CITY OF MOUNTAIN VIEW RENTAL HOUSING COMMITTEE

HEARING OFFICER DECISION

HELD PURSUANT TO THE COMMUNITY STABILIZATION AND FAIR RENT ACT (“CSFRA”)

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]	(Petition B – Decrease in Housing Services or Maintenance)
Property Address:	100 North Whisman Road
Affected Units:	See above list
Petitioner Tenant Name(s):	Elaina Jones, Nathan Roy [Unit 411] Stacey Schoeman, Clifford Schoeman [Unit 414] Zara Levy [Unit 416] Daniel Meyer, Maria Puyol [re: occupancy of Unit 2011 prior to 10/8] Sergio Gaspar, Kim Gaspar [[Unit 2013] Brian Walker, Eric Espinosa [re prior occupancy of Unit 2326 and current occupancy in unit 412]]
Respondent Landlord Names(s)	SI VI LLC [owner], Greystar Management [Prop Manager]
Hearing Officer:	Martin Eichner
Date of Pre-Hearing Conference:	November 6, 2020
Date of Hearings:	November 20, 2020, December 1, 2020
Date Hearing Record Closed	December 1, 2020
Date of Hearing Officer Decision	
Date of Mailing:	(See Attached Proof of Service)

I. STATEMENT OF THE CASE AND PROCEDURAL HISTORY PRIOR TO ISSUANCE OF THIS DECISION

a. The consolidated Hearing and Decision in this case is based on six separate Petitions. Each of these Petitions was filed by tenants from units at the rental property located at 100 North Whisman Road in the City of Mountain View. All six Petitions were filed as a “Tenant Petition B: Downward Rent Adjustment - Decrease In Housing Services Or Maintenance Under The CSFRA”.

b. Specifically, Petitions were filed by the tenants in the six units as follows:

i. Case No. 20210002, submitted on behalf of the tenants occupying Unit 411,
ii. Case No. 20210003, submitted on behalf of the tenants who occupied Unit 2326 and later unit 412,
iii. Case No. 20210005, submitted on behalf of the tenants occupying Unit 414,
iv. Case No. 20210006, submitted on behalf of the tenants occupying Unit 416,
v. Case No. 20210008 submitted on behalf of the tenants occupying Unit 2011,
vi. Case No. 20210009 submitted on behalf of the tenants occupying Unit 2013.

c. These six Petitions were reviewed and accepted for processing through the subsequent phases of the Petition process. The Petitions named Greystar Management as the Respondent.[1] On October 12, 2020, a Notice of Acceptance was issued to the parties by CSFRA Program Staff for each of the Petitions.

d. Program staff also determined that the six Petitions should be consolidated. The consolidation was based on the similar claims in each Petition alleging that Respondent prevented access to the tenant amenities at the rental property after the Covid-19 pandemic struck the area. The petitions also alleged other housing service decreases, not necessarily common to all the other petitions. A NOTICE OF HEARING, CONSOLIDATION OF PETITIONS, AND OF PREHEARING MEETING was issued by program staff on October 29, 2020.

e. Thereafter, Martin Eichner was designated as the Hearing Officer, ["HO"], for purposes of all further proceedings.

f. Pursuant to a timely Notice of Consolidation and Prehearing Meeting, HO Eichner facilitated a Pre-Hearing Telephone Conference on November 6, 2020. On November 9, HO Eichner issued a Written Order and Summary of Pre-Hearing Conference which was thereafter served on all parties.

g. The Summary listed the parties who participated in the prehearing conference. It described the housing service decrease issues to be determined and witnesses to be presented at the subsequent Hearing. The Summary listed the amenities issues common to all the petitions, and the additional service decrease issues raised for the individual units. The Summary also described the discussion conducted during this Pre-Hearing Conference, including a description of additional documents which the parties were encouraged to submit for the Hearing record.

