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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TONY ROQUE,

Plaintiff,

vs.

SEATTLE HOUSING AUTHORITY,

Defendant.

Case No. 2:20-cv-658-RAJ

**STATEMENT OF INTEREST OF THE
UNITED STATES OF AMERICA**

The United States respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517 to address questions of law with respect to the Court’s Order to Show Cause on whether the Court should convert its Temporary Restraining Order (“TRO”) into a preliminary injunction.¹ *See Roque*

¹ Under 28 U.S.C. § 517, “[t]he Solicitor General, or any officer of the Department of

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1 *v. Seattle Hous. Auth.*, No. 2:20-cv-658, 2020 WL 2114329 (W.D. Wash. May 4, 2020).

2 **I. INTEREST OF THE UNITED STATES**

3 Plaintiff alleges, *inter alia*, that defendant Seattle Housing Authority violated the Fair
 4 Housing Act (“FHA”) when it denied him a reasonable accommodation to allow his caregiver to park
 5 in his building’s parking garage, which is restricted to residents and building employees. *See* 42
 6 U.S.C. § 3604(f)(3)(B) (FHA’s reasonable accommodation mandate).² The United States has
 7 important enforcement responsibilities under the FHA. For example, the Attorney General may
 8 initiate civil proceedings on behalf of the United States in cases alleging a “pattern or practice”
 9 of housing discrimination. 42 U.S.C. § 3614(a). Additionally, the Attorney General “shall
 10 commence and maintain a civil action” on behalf of an aggrieved person who has filed a
 11 complaint of housing discrimination with the Department of Housing and Urban Development
 12 (“HUD”), where HUD has issued a determination of reasonable cause and the complainant or
 13 respondent has elected to proceed in federal court. 42 U.S.C. § 3612(o). Furthermore, private
 14 litigation under the Act is an important supplement to government enforcement. *See Trafficante*
 15 *v. Metro. Life Ins. Co.*, 409 U.S. 205, 211 (1972); 42 U.S.C. § 3616a (authorizing the Secretary
 16 of HUD to contract with private, non-profit fair housing organizations to conduct testing,
 17
 18

19 Justice, may be sent by the Attorney General to any State or district in the United States to attend
 20 to the interests of the United States in a suit pending in a court of the United States, or in a court
 of a State, or to attend to any other interest of the United States.”

21 ² Throughout this brief, the United States uses the term “disability” instead of
 22 “handicap.” For purposes of the FHA, the terms have the same meaning. *See Bragdon v.*
Abbott, 524 U.S. 624, 631 (1998) (definition of “disability” under Americans with Disabilities
 23 Act taken almost verbatim from definition of “handicap” under Fair Housing Act).

1 investigation, and litigation under the FHA). The United States therefore has a significant
2 interest in the proper resolution of legal issues concerning the application of the FHA, including
3 those addressed in the instant proceedings.

4 II. BACKGROUND

5 A. *Factual Background*

6 Plaintiff, Tony Roque, has alleged the following:

7 Mr. Roque is 49 years old and has C-6 quadriplegia. Dkt. 1, at ¶ 10 (Compl.). He resides
8 in an apartment building that is owned and operated by the Seattle Housing Authority. *Id.* ¶¶ 20-
9 21. Mr. Roque requires in-home caregiver assistance for numerous activities of daily living,
10 including “bathing, body care, bed mobility, eating, locomotion, medication assistance, use of
11 the toilet, personal hygiene, dressing, and transferring.” *Roque*, 2020 WL 2114329, at *1.
12 Among other things, Mr. Roque must be re-positioned every 30 minutes to avoid bedsores. Dkt.
13 1, at ¶ 16; Dkt. 5, at ¶ 5 (Tony Roque Decl.). His current caregiver is Fatuma Mohamud, who, in
14 addition to assisting Mr. Roque with his daily living activities, also delivers food, medicine, and
15 medical supplies to him. Dkt. 1, at ¶ 19; *Roque*, 2020 WL 2114329, at *1. As a result, Ms.
16 Mohamud drives to Mr. Roque’s apartment. Dkt. 1, at ¶ 19.³

17 Mr. Roque’s building is located in a busy, densely-populated urban neighborhood where
18 on-street parking is not consistently available. *Id.* at ¶ 22; Dkt. 5, at ¶ 27. Additionally, for those
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22 ³ Mr. Roque typically has multiple caregivers who assist him at different times.
23 However, Mr. Roque alleges that due of the Covid-19 pandemic, Ms. Mohamud is currently the
24 only caregiver willing and able to work for him. *See Roque*, 2020 WL 2114329, at *1.

