Rental Housing Committee
Tentative Appeal Decision

Petitions 2021002, 2021003, 2021005, 2021006, 2021008 and 2021009

The Rental Housing Committee of the City of Mountain View (the "**RHC**") finds and concludes the following:

I. Summary of Proceedings

On October 12, 2020, the RHC accepted and consolidated six petitions for downward adjustment of rent regarding seven units owned by SI VI LLC and managed by Greystar Management (collectively, "**Appellant-Landlord**").

All six of the petitions request a reduction of rent based on decreased housing services or maintenance. Although some of the claims in each of the petitions differ, the majority of the claims for decreased housing services relate to services and amenities that were removed or decreased as a result of the COVID-19 pandemic and the failure of the Appellant-Landlord to timely respond to requests for maintenance.

On October 29, 2020, the RHC provided notice to Elaina Jones, Nathan Roy, Brian Walker, Eric Espinosa, Stacey Schoeman, Clifford Schoeman, Zara Levy, Daniel Meyer, Maria Puyol, Sergio Gaspar and Kim Gaspar (collectively, "**Respondent-Tenants**") and to Appellant-Landlord that petition numbers 2021002, 2021003, 2021005, 2021006, 2021008 and 2021009 (collectively, the "**Petitions**") were consolidated into one hearing, which was scheduled for November 20, 2020 before Hearing Officer Martin Eichner (the "**Hearing Officer**"). A prehearing meeting was held on November 6, 2020 and the Hearing Officer issued a written order and summary of the prehearing conference on November 9, 2020. The Hearing Officer issued a Supplemental Prehearing Summary and Order on November 17, 2020 establishing the structure for presentations at the hearing.

The hearing on the Petitions was held on November 20, 2020. After 2.75 hours of hearing, the hearing was continued to December 1, 2020. After an additional 2.5 hours, the hearing was concluded, and the Hearing Officer closed the record. The hearing was recorded and is available as a part of the administrative record.

The Hearing Officer decision dated December 31, 2020 was delivered on or about that date.

A timely appeal of the Decision was received from Appellant-Landlord on January 11, 2021.

II. Procedural Posture

CSFRA section 1711(j) states in part that "[a]ny person aggrieved by the decision of the Hearing Officer may appeal to the full Committee for review." Regulation Chapter 5 section H(5)(a) provides that the RHC "shall affirm, reverse, or modify the Decision of the Hearing Officer, or

remand the matters raised in the Appeal to a Hearing Officer for further findings of fact and a revised Decision" as applicable to each appealed element of the decision.

III. **Summary of Hearing Officer Decision.**

The Respondent-Tenants requested rent reductions for a variety of issues including the loss of use of certain amenities that were either closed or restricted in response to the public health orders issued to address the COVID-19 pandemic. Amenities that were either restricted or removed included the pool, fitness center, hot tub and use of some communal lawns and outdoor spaces. Additionally, the Respondent-Tenants requested rent reductions based on a loss of benefits because of the Appellant-Landlord's failure to timely address repair and maintenance issues at the property. One of the Respondent-Tenants requested a rent reduction related to the valet trash service that the Respondent-Tenant claimed either was not provided or was provided in such a way as to be ineffective. A different Respondent-Tenant requested a rent reduction based on an incident with the management staff that made the Respondent-Tenant feel that he was not welcome to use and reserve the lawn areas for family gatherings.

The Decision analyzed the evidence presented by all parties and made the following determinations:

1. The amenities such as the pool, the fitness area, the hot tub, lawn areas and barbeque grills were housing services as defined in the CSFRA.

2. That as a result of the public health orders, the first of which went into effect in March of 2020, the Appellant-Landlord was prohibited from allowing use of the pool, the fitness center, the hot tub and other facilities until June 4, 2020, at which time the public health orders allowed for use of outdoor swimming pools subject to certain restrictions including limitations on the number of swimmers, social distancing between swimmers and either monitoring of the pool area or a reservation system to insure limited usage of the pool.

3. The public health orders allowed Appellant-Landlord to restore some services as of June 4, 2020. Although Appellant Landlord did restore use of one pool on a limited basis and with a reservation system, Appellant-Landlord never restored use of the second pool. Access to the hot tub was restored for use only by one person at a time. Use of the fitness center was never restored.