h. The Order attached to the Summary set the Hearing date for November 20, 2020. It addressed a process for the tenants to designate housing service decrease issues not already identified in the Summary, as well as a process for the parties to submit additional evidence and names of witnesses not previously identified. The Order set the timetable and procedure for such additional submissions, with a method to accomplish service on the other parties in the case.

i. The HO issued a Supplemental Prehearing Summary and Order on November 17, 2020. It established a structure for the presentation of, and response to, the evidence for each of the issues to be determined through the hearing process.

j. The Hearing on the consolidated petitions was held as scheduled on November 20, using the Zoom webinar platform. The Hearing could not be concluded within the 2.75 hours allocated for the November 20 date.

k. After the November 20 Hearing, the HO issued a follow-up Order on November 23. Based on the indicated availability of the parties, this Order set December 1, 2020 as the date for the second

[1] Later it was determined that SI VI LLC was the owner. References herein to "Respondent" include both Greystar and SI.

Hearing session. This Order also addressed the issues that would be the primary focus of the second session and set a schedule for the production and exchange of further documents and witness lists. The Order indicated that absent unexpected circumstances, the Hearing would be concluded on December 1.

l. The second Zoom platform Hearing was held on December 1, 2020. After an additional 2.5 hours, the Hearing was concluded, and the HO ordered that the record was closed.

II. ATTENDEES AND ACTIVE PARTICIPANTS AT THE HEARING

The following persons attended one or both of the Zoom hearings, providing testimony under oath and other input for the record:

For the Tenant-Petitioners:

Elaina Jones [Unit 411]

Stacey Schoeman [Unit 414]

Zara Levy and Dean Levy [Unit 416]

Daniel Meyer, Maria Puyol [re Unit 2011, now occupying 2014]

Sergio Gaspar, Kim Gaspar [[Unit 2013]

Brian Walker, Eric Espinosa [re prior occupancy of Unit 2326 and current occupancy in unit 412]]

For the Landlord-Respondent

Respondent's attorney: Lerna Kazazic, Law Firm of Pahl & McCay

On behalf of the Respondent Greystar Property Management Firm: Deanna Verduzco, Nadia Zep, Miguel Perez

In addition, the following CSFRA Program Staff participated in the hearings to provide administrative support:

Emily Hislop, CSFRA Hearing Administrator, and Patricia Black, City of Mountain Rent Stabilization Analyst II.

III. DOCUMENTARY EVIDENCE ENTERED INTO THE RECORD

The documents marked as exhibits for each of the Petitions in this case during the hearing, or as part of the post-hearing submission process, are described in the attached Appendix A.

IV. ISSUES PRESENTED

A. Are the Petitioners' housing service decrease claims within the jurisdiction of the CSFRA?

B. Are the housing service decrease claims raised by Petitioners within the scope of Section 1702(h) and Section 1710)(c) of the CSFRA? Are those claims based on Respondent's limitation of the Petitioners' access to the amenities on the property recognized under these CSFRA sections, even if Respondent sought to comply with the various Covid-19 "shutdown" Orders? As to those claims, did Respondent have no choice other than to limit access to the amenities, or could Respondent have granted further access while still complying with the Orders.

C. Are the Petitioners precluded from claiming that the amenities were part of their housing services protected by the CSFRA, in light of the presence of the "gratuity" language in Paragraph 46 in the applicable lease form and the additional relevant language in the lease Community Policies Addendum?

D. Do the provisions of the CSFRA, including Section 1713, nullify the Gratuity language in Paragraph 46 and the Community Policies Addendum to the extent they purport to waive the CSFRA right to housing services protections.

E. Did the Respondent actively market the availability of the amenities on this rental property, including two pools, a hot tub, barbeque and lawn area, fitness center, clubroom/game room, and business center to Petitioners and other tenants? Were these amenities significant inducements to become tenants at its property?

F. Has Respondent continued marketing these amenities, even after access to them was limited when the Covid-19 pandemic began?

G. Did the Respondent landlord in this case have reasonable notice of the housing service decreases claimed by the Petitioner tenants in their Petitions, and did the Respondent have an opportunity to correct them within the meaning of Section 1710(c) of the CSFRA?

