

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 12 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ERICA MICHELLE HENDERSON;
JEFFREY PIERCE HENDERSON,

Plaintiffs-Appellants,

v.

UNION STATION HOMELESS
SERVICES, a Non-Profit Public Benefit
Corporation; NON-PROFIT PUBLIC
BENEFIT CORPORTATION; JOHN
BRAUER; ELIZABETH TRUSSELL;
ERIC BRAND; JONATHAN SCHERCK;
DOES, 1 through 10,

Defendants-Appellees.

No. 21-56192

D.C. No.
2:20-cv-00476-PSG-MRW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Philip S. Gutierrez, Chief District Judge, Presiding

Submitted May 10, 2023**

Before: FERNANDEZ, SILVERMAN and NR SMITH, Circuit Judges

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Plaintiffs Erica and Jeffrey Henderson appeal the district court’s grant of summary judgment in favor of the defendants in their action alleging housing discrimination in violation of the Fair Housing Act (FHA) and California Fair Employment Housing Act (FEHA). We have jurisdiction pursuant to 28 U.S.C. § 1291. We review the summary judgment de novo, *Southwest Fair Hous. Council, Inc. v. Maricopa Domestic Water Improvement Dist.*, 17 F.4th 950, 959 (9th Cir. 2021), and affirm.

Summary judgment was proper on the housing discrimination claims. The FHA does not specifically preclude discrimination on account of marital status. *See* 42 U.S.C. § 3604(a) (prohibiting housing discrimination “because of race, color, religion, sex, familial status, or national origin.”). In contrast, the FEHA prohibits discrimination on account of marital status. Cal. Gov. Code § 12955(a). But plaintiffs were not denied housing because they were married. Rather, plaintiffs were told that they could have housing for themselves as a couple or family housing if they had their minor children with them. But no housing was available for a household of four adult extended family members. As a matter of law, a household of four adult extended family members does not qualify as “familial status” under the FHA or FEHA. Both statutes define “familial status” to include children under the age of 18. 42 U.S.C. § 3602(k); Cal. Gov. Code §

12955.2; *see United States v. City of Hayward*, 36 F.3d 832, 834 (9th Cir. 1994) (explaining that the FHA was amended to protect families with minor children).

The district court did not abuse its discretion by denying plaintiffs' request for additional discovery. It reasonably concluded that plaintiffs had access to their own depositions directly from the deposition officer and that the depositions were not in the exclusive control of the defendants. To the extent that plaintiffs challenge any other denial of discovery, they have not made "the clearest showing" of "actual and substantial prejudice" from the denial of any specific discovery. *See Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002) (setting forth the standard).

Plaintiff's Application for Medical Accommodation (Dkt. Entry No. 6) is DENIED as moot.

AFFIRMED.