4. The Respondent-Tenants alleged that the Appellant-Landlord deprived them of access to outdoor amenity space to hold outdoor fitness classes to compensate for the loss of the fitness center. Appellant-Landlord served at least one of the Respondent-Tenants with a cease and desist letter stating that the outdoor fitness classes were a lease violation and threatening eviction.

5. Based on the evidence presented at the hearing, the Hearing Officer determined that Appellant-Landlord could not provide the amenities such as the pool, the hot tub and fitness center between March 2020 and June 4, 2020 but that after June 4, 2020, the Appellant-Landlord

could have provided some of the amenities in compliance with the public health orders. The Hearing Officer further found that Appellant-Landlord failed to restore the amenities to the full extent that would have been allowed under the public health orders. Based on the Appellant-Landlord's failure to restore the amenities to the level that would have been allowed under the public health orders then in effect, the Hearing Officer ordered rent reductions for all of the Respondent-Tenants. The amount of the rent reduction was based on the cost of replacing the services and amenities based on the evidence submitted as part of the Hearing Record. The reductions were as follows for four of the households:

Access to the Pools	$175 per month
Access to Fitness Center/Hot Tub	$125 per month
Access to lawn and surrounding areas for exercise and gatherings	$75 per month

The reductions in rent for two of the households were set at a lower amount because two of the households had negotiated lower rent with the Appellant-Landlord by moving to different units in the complex after the reductions in services commenced. Reductions for these households were as follows:

Access to the Pools	$140 per month
Access to Fitness Center/Hot Tub	$100 per month
Access to lawn and surrounding areas for exercise and gatherings	$60 per month

The above rent reductions were effective from June 4, 2020 through September 30, 2020. The Hearing Officer did not award rent reductions for the reduction of the above services or amenities after September 30, 2020 because of changes in the COVID-19 impact after that date, which the Hearing Officer determined were changed circumstances from those alleged in the Petitions.

6. The Respondent-Tenants also raised issues related to various repair and maintenance complaints at the property and the Appellant-Landlord's failure to respond to such repair requests in a timely manner. The Decision details repair issues including loss of hot water for an extended period of time, toilet leaks, broken ventilation fans, and other issues. Several issues raised by the Respondent-Tenants were dismissed by the Hearing Officer because the Respondent-Tenants failed to bring the issue to the attention of the Appellant-Landlord. The Decision did find that the Respondent-Tenants had submitted evidence demonstrating a pattern of delayed or no responses to maintenance requests. The Decision found that prompt and responsive response to a service request is a benefit to be expected by a tenant and that the value to each of the Respondent-Tenants of the loss of that benefit was $40 per month. The Decision awards the rent reduction for this loss of the benefit for a period of one year prior to the filing of the Petitions but made no finding about whether the service decrease continued after October 1, 2020.

7. Respondent-Tenant for unit 2013 claimed that a member of Appellant-Landlord's staff harassed Respondent-Tenant's guest at a party in the public area which resulted in a confrontation causing the guest to leave and the Respondent-Tenant becoming afraid to hold similar events. The right to hold parties in the recreation area was determined to be a benefit or privilege associated with occupancy of the unit. Because the confrontation prevented the Respondent-Tenant for Unit 2013 from holding gatherings or parties the Decision awards the Respondent-Tenant of Unit 2013 a rent reduction of $50 per month from the time of the confrontation, June 2019 through February 2020 after which time, due to the public health orders, gatherings were not permitted.

8. Respondent-Tenants claimed that they were charged a mandatory fee of $25 per month for valet trash services but that the service was unreliable and thus provided no benefit to the Respondent-Tenants. Only Respondent-Tenant for Unit 414 raised the valet trash service in her petition so a rent reduction for this loss of service was only awarded to Unit 414. The rent reduction was awarded starting in July 2020 which is when the Appellant-Landlord was first notified of the issues with the valet trash service and is to continue until the fee is cancelled or until the Respondent-Tenant is satisfied with the service.

