17 California also recognizes the public interest in the issuance of permanent
18 injunctions to enjoin unlawful practices brought by persons acting as private attorney
19 generals. Broughton v. Cigna Healthplans of Calif., 21 Cal.4th 1066, 1072, 1079-1085
20 (1999) (finding requests for such relief not subject to mandatory arbitration). A
21 defendant has no right to continue to violate the law. Mel Mack, 53 Cal. App. 3d at
22 630. FEHA itself states the legislative finding that “the practice of discrimination
23 because of race, color, religion, sex, marital status, national origin, ancestry, familial
24 status, disability, or sexual orientation in housing accommodations is declared to be
25 against public policy,” and the legislative purpose of the enactment “to provide
26 effective remedies that will eliminate these discriminatory practices.” Cal. Govt. Code
27 § 12920.
28

1 Accordingly, in determining the nature of the injunctive relief to be entered in
2 this case, the Court must be guided by the stated public policies of both Congress and
3 the California Legislature that the Fair Housing Act and FEHA are intended to provide
4 remedies to eliminate discriminatory housing practices.

5 Plaintiffs anticipate that defendant will argue that an injunction prohibiting their
6 discriminatory housing practices would cause them undue hardship. However,
7 [w]hen Congress has prohibited certain conduct, law-abiding citizens
8 presumably refrain from that conduct voluntarily. The defendant in an
9 injunction proceeding who asks the court to balance the remedies in his
10 favor is, in effect, asking the court to approve of his decision not to
11 comply with the duties that law-abiding citizens comply with voluntarily.

12 Thus, the court is being asked to voice its approval of lawless conduct.
13 D. Farber, “Equitable Discretion, Legal Duties, and Environmental Injunctions,” 45 U.
14 PITT. L. REV. 513, 535-36 (1984). Here, unlike in cases involving failures to obtain
15 environmental permits, the structure of defendant’s business operates in violation of the
16 fair housing laws.

17 If this Court does not enjoin defendant from continuing to violate the fair
18 housing laws, the national and state policies prohibiting such discrimination will be
19 thwarted, and defendant will be able to continue to operate in violation of this Court’s
20 express finding of discriminatory practices. Injunctive relief as the only vehicle that
21 carries the sufficient remedial effect to ensure future compliance with the fair housing
22 laws’ requirements. “Anything less would be tantamount to nothing.”

23 Alabama-Tombigbee Rivers Coalition v. Department of Interior, 26 F.3d 1103, 1107
24 (11th Cir. 1994). Having found that Roommate.com engages in violations of the Fair
25 Housing Act and FEHA in the operation of its website, those violations must be
26 enjoined.

27 //

1 **C. Section 17203 of the California Business & Professions Code Provides an**
2 **Additional Source for the Injunctive Remedy Sought Here.**

3 Because the Court has ruled that Roommate.com has violated the Fair Housing
4 Act and FEHA, plaintiffs have established a violation of Business and Professions
5 Code § 17200 as a matter of law. Section 17200 “borrows” violations of other laws
6 and treats them as unlawful practices actionable under section 17200. See Harris v.
7 Investor’s Business Daily, Inc., 138 Cal.App.4th 28, 32-33 (2006). A violation of a
8 predicate law is a per se violation of § 17200. Cel-Tech Communications, Inc. v. Los
9 Angeles Cellular Telephone Co., 20 Cal.4th 163, 180 (1999); Farmers Ins. Exchange v.
10 Superior Court, 2 Cal.4th 377, 383 (1992). Acts that violate the fair housing laws,
11 including the Fair Housing Act and FEHA are unlawful acts that also violate § 17200.
12 As expressly stated by the California Supreme Court in People v. McKale, 25 Cal.3d
13 626, 637 (1979), “[d]iscrimination in housing and business establishments . . . is clearly
14 unlawful . . . Such unlawful business practices constitute unfair competition pursuant to
15 Business and Professions Code section 17200.”

16 Business & Profession Code §§ 17203 and 17204 provide injunctive relief as a
17 remedy for persons injured by unlawful business practices. “Any person who engages,
18 has engaged, or proposes to engage in unfair competition may be enjoined in any court
19 of competent jurisdiction.” Bus. & Prof. Code §17203. The remedial power granted
20 under this section is very broad. Cortez v. Purolator Air Filtration Products Co., 23
21 Cal.4th 163, 180 (2000). Hewlett v. Squaw Valley Ski Corp., 54 Cal. App.4th 499, 539
22 (1997). Section 17203 authorizes the court to fashion remedies to prevent, deter, and
23 compensate for unfair business practices. Cortez, 23 Cal.4th at 176.

24 A § 17200 claim may be brought by “any person who has suffered injury in fact
25 and has lost money or property as a result of the unfair competition.” Bus. & Prof.
26 Code § 17204. A fair housing organization establishes standing under to obtain
27 injunctive relief under §§ 17203 and 17204 in showing the same type of injury giving
28

1 rise to standing under the Fair Housing Act and FEHA. See Southern California
2 Housing Rights Center v. Los Feliz Towers Homeowners Ass'n, 426 F. Supp.2d 1061,
3 1069 (C.D. Cal. 2005). Plaintiffs have already established that necessary injury by way
4 of the Court's summary judgment order. (Doc. 183, pp. 3-4.)

5 Accordingly, the permanent injunctive relief entered by the Court should also be
6 based on § 17203.

7 **IV. CONCLUSION**

8 Plaintiffs request that the Court enter an injunction prohibiting Roommate.com
9 from continuing to operate its website roommates.com in violation of the Fair Housing
10 Act and FEHA as found by this Court in its November 7, 2008, order granting partial
11 summary judgment in favor of plaintiffs, and Business & Professions Code § 17200.

12 Dated: November 24, 2008.

13 Respectfully submitted,

14 BRANCART & BRANCART

15
16 /s/ Christopher Brancart
17 Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 On November 24, 2008 I served a true and correct copy of the following
3 documents entitled:

4 **NOTICE OF MOTION AND MOTION BY PLAINTIFFS FOR**
5 **ENTRY OF INJUNCTIVE RELIEF; MEMORANDUM OF POINTS**
6 **AND AUTHORITIES IN SUPPORT THEREOF**

7 upon the following person(s):

8 Mr. Scott B. Kidman
9 Quinn, Emanuel, Urquhart, Oliver &
10 Hedges
11 865 South Figueroa Street, 10th Floor
12 Los Angeles, CA 90017
13 Fax: (213) 443-3100

12 13	BY ELECTRONIC MAIL: By transmitting the above document(s) to the email address of the person designated above, and by electronically filing the documents on the Court's ECF system.
14 15	BY MAIL: By placing a copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States mail at Loma Mar, California, addressed as set forth above.
16	BY HAND DELIVERY: By causing such document(s) to be delivered by hand to the above person(s) at the address(es) set forth above.
17 18	BY THIRD-PARTY COMMERCIAL CARRIER (OVERNIGHT DELIVERY): By delivering a copy thereof to a third-party commercial carrier, addressed as set forth above, for delivery on the next business day.
19 20	BY FACSIMILE: By transmitting the above document(s) to the facsimile number(s) of the addressee(s) designated above.

21 I certify that I am employed in the office of a member of the bar of this court at
22 whose direction the service was made.

23 Executed on November 24, 2008, Loma Mar, California.

24 /s/ Elizabeth Brancart
25 Elizabeth Brancart