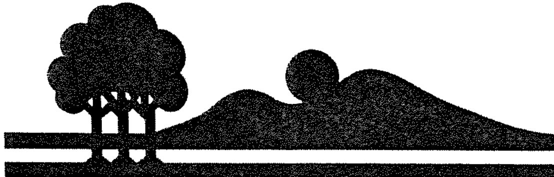

CITY OF MOUNTAIN VIEW

COMMUNITY STABILIZATION AND FAIR RENT ACT (CSFRA) REQUEST FOR APPEAL OF PETITION HEARING DECISION

Any Party to a petition may appeal the Decision by *serving a written Request for Appeal on all applicable parties and then filing a copy of the completed form with the City* within **ten (10) calendar days** after the mailing of the Petition Decision. If no Appeals are filed within ten (10) calendar days, the decision will be considered final.

I hereby Appeal the Hearing Officer's Decision for the following Petition to the Rental Housing Committee:

Petition Case Number: 20210002; 20210003; 20210005; 20210006; 20210008; 20210009.

Name of Hearing Officer: Martin Eichner Decision Date: December 31, 2020

For the following Property Address, including Unit Number(s), if applicable:

100 North Whisman Road Units 411, 412/2326, 414, 416, 2011, 2013

(Street Number) (Street Name) (Unit Number)

Person Appealing the Hearing Officer Decision *(if more than one person is appealing the petition decision, attach their contact information as applicable)*:

Name: SI VI, LLC / Greystar California, Inc. Phone: (408) 286-5100

Mailing Address: 225 W. Santa Clara St., #1500, San Jose, CA, 95113 Email: ssandoval@pahl-mccay.com

I am:

☐ A tenant affected by this petition. ☑ A landlord affected by this petition.

Reason for Appeal:

Please use the space below to clearly identify what issue and part of the Decision is the subject of the appeal (include section headings and subheadings, as necessary). Thoroughly explain the grounds for the appeal. For each issue you are appealing, provide the legal basis why the Rental Housing Committee should affirm, modify, reverse, or remand the Hearing Officer's Decision.

Please see next page.

(Continue on the next page; add additional pages if needed)

Filing Instructions:

Once you have completed this form and attached all relevant documents, **serve all parties with complete copies** before formally filing the Appeal with the City. Once served, file a copy of the completed form with the Notice of Service to the City of Mountain View, 500 Castro Street, Mountain View, CA 94041.

Declaration:

I (we) declare under penalty of perjury under the laws of the State of California that the foregoing and all attached pages, including documentation, are true correct, and complete.

Signature: [signature] Date: January 8, 2021

Print Name: Servando R. Sandoval

Reason for Appeal *(Continued)*

Awards subject to appeal:

1. Pool Access Loss
Please see attached Landlord Appeal Brief for grounds of appeal and legal basis.

2. Fitness Center & Hot Tub Loss
Please see attached Landlord Appeal Brief for grounds of appeal and legal basis.

3. Loss of Lawn & Surrounding Areas
Please see attached Landlord Appeal Brief for grounds of appeal and legal basis.

4. Valet Trash Service Issues
Please see attached Landlord Appeal Brief for grounds of appeal and legal basis.

5. Lack of Management Response to Maintenance Issues
Please see attached Landlord Appeal Brief for grounds of appeal and legal basis.

6. Loss of Use of Grassy Rec Area
Please see attached Landlord Appeal Brief for grounds of appeal and legal basis.

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RENTAL HOUSING COMMITTEE

CITY OF MOUNTAIN VIEW

Central Park Apartment Tenants Petitioners v. GREYSTAR CALIFORNIA, INC., and SI, VI, LLC Respondents	LANDLORD APPEAL BRIEF Rental Housing Committee Case Nos.: 20210002 (Unit 411) 20210003 (Unit 412 and 2326) 20210005 (Unit 414) 20210006 (Unit 416) 20210008 (Unit 2011) 20210009 (Unit 2013) Date: TBD Time: TBD

This Appeal to Hearing Officer Decision is submitted on behalf of Greystar California, Inc. ("Management"), as Managing Agent for owner SI VI, LLC (collectively, "Landlord") in response to the December 31, 2020 Decision issued by Hearing Officer Martin Eichner (the "Decision") in the following cases: 20210002 (Unit 411), 20210003 (Unit 412 and 2326), 20210005 (Unit 414), 20210006 (Unit 416), 20210008 (Unit 2011), 20210009 (Unit 2013) (collectively, the "Petitions" and Petitioners are collectively referred to as "Residents"). The Decision affects the real property located at 100 N. Whisman Road in Mountain View, California (the "Property").