9. The Decision also addressed a variety of legal issues that were raised at the Hearing finding that there is jurisdiction under Section 1710 of the CSFRA to determine the Respondent-Tenants' claims for loss of amenities.

10. The Decision addresses and analyzes the cases cited by both Respondent-Tenants and Appellant-Landlord for support of their positions discussing each at length in support of the Decision.

11. The Decision discusses the requirements of Section 1710(c) of the CSFRA that requires a tenant to give notice to the landlord of a housing service decrease and allow the landlord an opportunity to correct before a decrease in rent is granted. The Decision finds that the Appellant-Landlord had sufficient notice of the decrease in services but also finds that because of the unprecedented nature of the pandemic and the multiple changes in the public health orders from March through June, the Appellant-Landlord did not have a realistic opportunity to correct the loss of the amenities.

IV. Appealed Elements of Hearing Officer Decision

Regulation Chapter 5 section H(1)(a) states that "[t]he appealing party must state each claim that he or she is appealing, and the legal basis for such claim, on the Appeal request form." Section IV of this Appeal Decision identifies the elements of the Decision that are subject to appeal by the Appellant-Landlord. The Appeal Decision regarding each appealed element is provided in Section V of this Appeal Decision.

The Appellant-Landlord contests six elements of the Decision, which are identified as Appeal elements A.1 through A.6, below. Appeal elements A.1, A.2, A.3, and A.5 apply to all six Petitions. Appeal element A.4 applies only to unit 414 and Appeal element A.6 applies only to

unit 2013. Relevant information from the Decision and appeal for each contested element is provided below.

A. Appellant-Landlord Appeal Elements

1. All Units – Pool Access Loss

The Hearing Officer awarded all of the Respondent-Tenants a rent reduction ranging between $140 and $175 per month from the period between June 4, 2020 and September 30, 2020 as a result of reduced access to the pool amenities. Appellant-Landlord appeals the Hearing Officer's Decision with respect to the loss of access to the pool for a variety of reasons including that the evidence provided at the hearing was insufficient to support the Respondent-Tenants claims, that the Appellant-Landlord restored access to one of the pools in accordance with the public health orders and that the Appellant-Landlord could not have provided greater access to the pool during the time period that the rent reductions were awarded. Appellant-Landlord argues that the Hearing Officer's Decision would have required the Appellant-Landlord to independently assess the COVID-19 risks and implement rules that contradicted the public health orders.

Appellant-Landlord also attempts to correct testimony that was submitted at the hearing. Appellant-Landlord disputes the weight that the Hearing Officer gave to testimony presented by the Appellant-Landlord and argues that the CSFRA Regulations require the Hearing Officer to consider all evidence.

Appellant-Landlord makes additional legal arguments related to the rent reductions resulting from the withdrawal of services in response to the COVID-19 public health orders. The Appellant Landlord argues that a reduction in housing services should only result in a rent reduction when the reduction was the landlord's fault or under the control of the landlord. The Appellant-Landlord contends that the Decision disregards the purpose of the CSFRA to provide tenants with healthy housing, as well as case law. Additionally, the Appellant-Landlord also argues that the Hearing Officer's decision puts the Appellant-Landlord in the impossible position of either having to forego a fair rate of return or risk breaking the law. The Appellant-Landlord also disagrees with the Hearing Officer's determination that the rent reductions were an effort to apportion the economic loss being suffered as a result of the various public health orders and the impacts of the COVID-19 pandemic and argues in the Appeal that the removal of the amenities did not result in any cost savings to the Appellant-Landlord.

Appellant-Landlord requests that the rent reduction awards for the reduced access to the pool be reversed.

2. All Units – Fitness Center and Hot Tub

The Hearing Officer awarded all the Respondent-Tenants a reduction in rent between $100 and $125 per month between July 2, 2020 and September 30, 2020 for the closure of the fitness center and the hot tub. Appellant-Landlord contends that the applicable health orders did not allow the fitness center to reopen during the time period for which a rent reduction was granted, citing to a news article that indicates that a public health order that allowed reopening was

rescinded two days after its issuance. Appellant-Landlord also contends that the Hearing Officer included within the rent reduction a reduction for loss of the use of the hot tub although none of the Respondent-Tenants claimed such a loss. Appellant-Landlord further claims that the hot tub was partially reopened.