H. Did the Respondent fail to mitigate the impact of the pandemic shutdown Orders by not allowing additional access to the amenities that would have been permissible under the Orders?

I. Did the Respondent further fail to mitigate the impact of the pandemic shutdown Orders when it prevented the Petitioners from taking steps to engage in physical workout activities to partially compensate for the lost amenities?

J. Did the Petitioners meet their burden of proving that the following actions by Respondent, apart from precluding or limiting access to the amenities, constituted additional housing service decreases in violation the CSFRA:

    1. Cancellation of the free annual carpet cleaning benefit in 2016;
    2. Failure in 2020 to adequately ensure the reliability of the valet waste removal service for which the Petitioners were required to pay a separate monthly fee;
    3. Failure to provide hot water for units 411, 412 and 414 in October 2020;
    4. Failure in September 2020 to repair a faulty toilet and broken bathroom exhaust fan in unit 412;
    5. Failure to clean the carpet in unit 414 which was soiled in August 2020 as a result of Respondent's maintenance staff replacing the refrigerator in that unit;
    6. Failure to remove the mold infestation in unit 2013 that began in 2016 and has continued through the present;
    7. Failure to generally respond in an effective and timely manner to maintenance requests submitted by Petitioners; and
    8. Mistreatment of the family from unit 2013 and their guests when they attempted to use a recreational area, resulting in them not being able to comfortably utilize it?

K. For any housing service decrease proven by Petitioners, what is the monthly rental value of that service decrease, if any, for each of the Petitioners, and over what time period should any such decrease be applied?

V. CONTENTIONS AND POSIITONS OF THE PARTIES

The Amenities

Respondent emphasizes that the lockdown orders were unprecedented and when issued, required immediate mandatory compliance.[2] Respondent asserts that compliance with the March 16 Order required a total shutdown of all amenities.

Respondent admits that the shutdown requirements were clarified in subsequent orders. These clarifying orders began with the May 4 Order.[3] Respondent notes that It permitted limited access to one of the pools as a result of an Order effective on June 5, but it limited the pool access to one family at a time and only during daylight hours in order to comply with the Order. Respondent asserts that all subsequent Orders required it to continue to deny access to all the other amenities. It asserts that it was not required to consider the "best" or "most effective" options for compliance, but instead the Orders required only landlords' compliance to "the best of their abilities."

Respondent admits that it did not, at any time after March 2020, conduct any studies to determine whether it could take further action to restore greater access to the amenities once the Orders were issued. It felt that it was required to follow the Orders at face value, and that it risked violating the Orders by undertaking any additional steps to restore further access to the amenities.

Petitioners dispute Respondent's interpretation of the applicable requirements in the various Orders. They assert that the various Orders that became effective as of June 4 and thereafter would have permitted greater access to the amenities. They assert that Respondent's total closure of one of the two pools on the property, and the drastic limitation of access to the other pool were not required by the Orders.

Respondent's attorney represented that the open hours for this pool were from 8:30 am to 5 pm, but Petitioners stated that in practice the hours have been limited to 11:30 am to 5 pm.

Petitioners contend that the July 13 directive for outdoor swimming pools, [Respondent's Exhibit G] allowed one swimmer from a different family per 300 sq feet of pool area. Since the size of the pool near the leasing office is more than 1500 sq feet, it should have been permissible for up to 5 unrelated swimmers to use at any time.

Witness for the Respondent, Nadia Zep, stated that the other pool remained closed. Staff could not monitor its use due to its distance from the leasing office. Petitioners contend that the second pool, approximately 1200 sq feet, could have been used by additional residents with safe social distancing conforming to the 300 sq ft family limit. Petitioners assert that the property staff could have used the fitness center near that second pool as a station for them to monitor the pool. Since the

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[2] In responding to this issue and several other issues, Respondent chose to present factual evidence in the form of representations made by their attorney instead of presenting percipient witnesses with direct knowledge of the facts. The Hearing Officer addressed this approach during the hearing. He indicated that if confronted by direct testimony from the Petitioners contradicting the attorney representations, greater weight would probably be afforded the direct testimony. As addressed below in the Discussion section of this Decision, this use of representations detracted from the weight of certain factual defenses presented by Respondent.