GROUNDS TO APPEAL

Mountain View Charter Section 1711 allows any aggrieved party to appeal any decision issued by a Hearing Officer to the Rental Housing Committee ("RHA"). On appeal, the

Committee shall affirm, reverse, or modify the decision of the Hearing Officer. Pursuant to the Community Stabilization and Fair Rent Act ("CSFRA") Hearing Procedure Regulations, found in Chapter 5 of the Regulations ("Regulations"), any party to a petition may appeal the decision by requesting an appeal, and if no party requests an appeal within ten (10) calendar days after the mailing date of the decision, the decision will be considered final.

Pursuant to the Regulations Chapter 5, Section H(4), the Rental Housing Committee shall only review the claims raised in the appeal of the decision subject to the appeal. The appeal shall be based on the record, unless a majority of the RHA determines a De Novo Hearing shall be conducted. The scope of any de novo review may be limited to issues specified by a majority of the RHA. The RHA shall consider the decision final with respect to matters not raised in the appeal.

The instant Appeal is timely as the Decision was mailed to Appellants on December 31, 2020. Landlord is only raising specific matters on appeal and not the entire Decision.

NOTABLE FACTUAL & PROCEDURAL BACKGROUND

Six current households of the Property filed petitions against Landlord alleging a decrease in housing service under the CSFRA. Each of these petitions allege service reductions resulting from closure of amenities at the Property due to government mandated closures and government mandated restrictions on use of various features at the Property as a result of the COVID pandemic. Some petitions further alleged a decrease in housing service as a result of maintenance requests and repairs.

The first hearing was held in this matter on November 20, 2020 and the second hearing was held on December 1, 2020 (collectively, the "Hearing").

MATTERS ON APPEAL

Landlord is appealing the award of service reductions granted to Residents on the following bases:

1. Pool Access Loss
2. Fitness Center & Hot Tub Loss
3. Loss of Lawn & Surrounding Areas

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1 4. Valet Trash Service

2 5. Lack of Management Response to Maintenance Issues

3 **1. Pool Access Loss.**

4 The Hearing Officer awarded the Residents a reduction in rent ranging between $140 and
5 $175 per month for the period between June 4, 2020 and September 30, 2020. The Hearing Officer
6 found that Management could have provided greater access to the pool near the office for more
7 swimmers to use for longer periods of time and that the Landlord could have opened the second
8 swimming pool for limited use.

9 On June 5, 2020, Santa Clara County allowed swimming pools to re-open with significant
10 restrictions on use, including limitations on capacity, use of surrounding areas, and monitoring
11 requirements. (Landlord's Brief, Page 4)

12 On July 13, 2020, Santa Clara County published a Mandatory Directive for Outdoor Pools.
13 This directive specifically included "multi-unit residential complexes" within its scope. The Pool
14 Directive required that all swimmers "pre-register for a time slot to swim" and encouraged that
15 swimmers sign up ahead of time to make sure the pool has space for individuals and their family.
16 (page 2) Pool operators, including landlords, were required to limit the number of swimmers in
17 shared swimming areas of the pool to one swimmer per 300 square feet. (page 3) Residential
18 complexes were specifically required to create a sign-up/reservation system to stagger use by
19 separate households living in the complex, ensure the pool density requirements were not
20 exceeded, and ensure social distance was maintained by users. (page 3) (Landlord's Brief, Page 5)

21 Evidence was presented at the Hearing that Landlord reopened the swimming pool on June
22 12, 2020 and that Landlord closely followed the Santa Clara County Guide to Outdoor Pools,
23 which required that Management create a sign-up/reservation system to stagger use by separate
24 households/living units and ensure that measures to maintain social distance were followed.
25 (Landlord Brief, Page 6)

26 Tenants testified that they were displeased with the sign-up system and that the pool access
27 was limited to the hours of 11:30 and 5:00. Landlord presented rebuttal evidence during the
28 hearing that the pool access was limited to the hours of 8:30 to 6:00 to coincide with the hours that

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1 the leasing office was open, so that staff could monitor the pool use. The Hearing Officer
2 disregarded this rebuttal evidence, even though Residents provided no evidence that the pool was
3 limited to only those hours, aside from their own testimony. Residents' own evidence, however,
4 included an email from Landlord to all residents, sent on June 10, 2020, stating that the daily time
5 slots to use the swimming pool were between 8:30 and 6:00. (Case No. 202100069, Unit 2013,
6 Exhibit #9) The Residents' own evidence further includes an email exchange between Unit 2011
7 and Landlord, in which Ms. Puyol clearly states that member of her household arrived at the
8 swimming pool at 5 p.m. and Landlord's agent confirms that the pool is available for use until 6
9 p.m., when the office closes. (Case No. 2021008, Unit 2011, Exhibit #11) The Hearing Officer
10 makes no reference to either the Landlord's rebuttal testimony nor to these emails in the Decision.
11 In addition, this same email clearly stated that the maximum number of individuals allowed in the
12 swimming pool is 10 people.