1 without a zoned residential parking permit, street parking is limited to two hours. Dkt. 1, at ¶ 22.
 2 Mr. Roque’s caregivers are required to stay in Mr. Roque’s apartment for a significant amount of
 3 time. *Roque*, 2020 WL 2114329, at *1. Accordingly, in 2018, Ms. Mohamud began parking in
 4 Mr. Roque’s building’s garage, which is restricted to residents and building employees. *Id.*; *see*
 5 *also* Dkt. 22, at ¶ 5 (Davina O’Connor Decl.). Mr. Roque does not drive or own a car and does
 6 not otherwise use the garage. *See* Dkt. 5, at ¶ 21; *Roque*, 2020 WL 2114329, at *1. Ms.
 7 Mohamud parked in the garage until March 4, 2020, when the Housing Authority towed her car.
 8 *Roque*, 2020 WL 2114329, at *1. Ms. Mohamud paid almost \$500 to retrieve her car after it was
 9 towed. Dkt. 5, at ¶ 19.

10
 11 On March 9, 2020, Mr. Roque emailed Davina O’Connor, his building’s property
 12 manager, and asked for permission for Ms. Mohamud to continue parking in the garage.
 13 According to the Housing Authority, Mr. Roque’s request stated that forcing Ms. Mohamed to
 14 park on the street, and potentially far away from the building, “could be detrimental to my health
 15 if I’m in need of urgent care or medication.” Dkt. 21, at ¶ 3 (Stanja Stegich Decl.). Ms.
 16 O’Connor treated Mr. Roque’s email as a request for a reasonable accommodation and
 17 forwarded it to the Housing Authority’s ADA Committee. Dkt. 22, at ¶ 6. Mr. Roque’s doctor
 18 also sent a letter to the Housing Authority verifying his disability and need for this
 19 accommodation. Dkt. 21, Ex. 2.

20
 21 On April 20, 2020, the ADA Committee sent a letter to Mr. Roque denying his
 22 reasonable accommodation request. *Id.* Ex. 3. The letter acknowledged that Mr. Roque had

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1 “explain[ed] that you receive care in your apartment for symptoms of multiple disabling medical
 2 conditions including quadriplegia” and that “a parking space is needed for you to receive
 3 efficient and timely care.” *Id.* Nevertheless, the ADA Committee denied the accommodation
 4 because, it claimed, the parking space was not for Mr. Roque but for his caregiver, who is “not
 5 disabled and not a participant in the SHA’s housing program.” *Id.* The letter stated that Mr.
 6 Roque could appeal the decision to the ADA committee, but did not suggest or otherwise refer to
 7 any alternative accommodations. *Id.* Mr. Roque’s appeal is pending with the ADA Committee.
 8
 9 *See* Dkt. 29, at 1 (Order).

10 *B. Procedural History*

11 Mr. Roque filed this action on April 30, 2020, claiming that, among other things, the
 12 Housing Authority violated the FHA by refusing to grant him a reasonable accommodation. Dkt.
 13 1, at ¶¶ 85-88.⁴ Mr. Roque concurrently moved for a TRO, which this Court granted on May 4,
 14 2020. *Roque*, 2020 WL 2114329, at *3. The TRO prohibits the Housing Authority from
 15 “[t]owing, ticketing, or otherwise prohibiting Tony Roque’s care provider, Fatuma Mohamud,
 16 and visiting nurses from parking in the parking garage at” Mr. Roque’s building, and requires the
 17 Housing Authority to provide Mr. Roque’s caregivers with “full and unrestricted access” to the
 18 garage. *Id.* The Court later amended the TRO to require that Mr. Roque be provided one
 19 reserved parking space, to be shared by his caregivers. Dkt. 29, at 2. The TRO expired after 14
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21
 22 ⁴ Mr. Roque has also raised claims under the Americans with Disabilities Act (“ADA”),
 23 Section 504 of the Rehabilitation Act, and the Washington Law Against Discrimination. The
 24 United States does not address these claims here.

1 days, but was extended by the Court, by stipulation of the parties, to the date the Court decides
2 whether to issue a preliminary injunction or, in the event the ADA Committee decides to grant
3 Mr. Roque's requested accommodation on appeal, the date of that decision, whichever happens
4 earlier. *See* Dkt. 18.