[3] The relevant portions of the subsequent Orders are summarized in the Findings of Fact.

Respondent was collecting rent based in part on the existence of that second pool, that rent could have compensated the Respondent for the cost of monitoring.

As for the pool that was partially open, Respondent asserts that its proximity to the leasing office allowed the staff to monitor that pool from their office. Respondent's attorney could not explain why the pool access was limited to opening at 11:30 am, since staff began working in the office at 8:30 am. Petitioners state that staff was not always present in the office. Respondent's attorney represented that staff was required to be present to open the pool gate, but Petitioners responded that the gate was often, or perhaps always, left unlocked. They point out that it was left unlocked so that the package delivery service could enter the area.

It is uncontested that all the other amenities, including the other pool, have remained totally closed since March. Specifically, the lawn and grill area near the larger pool were closed and have not been opened for any use since March. The fitness center, business center and club room have also been fully closed since March. Petitioners contend that these facilities could have been made available to at least one family unit at a time.

Petitioners assert that the closure of the grill and other nearby area around the larger pool prevented the use of that nearby area for exercise which would have been permissible under the Orders. They contend that the fitness center could have been opened, as long as the use was limited to a single-family unit wearing masks, with limited cardio-vascular exercise.

Petitioners stated that they attempted to organize fitness and social activities that would compensate in part for the lost amenities. They assert that these activities were consistent with the limitations imposed by the Orders. For example, they understood that the Orders allowed them to engage in outdoor exercise if they maintained the required 6' social distance from anyone not in their immediate household and if they limited the total size of the exercise group to 25 persons. They contend that such limitations complied with the June 5 Executive Summary, [contained in Resp Ex. 10], which permitted outdoor recreational activities by groups of no more than 25 people who maintained social distancing and who had no physical contact. They assert that their exercise activities were consistent with these limitations. The exercises took place in parking spaces that belonged to them or to other Tenants who gave them permission to use the spaces. They stated that they maintained social distance and limited the total size of the group to 25 or less.[4]

When Petitioners organized their exercise activities, they received a "Desist Order" from management, threatening to evict them if they did not cease these activities. [Case Number 20210002, Ex. 5]. Respondent asserts that the Petitioners were not complying with the applicable Order and that its evidence documents their failure to comply.

Petitioners stated that their efforts to communicate with the property management onsite staff about amenity access and other related issues often were rebutted or went unanswered. They stated that management made no effort to negotiate or interact with them about their efforts to adjust to the restrictions, either before or after the Desist Order was served on them.

Petitioners asserted that certain of the Petitioners, including Stacey Schoeman, went to the office on July 7 to attempt to talk to local staff about the Desist Order. They state that the staff would not meet with them. Later, the office staff installed an opaque covering on the office windows,

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[4] . 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.

preventing observation of the office staff. Respondent represented that the windows were blocked to deter potential violations of social distancing limits.

There were no other direct interactions or meetings with Respondent's staff concerning any of these amenity issues. To the extent there was any other communication between Respondent's staff and the Petitioners, those communications between the parties occurred via email, although Petitioners point out that many of their emails were unanswered.

Respondent never offered to reduce the rents being paid by the Petitioners to directly reflect the loss of the amenities. However, during this same period, the rental rates for the property fell as part of the overall decrease in rental rates in the Mountain View area. Some of the Petitioners did agree to move to units with lower rates, some of which had rates that were significantly lower. The resulting monthly decrease of several hundred dollars was motivated by the market changes compared to the prior rates locked in by rent stabilization, not as direct result of an adjustment for the loss of amenities. However, Petitioners concede that the new lower market rates might also reflect the decrease in the property's overall rental values resulting from the amenities being removed.