13 Landlord's agent, Nadia Zep, testified during the Hearing that a City of Mountain View
14 employee came to the Property on July 9, 2020, and instructed the Property to limit use of the
15 swimming pool to one household at a time. Ms. Zep, however, intended to testify that the
16 individual who came to the Property was Jennifer Rios and is an inspector who works for the
17 County of Santa Clara. In response to this visit by Ms. Rios, Landlord sent an email to all residents
18 on July 15, 2020, informing the residents that the pool was now limited to use by only one
19 household at a time in order to comply with the restrictions. (Case No. 202100069, Unit 2013,
20 Exhibit #9) This change, however, made no effect on the hours of availability.

21 In his Decision, the Hearing Officer repeatedly reprimands Landlord for not presenting
22 "convincing evidence to demonstrate that it made a reasonable effort to assess or study whether it
23 could take steps to further restore access to any of these amenities. The record on the subject is
24 bare, despite the specific request made for any such evidence in the Pre-Hearing Telephone
25 Conference Summary and Order." [Decision, Pages 14-15] The Hearing Officer further goes on
26 the find that the representation that Landlord had no other choice but to implement the Orders in
27 the manner it applied was not convincing in the absence of testimony from any member of
28 Landlord's staff who was the actual decision-maker or who assessed the options available to

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implement the Order. The Hearing Officer further reprimands Landlord for not making the "effort to negotiate possible further access to the amenities with the [residents], even though Petitioner Elaina Jones offered to provide her immunology expertise as a Stanford Fellow, to address these issues." [Page 15]

These finding, in and of themselves, cannot be sustained. The Hearing Officer's finding relies heavily on the idea that the Landlord should have conducted some type of COVID-19 study to independently assess the risks associated with use of amenities by residents. Following the Hearing Officer's logic, Landlord would have implemented its own rules for use of the pool, thereby contradicting the Health Order. This logic also ignores the presumption that the County's health orders are based upon these types of studies and scientific bases and that following such orders would be sufficient. In addition, regardless of whether the orders were scientifically sound, any business operating in or individual living in Santa Clara County had the legal obligation to follow the order in place at that time. The failure to do so was punishable by monetary fines as well as a criminal misdemeanor. Thus, even if Landlord consulted with scientific experts and conducted studies relating to the safety of the use of the amenities, Landlord would be required to follow the Health Order, or be subject to enforcement by the Health Department. In fact, evidence was presented during the Hearing that Landlord consulted with legal counsel to ensure compliance with the Health Order; however, testimony regarding these discussions was not included as such communications would be protected under the attorney-client privilege.

Not only is the Hearing Officer's finding legally flawed, but it is further based on incorrect facts and improper failure to add weight to Ms. Zep's testimony, all of which were correctly presented to the Hearing Officer during the hearing. In his Decision, the Hearing Officer stated that the testimony provided by Ms. Zep is not entitled to significant weight in light of the lack of foundation for it. He further went on to state that Landlord failed to produce a report of this assessment prepared by any employee and that Landlord did not produce any contemporaneous written documentation of this visit. (Decision, Page 15) Such failure to give significant weight to Ms. Zep's testimony is not only improper under the CSFRA Regulations, but it also demonstrates

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a clear double standard as to the evidence rules applied to the parties.[1] CSFRA Regulations Chapter 5(E) state that "[f]ormal rules of evidence shall not be applicable to Hearings on Petitions for individual rent adjustment." The Regulations further state that,

> The Hearing Officer shall consider any relevant evidence if it is the sort of evidence which a reasonable person might consider in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objections in civil actions.

Clearly, this portion of the Regulations was disregarded in its entirety by the Hearing Officer. While the Hearing Officer allowed a tenant to testify as an expert witness, without following the property procedure under CSFRA (which will be discussed further below), the Hearing Officer completely disregarded Ms. Zep's testimony, which was crucial in demonstrating why the pool was limited to just one person. Even if formal evidence rules applied to the Hearing, her testimony would be admissible as it would demonstrate state of mind in making the decision to reduce the pool capacity from 10 people to one household at a time. Additionally, it is questionable whether the "expert witness" testimony allowed by the Hearing Officer was actually properly vetted to determine the expertise of the witness. Landlord was not given a proper opportunity to voir dire the expert witness. The fact that the Hearing Officer would allow a tenant, who self-represented themselves as an expert, to potentially contradict the clear orders of the County Health Department is absurd at minimum and possible negligent. The Hearing Officer would require Landlord to "negotiate" with a Stanford employee who would seek to contradict the Health Order is simply unreasonable and is sufficient basis for reversing the Decision.