Appellant-Landlord requests the award of rent reduction for the loss of use of the fitness center and hot tub be reversed.

3. All Units: Lawn and Surrounding Area

The Hearing Officer awarded all of the Respondents-Tenants a rent reduction between $60 and $75 per month between June 4, 2020 and September 30, 2020 for loss of use of the lawn and surrounding areas. The Hearing Officer founds that Appellant-Landlords could have allowed exercise and other use of the lawn and surrounding areas with appropriate limitations in compliance with the applicable health orders. The Appellant-Landlord contends that the Respondents-Tenants were not complying with the applicable health orders in holding outdoor fitness classes in the parking areas of the complex and were not following social distancing protocols. The Appellant-Landlord also contends that use of the parking area for any use other parking is contrary to the lease agreements so prohibiting the Respondent-Tenants from using the parking areas for fitness classes was not a reduction in services or benefits. Additionally, the Appellant-Landlord questions the Hearing Officer's failure to address evidence that was submitted showing that the use of the parking areas for fitness classes was not in compliance with the public health orders.

Appellant-Landlord requests the award for reduced housing services based on the parking space be reversed.

4. Unit 414: Valet Trash Service

The Hearing Officer awarded the resident of Unit 414 a $25 rent reduction per month because the valet trash service was so unreliable as to provide no benefit to the residents. The rent reduction was awarded starting in July 2020 and continuing until the $25 mandatory fee is removed or until the resident confirms she is satisfied with the service. The Appellant-Landlord contends that the Respondent-Tenant did not meet the burden of proof in showing that the service was deficient. The Appellant-Landlord also objects to the Hearing Officer allowing the Respondent-Tenant's subjective determination of the service being satisfactory for when the rent reduction should be discontinued.

Appellant-Landlord requests the award to Unit 414 for reduced housing services based on the deficient valet trash service be reversed.

5. All Units: Lack of Management Response to Maintenance Issue

The Hearing Officer awarded all Respondent-Tenants a reduction in rent of $40 per month between October 1, 2019 through October 1, 2020 on the basis that the Appellant-Landlord failed to promptly respond to service requests. Appellant-Landlord argues that the decision expands the scope of the CSFRA by holding that prompt response to the service requests are a benefit and a housing service despite the fact that the CSFRA does not include those in the definition of housing services and further argues that rent control laws can only allow rent reductions for issues that are both quantifiable and restitutive. Appellant-Landlord also cites to contradictory findings in the Decision regarding the reasonableness of the Appellant-Landlord's response time to repair and maintenance requests.

Appellant-Landlord requests the award for the reduced housing services based on the lack of management response to maintenance issues be reversed.

6. Unit 2013: Loss of Use of Grassy Recreation Area

The Hearing Officer awarded the Respondent-Tenant Gaspar a reduction in rent of $50 per month between June 2019 and February 2020 based on a finding that the Respondent-Tenant was effectively denied the benefit of the use of the lawn as a result of confrontations with the management staff. The Appellant-Landlord alleges that the rent reduction relates to a single incident and that the Respondent-Tenant failed to prove that he would have used the portion of the property in question on a continuous basis warranting the ongoing rent reduction.

Appellant-Landlord requests that the award to unit 2013 for reduction in housing services due to the loss of the use of the grassy recreation area be reversed.

7. Effect of New Legislation.

Although not raised by the Appellant-Landlord, the impact of recent State legislation, Senate Bill 91, must also be considered. SB 91 adds Section 1942.9 to the Civil Code, which reads in part:

> (b) Notwithstanding any other law, a landlord who temporarily reduces or makes unavailable a service or amenity as a result of compliance with federal, state or local public health orders or guidelines shall not be considered to have violated the rental or lease agreements, nor to have provided different terms or conditions of tenancy or reduced services for purposes of any law, ordinance, rule, regulation, or initiative measure adopted by a local governmental entity that establishes a maximum amount that a landlord may charge a tenant for rent.

Civil Code Section 1942.9 became effective January 29, 2021.