5 The Court also ordered the Housing Authority to show cause for why the Court should
6 not transform the TRO into a preliminary injunction. *Roque*, 2020 WL 2114329, at *3. In its
7 response, the Housing Authority did not dispute that Mr. Roque was a person with a disability or
8 that his disabilities necessitated extensive in-home care. Dkt. 20, at 9 (Def.'s Resp. to Order to
9 Show Cause). Instead, the Housing Authority argued that, under the FHA, it properly denied Mr.
10 Roque's accommodation request because it "was for the benefit of Ms. Mohamud" and not Mr.
11 Roque. *Id.* at 7. The Housing Authority further argued that, even if the initial accommodation
12 request had been characterized as being for Mr. Roque's benefit (and concedes that the
13 Complaint so characterizes this accommodation), it was still properly denied because "Plaintiff
14 does not point to any other resident, disabled or non-disabled, who does not drive or own a car
15 that was granted garage access." *Id.* at 9.

16 The Housing Authority also suggested, for the first time, a number of "possible"
17 alternatives, including (1) that Mr. Roque could apply to the City for a neighborhood parking
18 permit that Ms. Mohamud could use to park on the street for an unlimited amount of time; (2)
19 that Mr. Roque could move to a larger unit that could accommodate a 24-hour, live-in caregiver;
20 and (3) that Mr. Roque could hire a different caregiver who lives nearby. *See id.* at 13-14.

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1 Finally, the Housing Authority alleged that the requested accommodation, which it described as
 2 four reserved spaces, was unreasonable because other residents with disabilities might ask for the
 3 same accommodation. *Id.* at 14.⁵

4 Mr. Roque's reply clarified that he sought only one reserved parking space for his
 5 caregivers, which was necessary not for the caregivers' benefit but for the "full and equal
 6 enjoyment of his apartment," which he asserts would not be possible without steady, in-home
 7 personal care. Dkt. 24, at 8 (Pl.'s Reply to Def.'s Resp. to Order to Show Cause). He also
 8 argued that the Housing Authority's alternatives did not undermine the necessity of the requested
 9 accommodation because, he asserts, (1) the State does not provide 24-hour, live-in caregivers to
 10 persons who live in their own homes, but instead limits in-home care to 16 hours per day; (2)
 11 even with a resident parking permit, nearby street parking is still difficult or impossible to locate;
 12 and (3) Mr. Roque cannot find other caregivers willing to work with him during the Covid-19
 13 crisis, let alone one who lives nearby. *Id.* at 9-10.

15 III. ARGUMENT

16 The United States addresses two legal questions raised by the Housing Authority's
 17 opposition to Mr. Roque's reasonable accommodation request: first, whether a housing provider
 18 can ever be required to provide a parking space for the caregiver of a resident with a disability as
 19 a reasonable accommodation under the FHA; and, second, whether a housing provider may deny
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21
 22 ⁵ The Housing Authority also argued that it was not properly served and that Mr. Roque
 23 did not exhaust his administrative remedies under the ADA. Dkt. 20, at 5-7. The United States
 24 does not address these arguments here.

1 a requested accommodation solely because it might provide a benefit to a resident with a
2 disability that is not available to other residents. The United States does not take a position on
3 whether the Court should find that the accommodation should be granted under the specific facts
4 of this case.

5 A. *Under the FHA, a Parking Space for a Caregiver of a Resident with a Disability*
6 *May Be a “Necessary” Accommodation Under Certain Circumstances*

7 The Housing Authority argues that Mr. Roque’s FHA reasonable accommodation claim
8 necessarily fails because the parking space he requested would be used by his caregiver and not
9 Mr. Roque himself. Dkt. 20, at 8-9. As explained below, this is incorrect.

10 The FHA prohibits discrimination in housing on the basis of disability. 42 U.S.C. §
11 3604(f). Discrimination under the FHA includes “a refusal to make reasonable accommodations
12 in rules, policies, practices, or services, when such accommodations may be necessary to afford
13 [a person with a disability] equal opportunity to use and enjoy a dwelling[.]” *Id.* § 3604(f)(3)(B).
14 This provision “imposes an affirmative duty upon landlords reasonably to accommodate the
15 needs of handicapped persons.” *United States v. Cal. Mobile Home Park Mgmt. Co.*, 29 F.3d
16 1413, 1416 (9th Cir. 1994) (“*Cal. Mobile Home Park I*”) (citing H.R. Rep. No. 100-711, at 25
17 (1988), as reprinted in 1988 U.S.C.C.A.N. 2173, 2186). This affirmative duty applies not only
18 to physical accommodations, “but also with regard to the administrative policies governing
19 rentals.” *Giebelier v. M & B Assocs.*, 343 F.3d 1143, 1147 (9th Cir. 2003). Additionally, in
20 enacting this provision, “Congress anticipated that landlords would have to shoulder certain costs
21 involved, so long as they are not unduly burdensome.” *Cal. Mobile Home Park I*, 29 F.3d at
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1 1416.