In addition to these clear flaws in both the law and admission of evidence and testimony, the Hearing Officer misstates the facts that were presented at the Hearing. The Hearing Officer found that there was no evidence that Landlord assigned a person to monitor the pool usage and that the staff were unlikely able to monitor the pool, including the sign-in sheet, in light of their other duties and in light of several months when the office windows were blocked with an opaque

[1] This application of formal evidence rules to Landlord and clear bias is demonstrable throughout the entirety of the decision. Throughout the hearing, Landlord objected to the introduction of testimony on behalf of the Residents on several occasions. These objections appear to be disregarded. Residents did not object to the introduction of any evidence on behalf of Landlord, yet the Hearing Officer appears to have imposed these formal and strict evidence rules in his assessment of the facts and evidence presented.

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covering.

This finding completely ignores the evidence presented at the Hearing that office staff monitored who was using the pool, that the reason the second pool was not opened was because they could not monitor it as required by the Health Order, and that the opaque covering allowed staff to see outside of the office but prevented individuals from seeing inside the office. The Hearing Officer also faults the Landlord for not reopening the second pool, claiming that Landlord could have hired another employee to monitor the use of the second pool. However, such a position cannot be supported by the Ordinance. Requiring an owner to hire additional staff to allow use of an amenity, under the restrictions imposed by the Health Order, is tantamount to imposing additional costs to an owner, or be subject to a service reduction. This cannot be sustained, especially when businesses are trying to comply with health directives that impose additional costs such as monitoring, extra cleaning costs, and extra maintenance costs to allow for use the amenity that could be opened.

In any event, Landlord implemented the Health Order and opened the pool for use as directed by Santa Clara County. For these reasons, Landlord is appealing the award to each Resident on the basis that the_Decision is not supported by the evidence presented or the law. Landlord closely followed the applicable County Health Orders and the County Directive for Swimming Pools as well as all of the limitations that were implemented to comply with the mandates of the Health Orders. Landlord could not substitute its own judgment for that of the County Health Officer and provide more access even if evidence suggested less restrictive access could have been safely accomplished. Further, since residents could not use the pool with any more frequency than what was allowed under the Health Orders and the Directive, there was no service reduction by Management because residents could not have used the amenity with any more frequency than what was allowed.

2. Fitness Center and Hot Tub.

The Hearing Officer also awarded the Residents a reduction in rent between $100 and $125 per month between July 2, 2020 and September 30, 2020 for the fitness center and hot tub. The Hearing Officer found that Landlord could have partially re-opened the fitness center with social

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distancing and other limitations and that this level of access could have been allowed when the fitness centers were approved in the July 2 Order [effective July 13] for partial re-opening. [Decision, Page 16]

The Decision states that it was uncontested that all other amenities, specifically the fitness center, lawn, and grill near the larger pool were closed and have not been opened at all since March 2020. [Decision, Page 6] This finding is not supported by the evidence. Landlord presented evidence that the fitness center and grill areas were partially reopened when allowed under the Health Orders. The Hearing Officer bases his decision on the July 2, 2020 Order, which allowed fitness center's to reopen. Under this specific order, Santa Clara County allowed fitness centers to reopen on July 13, 2020; however, these fitness centers were all quickly shut down by California on July 15, 2020, when the number of COVID-19 cases spiked in the County.[2] As a result, indoor fitness centers were not allowed to operate in the County during the entire time for which the Hearing Officer awarded the Residents a reduction in rent. Indoor fitness centers were allowed to re-reopen starting on September 8, 2020, pursuant to the State's announcement that Santa Clara County had been moved from the Purple Tier to the Red Tier.[3] Significant restrictions were placed on the partial-reopening and Landlord took numerous steps to ensure compliance with these restrictions and re-opened the fitness center on October 5, 2020. Regardless, the Hearing Officer's findings are inconsistent with the applicable Health Orders. The fact is that Landlord could not open the indoor gym on July 2, 2020 because of the restrictions imposed by both the County and State Orders.