V. Decision Regarding Appealed Elements

A. Application of New Law

As a preliminary matter the application of Civil Code Section 1942.9 to these Petitions must be determined. Civil Code Section 1942.9 became effective January 29, 2021. The Decision impacts reductions in service that occurred between June 4, 2020 and September 30, 2020 as a result of public health orders related to the COVID-19 pandemic.

SB 91, which includes the new Civil Code Section 1942.9, amends the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 that was enacted in the fall of 2020 and that provides tenants with protection from evictions for nonpayment of rent related to COVID-19 financial distress. SB 91 extends those eviction protections and implements the State's rental assistance program. Some provisions of the Tenant, Homeowner and Small Tenant Relief and Stabilization Act of 2020 as originally adopted in 2020 included provisions that apply retroactively to tenants, such as the eviction protections for nonpayment of rent dating back to March 1, 2020. However, Civil Code Section 1942.9 contains no such language expressing an intent that it applies retroactively. Nor is there any language elsewhere in SB 91 that expresses a general intent that SB 91 as a whole is intended to apply retroactively.

Generally, statutes operate prospectively only. *Myers v. Phillip Morris Companies, Inc.* (2002) 28 Cal. 4th 828, 840. The presumption against retroactive legislation is deeply rooted and based on considerations of fairness that individuals should have an opportunity to know what the law is and to conform their conduct accordingly. *Landgraf v. USI Film Prods.* (1994) 511 U.S. 244.

A statute may be applied retroactively only if it contains express language of retroactivity or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application. *Myers, supra at p. 844.*

There is no express language in Civil Code Section 1942.9 or in SB 91 of retroactivity with respect to the Section 1942.9. If the statute is ambiguous then the next step is to determine whether the new law would have a retroactive effect, meaning would it impair the rights of a party, increase a party's liability for past conduct or impose new duties with respect to a transaction already completed. If the statute would have such an effect, the presumption is that without express legislative intent, the statute is not retroactive. *Landgraf , supra, Aetna Cas. & Sur. Co v. Industrial Acc. Commission* (1947) 30 Cal. 2d 388, *Evangelatos v. Superior Court* (1988) 44 Cal. 3d. 1188.

Here the application of the statute retroactively would impair the rights of the tenants under the CSFRA. The tenants have a right under Section 1710 of the CSFRA to petition for a rent reduction if housing services are reduced or withdrawn. The ability to obtain a rent reduction is a fundamental purpose of the CSFRA to protect tenants from excessive rent increases. Essentially, a rent reduction for a reduction in housing services protects tenants from a back door rent increase by landlords withdrawing services that were originally part of the bundle of goods included in the rental. The Respondent-Tenants exercised those rights consistent with the law in

effect at the time of their Petitions. Those rights would be significantly impaired by the application of Civil Code Section 1942.9 to their already filed and decided petition. Civil Code Section 1942.9 will prospectively prohibit additional rent reductions for housing services that are withdrawn in compliance with public health orders after the effective date of the Legislation, but the Legislation cannot be applied retroactively to these Petitions.

B. Appealed Elements.

1. **Pool Access Loss.**

The Decision finds that the Appellant-Landlord could have provided additional pool access in compliance with the public health orders commencing in June when the public health orders allowed reopening of pools subject to certain limitations. Based on the evidence, the Appellant-Landlord determined that it could not open a pool unless the pool was monitored by staff and the pool was subject to a reservation system. Additionally, based on the public health orders, occupancy of the pool area had to be limited to no more than one swimmer per 300 square feet of pool area. At some point the Appellant-Landlord determined that pool use was limited to swimmers from the same households at any one time further limiting the use of the pool. Additionally, although the Appellant-Landlord claimed that the one pool was open from 8:30 to 5:00, the Respondent-Tenants testified credibly that actual use was limited to 11:30 to 5:00 further restricting pool usage.

No evidence was submitted by the Appellant-Landlord regarding the restriction of swimmers from a single household other than testimony of the Appellant-Landlord's agent that a representative of the City of Mountain View Public Health Department visited the site and informed her that pool use was limited to one household at a time. At the hearing the Appellant-Landlord's agent could not identify the City of Mountain View official and could not provide any additional evidence regarding this limitation. Additionally, no evidence exists in the record on why the property would be more tightly restricted than the restrictions in the published public health orders, all of which were offered by the Appellant-Landlord as evidence.