2 To state a claim for a reasonable accommodation under the FHA, a plaintiff must show
 3 the following: (1) the plaintiff, a member of the plaintiff's household, or someone associated
 4 with the plaintiff has a disability as defined by the FHA; (2) defendants knew or should
 5 reasonably be expected to know of this disability; (3) accommodation of the disability "may be
 6 necessary" to afford the plaintiff an equal opportunity to use and enjoy the dwelling; and (4)
 7 defendants refused to make such accommodation. *United States v. Cal. Mobile Home Park*, 107
 8 F.3d 1374, 1380 (9th Cir. 1997) ("*Cal. Mobile Home Park I*"); *see also Giebler*, 343 F.3d at
 9 1147.
 10

11 Three of these four elements are not in dispute here. The Housing Authority does not
 12 dispute that Mr. Roque has a disability, that it knew of his disability, and that it denied his
 13 request for an accommodation. *See* Dkt. 20, at 8, 9 ("SHA does not dispute that Plaintiff is
 14 disabled."); *see also* Dkt. 22, at ¶ 3 (quoting Mr. Roque's accommodation request identifying
 15 himself as having a disability). Instead, the focus here is whether the requested accommodation
 16 "may be necessary" to afford Mr. Roque an "equal opportunity to use and enjoy a dwelling," 42
 17 U.S.C. § 3604(f)(3)(B).
 18

19 The Housing Authority denied Mr. Roque's requested accommodation on the ground that
 20 it was for the benefit of his caretaker, rather than Mr. Roque himself. *See* Dkt. 22, Ex. 3 ("The
 21 Committee denied your request because the accommodation is intended for your caregiver, who
 22 is not disabled . . ."); *see also* Dkt. 20, at 8. To be sure, it would be the caretaker, not Mr. Roque,
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1 who would park in the requested space. But a parking space for a resident’s caregiver may be a
 2 “necessary” accommodation, even though the resident is not using the space himself, if having
 3 the caregiver park on the premises ensures the provision of in-home care and support services
 4 that the resident may need to use and enjoy his dwelling. *See Robison v. Amcal Wood Ranch*
 5 *Fund XXXVII*, No. CV 07-4862, 2008 WL 9888773, at *11 (C.D. Cal. Sept. 23, 2008)
 6 (“Plaintiffs have provided evidence that a permanent parking space for Mary Austin’s caretaker
 7 was necessary for Mary’s continued use and enjoyment of her apartment.”); *Giebeler*, 343 F.3d
 8 at 1150 (“[A]ccommodations may adjust for the practical impact of a disability, not only for the
 9 immediate manifestations of the physical or mental impairment giving rise to the disability.”).

10
 11 In *California Mobile Home Park*, the Ninth Circuit addressed whether a housing provider
 12 was required to waive a generally-applicable parking fee charged to an in-home caregiver as a
 13 reasonable accommodation to the plaintiff’s daughter, whose disabilities necessitated in-home
 14 care. In its first opinion, the Court of Appeals reversed the district court’s dismissal of the case
 15 and recognized that such an accommodation may be required under the FHA in certain
 16 circumstances. Noting that “[t]he reasonable accommodation inquiry is highly fact-specific,
 17 requiring case-by-case determination,” the Court of Appeals allowed the plaintiff to develop a
 18 record on whether “the fees involved had the effect of denying her an equal opportunity to use
 19 and enjoy her dwelling.” *Cal. Mobile Home Park I*, 29 F.3d 1413, 1418 (9th Cir. 1994).
 20

21 After a remand to the district court, the Ninth Circuit affirmed the district court’s entry of
 22 judgment against the plaintiff because he had failed to show that the parking fees “prevented a

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1 third party from being able to provide care services [to the plaintiff's daughter], or that it
2 diminished the care she could receive." *Cal. Mobile Home Park II*, 107 F.3d at 1382. This was
3 because the "[p]laintiff submitted no evidence explaining why [the caregiver] could not have
4 parked outside of the mobile home park and still have provided caregiver services to [plaintiff's]
5 daughter. ... There is no evidence that [the caregiver's] car was necessary to provide services for
6 [plaintiff's] daughter." *Id.* at 1381.