The Hearing Officer incorporated the alleged loss of use of the hot tub into this award; however, not one of the Residents alleged the loss of use of hot tub in their Petition. The Hearing Officer impermissibly went beyond the scope of the petitions and awarded the Residents for a loss that they themselves did not allege. In addition, the finding was based on incorrect facts as the hot tub was partially reopened and residents using the pool were allowed to use the hot tub during their designated time slot, as the pool at the Property partially encompasses the hot tub.

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[2] https://www.mercurynews.com/2020/07/13/santa-clara-county-gyms-salons-forced-to-close-2-days-after-reopening/
[3] https://www.sccgov.org/sites/covid19/Pages/Archive/press-release-09-08-20-Red-Tier-State-COVID19-Framework.aspx

3. **Lawn & Surrounding Areas.**

The Hearing Officer further awarded the Residents a reduction in rent between $60-$75 per month between June 4, 2020 and September 30, 2020 for the lawn and surrounding areas. The Hearing Officer found that Management could have allowed exercise and other use of the lawn area, with appropriate limitations on the totally number of people exercising and appropriate enforcement of social distancing.

Throughout the month of June, Landlord received complaints from neighbors that Residents were using the parking areas to gather together and engage in group exercise. In response to these complaints, and the Health Order in place at that time which prohibited gatherings of any kind, Landlord served *a single* resident with a Notice to Cease regarding a gathering held by that resident on June 28, 2020. The tenant took great offense to this because she works for Stanford and presented herself as a COVID-19 expert. However, her gathering was in violation of the Health Oder and she was requested to cease her violation of the Health Order. It should also be noted that use of the parking lot for anything other than parking is contrary to the Lease Agreement. Thus, even if the Landlord denied tenants the right to use the parking lot for exercise classes, that should not be deemed a service reduction because residents never had that right before the pandemic.

The Hearing Officer also states in the Decision that the Residents contended that their use of the parking lot complied with the June 5 Executive Summary, which permitted outdoor recreational activities by groups of no more than 25 people who maintained social distancing and who had no physical contact. The Hearing Officer further states that "Petitioner Elaina Jones is an immunologist employed by Stanford University working on Covid-19 issues, and as such she is familiar with the various Orders. Although technically she was not qualified in this hearing as an expert witness, her familiarity with the impact of the pandemic is relevant to her motivation in deciding to engage in the actual actions she and other petitioners took to address the lack of access to the amenities." [Page 6] Later in the Decision, the Hearing Officer found that, "Petitioner Jones testified credibly that the activities were within the outdoor group activity limits set by the Order in place at the time, including the observation of social distancing."

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Over objections to the introduction of her testimony on the basis that no expert witnesses were disclosed as required by the CSFRA Regulations, it is clear the Hearing Officer gave great weight to her purported "expert" testimony, as demonstrated throughout the Decision. Aside from this improper introduction of expert witness testimony, the Hearing Officer's finding disregards the restrictions of the Order in place at that time. Under the Order in place at that time, all public and private gatherings of any number of people occurring outside a single household or living unit were prohibited, except for the limited purposes expressly permitted in the Order. (May 22 Order, Paragraph 7). The Evidence presented during the hearing included photographs of a gathering held on June 28, 2020, in which one can clearly see that individuals were less than 6 feet apart. In addition, none of the individuals were wearing masks. (Respondent's Exhibit #22). Interestingly, while the Hearing Officer allowed testimony of the tenants, based on their so called expertise, the Hearing Officer, completely ignores that there was no evidence presented by these tenants that their gatherings, even if these gatherings were allowed under the Health Order, complied with the requirements under those Health Orders. For instance, the Health Order allowed outdoor group exercise classes but imposed many requirements. For instance, there was a requirement for people to register to allow for contact tracing. It also imposed certain cleaning and sanitizing requirements and further required that the operator follow all Social Distancing Protocols. [June 5 Order, Appendix C-1 and C-2.] Thus, the evidence presented at the Hearing clearly showed that those Social Distancing Protocols were not being followed. Thus, the tenant expert did not in fact ensure that participants were adhering to the Health Orders.

In supporting his decision, the Hearing Officer once again misstates the evidence presented at the Hearing. Landlord introduced a redacted email from a neighbor complaining regarding the Residents' frequent gatherings. The email that was submitted redacted the complainant neighbor's name, as that neighbor had expressed concerns of retaliation from Residents. While the Hearing Officer found that the group exercises took place in parking space that belonged to Residents who gave permission for this use, the email demonstrates otherwise. The email states that this specific resident "refused to show any support since [the Residents] affected [his or her] life." (Respondents' Exhibits, Exhibit #23) In addition, and without any basis, the Hearing Officer

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determined that the author of the email was Nadia Zep, although it was explained multiple times during the hearing that this complaint (among others) were received from neighbors. (Decision, Page 16). Thus, the Hearing Officer injected himself into the proceedings by making a determination without any basis to support that finding.