The Appellant-Landlord attempts to clarify and correct the evidence given by the agent regarding the visit by the public health official in the Appeal. Introduction of new evidence on appeal is not permissible (Section 1711(j)). The Appellant-Landlord was provided two opportunities to present the accurate evidence since the hearing was continued and could also have requested that the hearing record remain open for the submission of additional evidence. Additionally, the Hearing Officer issued two pre-hearing orders, one of which indicated the nature of information that would be helpful for the hearing. The Record does not provide credible evidence to support the Appellant-Landlord's contention that it was limited to allowing use of the pool to a single household and that it could not open the other pool or open the pool for longer hours.

Appellant-Landlord argues that the Hearing Officer is required to consider all evidence based on the CSFRA regulations to refute provisions of the Decision that address the credibility of evidence submitted. Although the formal rules of evidence do not apply to hearings, the Hearing Officer, in rendering a decision is required to weigh the evidence as was done here. Appellant-

Landlord's argument regarding the Hearing Officer's role with regard to the evidence would result in the elimination of all discretion on the part of the Hearing Officer and decisions would be reduced to merely a test of who presented the most evidence without any consideration of the credibility of the evidence.

Appellant-Landlord also argues that it opened the pool to the full extent allowed by the public health orders ignoring that the public health orders would have allowed it to open the second pool without monitoring if it implemented a reservation system to limit the number of users. See Respondents Exhibit 10. Appellant-Landlord argument that it could only reopen the second pool if it was staffed is not supported by the evidence in the Record including the public health orders submitted by the Appellant-Landlord. Appellant-Landlord failed to provide any evidence that would support its position that it could not have allowed greater access to on-site pools.

The Appellant-Landlord argues that the Decision misconstrues the CSFRA and the applicable case law with respect to the withdrawal of services in compliance with public health orders. Appellant-Landlord cites to *Golden Gateway Center v. San Francisco Residential Rent Stabilization & Arbitration Board.* (1999) 73 Cal. App. 4th 1204 for the proposition that an unavoidable type of inconvenience which may interfere with a housing service but which does not substantially interfere with the right to occupy the premises as a residence, does not entitle a tenant to a reduction in rent. As stated in the Decision, the Appellant-Landlord misconstrues the holding in *Golden Gate.* In *Golden Gate*, tenants were awarded a rent reduction while balconies were temporarily unavailable while the landlord repaired the balconies. The *Golden Gate* Court looked to the purposes of the San Francisco Rent Ordinance which was to regulate rents so that tenants would not be subjected to excessive rent increases. The San Francisco ordinance defined rent increases to include not only additional rent but a reduction in housing services without a corresponding reduction in rent. "Thus, when a service that had been provided as part of the tenant's rental package ceased to be provided, the tenant could not reasonably be expected to continue paying the same rent." *Golden Gate, supra at 1211.* The Court then went on to find that in the *Golden Gate* case, the housing service did not cease to be provided; rather, by undertaking to provide housing services – repair, maintenance, and paint- another service was temporarily interrupted. In that instance, the Court held that this unavoidable type of inconvenience which may interfere with a housing service but does not substantially interfere with a right to occupy does not entitle the tenant to a rent reduction.

As the Decision notes, the withdrawal of housing services alleged by the Respondent-Tenants was not done in the service of Appellant-Landlord providing another housing service, but rather was in response to public health orders. The facts of the Petitions are distinguishable from the *Golden Gate* case.

Based on the evidence in the record regarding the requirements of the public health orders and the lack of evidence presented by the Appellant-Landlord justifying the limited access to only one of the pools included in the hearing record, the Decision regarding the reduction in rent related to lack of access to the pool is **affirmed** and the Appellant-Landlord's appeal is denied.

2. **Fitness Center and Hot Tub**.

Appellant-Landlord contends that the fitness center could not have been reopened during the time that the Decision awards a rent reduction because of public health orders, however, the Appellant-Landlord does not cite to any evidence in the record to support this claim but rather on appeal cites to a newspaper article that is not part of the hearing record. Despite the fact that the record is replete with public health orders as they evolved, the Appellant-Landlord failed to include within the record the relevant information prohibiting the reopening of the fitness center.