7
8 Thus, while the plaintiff in *California Mobile Home Park* could not demonstrate why an
9 on-site parking space for the caregiver was necessary for the provision of his daughter's in-home
10 support, the Ninth Circuit recognized that such a causal connection might be established under
11 different facts and circumstances. Accordingly, in *Robison*, the district court, applying
12 *California Mobile Home Park*, held that a permanent on-site parking space for the use of a
13 caregiver was a "necessary" accommodation for a resident with disabilities because: (1) the
14 resident required round-the-clock care; (2) the caregiver needed to have a car available to take
15 the resident to the hospital; (3) there was no available off-street parking for several miles, thus
16 forcing the caretakers to take a shuttle bus to the dwelling; (4) while there were visitor spaces on
17 the premises, they were often full. 2008 WL 9888773, at *11. The *Robison* court concluded
18 that, under these circumstances, "the jury could find that a permanent visitor spot was necessary
19 to make sure [the resident] received the care she required." *Id.* *Accord Utah Labor Comm'n v.*
20 *Paradise Town*, 660 F. Supp. 2d 1256, 1262 (D. Utah 2009) (in ruling that resident was entitled
21 to a waiver of zoning restrictions as a reasonable accommodation to allow her in-home
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1 caregivers to live in an adjacent outbuilding, the court held that “[t]he issue is whether [the
 2 resident] can fully enjoy the privileges of living in her home if the caretakers are not allowed to
 3 live in the outbuilding, not whether the caregivers should have a right to live in the
 4 outbuilding.”).

5 Mr. Roque has alleged similar facts to those relied on by the court in *Robison*. First, he
 6 alleges that he requires round-the-clock care and receives the maximum number of in-home
 7 service hours permitted by Washington’s Medicaid program. *See* Dkt. 1, at ¶ 13; Dkt. 24, at 9
 8 n.7. Second, his accommodation request asserted that forcing Ms. Mohamed to park far away
 9 from the building “could be detrimental to my health if I’m in need of urgent care or
 10 medication,” thus indicating that having a car parked nearby was necessary to ensure that Mr.
 11 Roque receives proper in-home care. *See* Dkt. 22, at ¶ 3. Third, Mr. Roque has alleged that on-
 12 street parking near his building, even for drivers with a residential parking permit, is often
 13 unavailable. Dkt. 24, at 10. Finally, it is undisputed that there are no visitor spaces at Mr.
 14 Roque’s building. These allegations are highly relevant to whether a parking space for Mr.
 15 Roque’s caregiver may be necessary to allow Mr. Roque to continue to receive in-home support
 16 services that assist him in living independently due to his disabilities.

17
 18 *B. A Reasonable Accommodation May Not Be Denied Solely Because It Would*
 19 *Provide Mr. Roque With a Benefit Not Available to Other Residents*

20 The Housing Authority has also argued that its refusal to provide a parking space for Mr.
 21 Roque’s caregiver was justified because “Plaintiff does not point to any other resident, disabled
 22 or non-disabled, who does not drive or own a car that was granted garage access” and that

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1 therefore this accommodation “will grant [Mr. Roque] a singular privilege shared by no other
2 resident.” Dkt. 20, at 9-10. This reflects a basic misunderstanding of the duty to provide
3 reasonable accommodations, under which “preferences will sometimes prove necessary to
4 achieve the Act’s basic equal opportunity goal.” *U.S. Airways v. Barnett*, 535 U.S. 391, 397
5 (2002) (interpreting Title I of ADA). Thus, “[t]he simple fact that an accommodation would
6 provide a ‘preference’ . . . cannot, *in and of itself*, automatically show that the accommodation
7 is not ‘reasonable.’” *Id.* at 398 (emphasis in original). *Accord McGary v. City of Portland*, 386
8 F.3d 1259, 1263 (9th Cir. 2004) (“[E]xceptions to neutral policies may be mandated by the
9 FHAA[.]”) (quoting *Giebeler*, 343 F.3d at 1152 n.6 (citations omitted)).
10

11 Accordingly, whether or not other residents who do not drive or own a car have been
12 granted garage access is not determinative of whether Mr. Roque’s requested accommodation is
13 “reasonable.” Instead, this determination requires an examination of whether, under the specific
14 facts and circumstances of the case, the accommodation “imposes no fundamental alterations in
15 the nature of the program or undue financial and administrative burdens.” *Giebeler*, 343 F.3d at
16 1157 (citations and internal quotations omitted).
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IV. CONCLUSION

For the reasons stated above, a parking space for Mr. Roque’s caregivers may be necessary to ensure Mr. Roque an equal opportunity to use and enjoy his dwelling, notwithstanding the fact that Mr. Roque would not be directly using this space. Furthermore, the Housing Authority’s policy of not providing garage access to other residents who do not drive or own a car is not a basis for denying Mr. Roque’s requested accommodation.

Dated: June 12, 2020.

Respectfully submitted,

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