As mentioned above, any restriction by Landlord imposed on residents regarding the use of the parking lot for gatherings or exercise classes should not be deemed a service reduction. To be a service reduction, there must be a finding that Landlord is taking away the use of an amenity that tenants had the right to use. Thus, even if the exercise classes were allowed under the Health Order without any restrictions, residents did not have the right to use the parking area to conduct exercise classes. As such, Landlord did not take away anything from tenants and should not be held responsible for any service reduction under the facts of this case.

Separate and aside from the group activity in the parking area, two of the Residents complained regarding an email that was received from Landlord based on their gathering and damage of the grass area at the Property. The email was sent in response to a complaint received from a neighbor regarding gatherings with multiple families, 7-8 children, and excessive talking and loud noises that disturbed the neighbor who was working from home. The email was sent to those households to address these disturbances to the other residents and the damage to the grass area.

The Hearing Officer found that Landlord should have allowed exercise and other use of the lawn area, with appropriate limitations on the total number of persons exercising and appropriate enforcement of social distancing. The fundamental flaw with the Hearing Officer's finding is that Landlord never prohibited any resident from using the lawn. Rather, Landlord addresses violations of the Health Orders in place at that time and complaints received from other residents regarding the noise emanating from certain households gathering. Additionally, the Hearing Officer is imposing additional responsibilities on Landlord to monitor the use of the common areas to ensure that compliance with the Health Orders. As the Committee is well aware, even police departments are reluctant to enforce compliance with Health Orders and Social Distancing Protocols. However, the Hearing Officer would impose that additional burden on Landlord. In the end. the award is not

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supported by the evidence or the law and must be reversed.

4. Valet Trash Service Issues

The Hearing Officer awarded the residents of Unit 414 a $25 reduction in rent per month based on the finding that the Petitioner's testimony was credible as to the fact that the service was so unreliable that she received no benefit from it. The Hearing Officer awarded this reduction between July 2020 and until the resident confirms in writing that she is satisfied with the service, or until 6 months after the Decision date.

The resident alleged that the service was not performed adequately, nor to her satisfaction. During the Hearing, this tenant provided testimony that there were times that her trash was not picked up and that the recycling was not put in the correct bin. The testimony that was offered was filled with boasted sarcasm and the resident could only provide evidence that the valet trash service did not pick up her trash one time. The resident further testified that her recycling was not disposed of properly in the recycling container and was placed in the trash container instead. The resident further offered testimony and written evidence that she simply did not want to pay for this service because she could throw out her own trash, regardless of agreeing to the service in her lease.

The resident simply did not meet her burden of proof to support a finding that the service was not being performed. More importantly, the Hearing Officer failed to consider important testimony and evidence regarding the resident's motivation. In addition, the award was not rationally related to the complaints made. The Hearing Officer awarded a 100% reduction in the service, although the resident herself only testified of one instance when her trash was not collected. Finally, extending the reduction until the tenant declares herself satisfied is outside the scope of the ordinance. Allowing a resident to complain as to their own personal subjective satisfaction with a service and then preclude a landlord from collecting dues on a service, while forcing the landlord to keep offering the service, is incomprehensible and sets a terrible precedent.

5. Lack of Management Response to Maintenance Issue.

The Hearing Officer also awarded all Residents a reduction in rent of $40 per month between October 1, 2019 and October 1, 2020. The Hearing Officer found that "prompt and

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responsive response to service requests is a 'benefit' to be expected by a tenant in a property within the jurisdiction of the CSFRA" and that Landlord failed on multiple occasions to provide this housing service.

The Hearing Officer stated that the Residents testimony documents a number of management delays, or failure to respond at all, when Residents made the various maintenance requests correcting to the claims made within the Petition. The examples that the Hearing Officer provides (beyond the correspondence regarding the amenities discussed above) include Petitioner Schoemann's experience with the carpet stain in her unit and the experience of Petitioners Walker and Espinosa when they sought to have their toilet and fan defects repaired. The Hearing Officer found that while the record is unclear regarding the actual length of time that this "service decrease" has occurred, it is held "to have lasted for at least one year prior to the date the Petitions were filed." (Decision, Page 21). This finding simply cannot be supported by the evidence. Testimony of three tenants of specific instances does not prove service reductions for all tenants.