Appellant-Landlord correctly claims that the none of Petitions raised the loss of the hot tubs so no rent reduction should be awarded for such a loss. The Decision does not indicate how the loss of the hot tub impacted the rent reductions awarded for the combined loss of the fitness center and hot tub.

The issue of whether the Appellant-Landlord could have re-opened the fitness center during the period of time that a rent reduction was ordered and the determination of the amount by which the ordered rent reduction for the combined loss of the fitness center and hot tub is **remanded** to the Hearing Officer for further consideration to determine whether the Appellant-Landlord could have reopened the fitness center and if so to determine the value of the rent reduction based solely on the loss of the fitness center.

3. **Lawn and Surrounding Areas**.

Appellant-Landlord contends that the rent reduction for the inability to use the lawn and surrounding areas is improper for a variety of reasons including that the area being used by the Respondent-Tenants for fitness classes was the parking areas which are not provided for fitness activities so a prohibition on their use for this purpose does not result in a reduction in housing services. The Appellant-Landlord also refers to Respondent Exhibit 22 which provides photographic evidence that the fitness classes were not being conducted in accordance with the public health orders in place at the time.

The Decision finds that the fitness classes were being conducted in accordance with the public health orders relying upon testimony of the Respondent-Tenants. The Hearing Officer considered the photographic evidence but did not find it decisive given the weight of the other evidence. In particular, the Hearing Officer considered the Appellant-Landlord's failure to work with the Respondent-Tenants to find alternatives to the closed fitness center and options for allowing the use of the common areas by the Respondent-Tenants. Several of the public health orders in effect at during the time that the rent reduction was awarded for the lack of access to the lawn and surrounding areas, allowed gatherings people outdoors (see e.g. Respondent Exhibit 11 allowing gatherings of up to 60 people outdoors).

Appellant-Landlord also disputes the weight that the Hearing Officer gave to certain testimony arguing that the Hearing Officer treated Respondent-Tenant Elaina Jones as an expert witness because of her background in immunology. The Decision nowhere suggests that Ms. Jones was treated as an expert witness but does treat her testimony as credible.

The evidence in the record demonstrates that the Appellant-Landlord failed to make efforts to allow use of common areas for fitness classes or work with the Respondent-Tenants to find

options for addressing the loss of the fitness center and other facilities. Based on the evidence in the record, the decision on the rent reductions for lack of access to the lawn and surrounding areas is **affirmed** and the Appellant-Landlord's appeal on this issue is denied.

4. **Unit 414 Valet Trash Service**

The Decision sets out the evidence presented by the Respondent-Tenant in unit 414 regarding the valet trash service including emails from the Respondent-Tenant to the Appellant-Landlord regarding the service. Based on the Decision, the Appellant-Landlord failed to refute the evidence presented that the valet service was inadequate at the hearing and the Appeal fails to cite to any evidence refuting the Respondent-Tenant's evidence other than to allude to the Respondent-Tenant's ulterior motives for requesting a rent reduction, although those motives are never clarified.

The Decision grants the Respondent-Tenant in Unit 414 with a $25 per month rent reduction commencing in July 2020 when the Appellant-Landlord was notified of the deficiencies in the service and continuing until the fee is eliminated or the Respondent-Tenant is satisfied with the service. Appellant-Landlord objects to the subjective nature of the determination of when the rent reduction ends and the fact that the determination is wholly within the control of the Respondent-Tenant. Because the Decision fails to provide a measurable basis upon which to determine when the service meets the conditions of the rental agreement, the appeal from Appellant-Landlord is granted and this element of the Decision is **remanded** to the Hearing Officer for the sole purpose of establishing an appropriate measurement for determining when the housing service has been restored or the fee eliminated.

5. **All Units: Lack of Management Response to Maintenance Issue**

The Decision provided detailed findings regarding various maintenance requests made by the Respondent-Tenants including lack of hot water, toilet leaks and carpet cleaning requests. In each of these detailed explanations the Decision finds that the response times on the part of Appellant-Landlord were reasonable given the nature of the repairs. However, the Decision then cites to two of these same instances of repair and maintenance requests, the carpet cleaning and the toilet and fan defects to find that there is a pattern of delay or lack of response to maintenance requests. The Decision awards a rent reduction of $40 a month finding that prompt and responsive response to service requests is a benefit to be expected and finds that although the record is unclear on the length of time that the lack of responsiveness has occurred, it was held to have lasted for at least one year.

Appellant-Landlord raises valid issues regarding the evidentiary link to the finding of a rent reduction given the findings in the decision that specific repair and maintenance requests were responded to in a reasonable time frame. Appellant-Landlord also raises legal arguments that a rent reduction cannot be awarded for a non-quantifiable item such as response time, citing to *Larson v. City and Cty of San Francisco*, (2011) 192 Cal. App. 4th 1263. Appellant-Landlord's reliance on *Larson* is misplaced and misconstrues the holding in that case. In the *Larson* case, the Court specifically found that an ordinance that allowed for a rent reduction on the basis that due diligence was not exercised in completing repairs was proper but found other portions of the

ordinance that addressed tortious behavior to be an attempt to bypass the judicial system and impermissibly endow the hearing officer with judicial power.

Despite Appellant-Landlord misplaced reliance on the *Larson* holding, the appeal from Appellant-Landlord is granted as to this element of the Decision and the Decision is **reversed** with respect to the rent reduction awarded for lack of management response to maintenance issues on the basis that the evidence does not support the Decision.

6. Unit 2013: Loss of Use of Grassy Recreation Area

The Decision awards the Respondent -Tenant for Unit 2013 a rent reduction of $50 per month on the basis that Respondent-Tenant was precluded from using recreational areas because of the behavior of the Appellant-Landlord staff. The Decision does not provide any evidence that Respondent-Tenant would have used the recreational areas after the birthday party incident nor how often Respondent-Tenant would have used the recreational area. Yet despite that lack of any such information, the Respondent-Tenant was awarded the monthly rental reduction from July 2019 through February 2020 when the shelter in place orders would have prohibited the use of the recreational areas. The appeal from Appellant-Landlord is granted as to this element of the Decision and the Decision is **reversed** with respect to the rent reduction awarded to Unit 2103 for loss of use of the grassy recreation area on the basis that the evidence does not support the decision.

VI. Conclusion

As detailed above, the RHC grants in part and denies in part Appellant-Landlord's appeal of the Decision.

A.1 The Appellant-Landlord's appeal on the issue of the rent reduction related to lack of access to the pool is denied. The Decision regarding the reduction in rent related to lack of access to the pool is **affirmed** and the Appellant-Landlord's appeal is denied.

A.2 The Appellant-Landlord's appeal on the issue of the rent reduction related to the loss of the fitness center and the hot tub is granted. The issue of a rent reduction for the loss of the fitness center and the hot tub is **remanded** to the Hearing Officer for further consideration to determine whether the Appellant-Landlord could have reopened the fitness center and if so to determine the value of the rent reduction based solely on the loss of the fitness center.

A.3 The Appellant-Landlord's appeal on the issue of the rent reduction for the lack of access to the lawn and surrounding areas is denied. The Decision on the rent reductions for lack of access to the lawn and surrounding areas is **affirmed** and the Appellant-Landlord's appeal on this issue is denied.

A.4 The Appellant-Landlord's appeal of the rent reduction for Unit 414 for the deficient valet trash service is granted. The Decision with respect to this element of the Decision is **remanded**

to the Hearing Officer solely to establish an appropriate measurement for determining when the housing service has been restored or the fee eliminated.

A.5 The Appellant-Landlord's appeal of the rent reduction for lack of management response to maintenance requests is granted. The Decision is **reversed** with respect to the rent reduction awarded for lack of management response to maintenance issues on the basis that the evidence does not support the decision.

A.6 The appeal from Appellant-Landlord is granted as to the rent reduction awarded to Unit 2103 for loss of use of the grassy recreation area. The Decision is **reversed** with respect to the rent reduction awarded to Unit 2103 for loss of use of the grassy recreation area.