During the Hearing, the Residents testified they did not receive responses from management within a reasonable time frame. Petitioner Schoemann complained that she was not receiving responses to her emails. When these same emails regarding her complaints of the carpet were examined during the hearing, it was demonstrated that she was sending multiple emails during one day and had received responses to her emails within 24 hours. (Case No. 20210005, Unit #414, Exhibit 3, page 5) -The Residents further testified that they did not receive a response from Landlord when they attempted to ask about the Notice to Cease served on Petitioner Jones. As explained to the Hearing Officer during the Hearing, notices served on one household are not discussed with another.

The Hearing Officers finding and award on this issue are entirely contradictory to the remainder of the Decision. The Hearing Officer found that all maintenance requests were addressed in a reasonable manner and within a reasonable time frame and did not award any resident for any claim made on the basis of a reduction in maintenance. In addition, the Hearing Officer impermissibly expands the scope of the CSFRA by holding that "prompt and responsive responses" to service requests are a benefit and in turn a housing service under the CSFRA. Had

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the drafters of the CSFRA contemplated this to be a housing service, it would be listed as such in the CSFRA itself. In addition, such an award is based on something purely non-quantifiable, which is impressible under case law regarding rent control. While courts have typically upheld rent control laws allows rent reductions for issues that are both quantifiable and restitutive, courts have struck down rent control provisions allowing for rent reductions that are nonquantifiable and non-restitutive in character. Larson v. City & Cty. of S.F., 192 Cal. App. 4th 1263, 1281 (2011) As best described by the Court in Larson v. City & County of S.F., an award for this type of "decrease in housing service" is "an attempt to bypass the judicial system and impermissibly endow the [Hearing Officer] with judicial power constitutionally reserved to the judiciary." Id at 1283.

6. **Loss of Use of Grassy Recreation Area By Petitioner Gaspar.**

The Hearing Officer awarded Petitioner Gaspar with a reduction in rent of $50 per month between June 2019 and February 2020 based on an isolated incident between Petitioner Gaspar's guest and Landlord's employee who formerly worked at the Property. The Hearing Officer found that Petitioner Gaspar was effectively denied the benefit of the use of the "lawn" are a result of the confrontation with management staff, that the Hearing Officer determined as at least in part due to unacceptable behavior by management staff.

Petitioner Gaspar complained regarding a single incident between his guest and a former employee of the Property. The issue came about when Management placed a violation notice on the guest's car for parking in "future resident" parking Space. According to the tenant's testimony, the employee approached the tenant during the party and shouted and yelled at him. As a result of this single incident, the tenant alleged that chose not to "hire the lawn" for a subsequent birthday party for their older daughter in the fall of 2019 because they were concerned that they would be subjected to the same conduct by this employee. Interestingly, the employee in question was no longer employed at the Property in the Fall Of 2019.

During the Hearing, the tenant did not provide testimony or evidence that he would have continuously used this portion of the property or that they were prevented from doing so by Management at any time. It was all speculation on the part of the tenant. Regardless of this

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1 complete lack of evidence, the Hearing Officer inappropriately awarded Petitioner Gaspar a
2 reduction in rent completely outside the scope of the one insolated event. Further, the award is
3 outside the scope of the CSFRA as Management did not disallow him to use any portion of the
4 lawn; the tenant simply chose not to do so for one specific birthday party.

5 **ADDITIONAL LEGAL ARGUMENT**

6 In addition to the specific flaws associated with the findings of each of the awards, there
7 are numerous legal flaws associated with awards are applicable to each amenity. The Hearing
8 Officer held that there is no general language in the CSFRA Section 1710 indicating that a
9 downward adjustment can only be ordered when the decrease in services was due to the landlord's
10 fault or due to conditions under the control of the landlord. The Hearing Officer further held that
11 there are strong policy and equitable basis for not recognizing this limitation and that Tenants
12 should not be required to pay rent for a significant housing service they bargained for, after they
13 are no longer receiving it, regardless of the reason why they are no longer receiving it. (Decision,
14 Page 23) He further found that when tenants continue to pay for services and benefits they are not
receiving, they are receiving nothing in return for this portion of their rent payments.

15 This holding completely disregards both the purpose of the CSFRA (to provide healthy
16 housing) and case law which holds that an unavoidable type of inconvenience, which may
17 interfere with a housing service but which does not substantially interfere with the right to occupy
18 the premises as a residence, does not entitle a tenant to a reduction in rent. Golden Gateway Center
v. San Francisco Residential Rent Stabilization & Arbitration Bd, 73Cal. App. 4th 1204 (1999)
19 The Hearing Officer found that Landlord "merely prevented access to the facilities because it
20 deemed that action to be required by the Orders." However, the restrictions placed on the
21 amenities by Landlord were not unilaterally imposed by Landlord.

22 Rather, these restrictions were legally required under the Health Orders. In addition, these
23 restrictions were placed with the intent to provide residents with healthy housing and curb the
24 spread of COVID-19. Conversely, if Landlord had not enforced these restrictions and complied
25 with the Orders, Landlord would have surely received petitions from residents alleging a reduction
26 in service on the basis of health and safety concerns. The Hearing Officer's holding places any
27 landlord in Mountain View in an impossible position of either punitively forgoing fair return or
28 risk breaking the law. The public policy should be in encouraging owners to follow the law and
not place tenants in danger for dear that they will be subjected to service reduction petitions.

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The Hearing Officer further held that the rent reduction is an effort to apportion the economic loss being suffered as a result of the COVID-19 Orders. The Hearing Officer goes on to hold that the language of Section 1710(c) represents a decision by the framers of the CSFRA to impose the economic loss from this type of event on the landlord, rather than the tenant. This holding is not only a stretch of the intention of the SCFRA, but absolutely inaccurate. The Hearing Officer incorrectly finds that Respondent should have "recognized some level of saving" with the closure of the amenities. (Decision, Page 26) The Hearing Officer bases this solely on personal opinion as he did not request any type of evidence demonstrating costs and expenses associated with COVID-19 restrictions. Had he done so, evidence would have been presented demonstrating significantly higher costs in order to comply with the requirements of the Health Orders. Further, the evidence would show that there was no savings in closing amenities such as the pool. Landlord still has to maintain the pool, even when closed. This unsubstantiated finding appears to partially influence the Hearing Officer's Decision and the bias shown throughout the proceedings.

The Hearing Officer also held that the Landlord's duty to provide the amenity housing services begins at the time when Landlord had notice of the loss of the amenities with an opportunity to correct that loss. (Decision, Page 27) The Hearing Officer found that prior to June 4, Landlord had "little or no choice about re-opening the amenities" and that the changes in the Health Orders gave some leeway to Landlord to re-open or otherwise alleviate the impact of the closed amenities. The Hearing Officer held that any realistic opportunity to correct the loss of access to the amenities could not have occurred prior to the June Health Order. On this basis, the Hearing Officer limits the remedy for the services decreases to the period beginning on June 4, 2020.

Without further elaboration, the Hearing Officer jumps to the conclusion that any concern about economic loss on the part of the Landlord for having to "rebate the value of the amenities" is unpersuasive on the following bases: (1) that Landlord should have been saving money by limiting access, a conclusion that the Hearing Officer reached without one iota of evidence presented by either party, and (2) that Landlord failed to make a reasonable effort to assess whether some part of the amenities could be restored. Again, the Hearing Officer bases this assertion on the incorrect statement that Landlord failed to explain why pool hours were drastically limited, which was rebutted by evidence discussed above, and why access was limited to one family at a time, which again was explained by testimony from Ms. Zep.

Finally, the Hearing Officer held that Landlord could have safely provided further access

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1 to the amenities while still conforming with the Orders. However, the Hearing Officer offers no
2 details on what the Landlord could have done differently. As explained above, in detail under
3 each specific amenity, Landlord reopened the amenities as soon as practicable as allowed under
4 the various and changing Health Orders which were issued under the guidance of public health officials.

5 **CONCLUSION**

6 The Hearing Officer's Decision completely misapplies the purpose of the Health Orders
7 that were set in place by the Health Department: to curb the spread of COVID-19. The Hearing
8 Officer would have landlords impose their own restrictions, based on their own studies, even if
9 those decisions were contrary to the health experts. In addition, the Decision ignores that Landlord
10 has an obligation to provide **all** residents with healthy and safe housing, not just under California
11 law, but under the CSFRA. Instead of commending Landlord for abiding with the Health Orders
12 and assisting with curbing the spread of this virus, the Decision punishes Landlord for trying to
13 enforce the Health Orders by preventing residents from violating the health Orders when they
14 were having gatherings that violated the Social Distancing Protocols.

15 The Decision is simply not supported by the evidence or the law and the Decision must be
16 reversed as to the issues raised in this Appeal. The hearing Officer should not be allowed to
17 impose his own personal view of what a landlord should do during this pandemic and award
18 service reductions simply because the Hearing Officer believes that the landlord should have done
19 more than what the Order allows. Allowing this decision to stand sets a dangerous precedent
20 where landlords have to choose between following the Health Orders or face service reduction
21 claims. This is especially true at this time where the cases are at an all-time high, not only in the
22 Bay Area but throughout California and the United Sates. This decision must be reversed.

23 DATED: January 8, 2021

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