Elimination of the annual carpet cleaning benefit

Petitioners, other than Daniel Meyer, stated that there was a benefit provided to all tenants at the property prior to the passage of the CSFRA in the form of an annual free carpet cleaning.[5] That benefit was terminated in 2016 when the CSFRA was passed. Petitioners contend that the next annual carpet cleaning would have been due a year after passage of the CSFRA when their next lease renewal occurred. Because of future lease renewals, the failure to offer the carpet cleaning constituted a continuing violation in subsequent years.

Respondent's attorney represented that the benefit was a reward for signing a one-year lease renewal. It was terminated prior to the passage of the CSFRA. She stated that none of the Petitioners would have been eligible for this benefit thereafter because none of them has signed a new lease since the CSFRA passage. She further represented that no one had received a free carpet cleaning within the last three years.

Petitioner Schoeman stated that she has signed a one-year lease and Petitioner Elaina Jones stated that everyone in her "block" also received "this offer" except her.

ADDITIONAL SERVICE DECREASE ISSUES RAISED BY INDIVIDUAL PETITIONS THAT WERE ADDRESSED AT THE HEARING.

Loss of Hot Water [Units 411, 412, 414]

Respondent's attorney represented that the hot water shut off in October 2020 occurred in blocks 1-6, not just block 4. The specific problem was that the temperature of the hot water was fluctuating rather than being totally lost. This fluctuation initially led to the onsite maintenance staff believing the problem had been fixed. When it became apparent that the problem was continuing, Respondent realized it needed to bring in a "specialist" to fix it.

In regard to the loss of hot water and other similar service decrease claims, Respondent asserts that the general speed of management's response to service requests is not *per se* a service decrease within the meaning of the CSFRA. The issue is whether the management repair efforts were

[5] Petitioner Daniel Meyer acknowledged that he became a tenant after this time period.

reasonable, in the circumstances of the specific service request at issue. Management's response to this issue of lost hot water was reasonable in light of the complications that arose while the hot water access was being repaired.

Toilet Leak in Unit 412

These petitioners stated that they relocated to unit 412 in July 21, 2020. They stated that they noticed almost immediately that the water in the downstairs toilet was intermittently draining without refilling the toilet bowl. This problem happened on a daily basis, leading to an unpleasant "sewer"-like odor emitting from the toilet. On September 2, they filed a maintenance request. Their request also noted that the ventilation fan in that bathroom was broken, which aggravated the impact of the escaping odor. The odor continued for nine days before it was fixed. Twelve days passed before the fan was fixed.

Respondent asserts that the 9 day and 12 day delays in completing these repairs were a reasonable period.[6]

Elimination of the Valet Waste Services Raised by Unit 414

Petitioner Stacey Schoeman explained that she, as well as all other tenants, was required to pay a monthly $25 fee to have this "valet" service remove their recycling and other waste after it was placed outside the door to the unit. On many occasions, the service failed to remove the waste. On one occasion, Stacey found that the recycling had been left in the property's dumpster. Petitioner asserts that she alerted the local office management on several occasions, sometimes as often as weekly, that the waste was not being picked up. Petitioners from Unit 2013 were copied of these email complaints. The only response Stacey received was to be told to take up her complaint with the valet service. Despite her complaints, management continued to charge her for the service. Several other Petitioners, including Jones and Walker confirmed that they had the same experience. Eventually they just began to dump their own refuse.

Respondent replied that the service is still "offered" and has been continually offered, and that other tenants are happy with the service. There have only been about 3 complaints made to management. The real motivation for the Petitioners complaining has been that they do not want to pay for the fee for the service.

When asked by the Hearing Officer, none of the other Petitioners indicated that they had complained to management about the valet service.

Refrigerator Leak That Resulted in Damage to the Carpet in Unit 414

Petitioner Stacey Schoeman stated that she notified management several times in July 2020 that the refrigerator in her unit was leaking. Management finally brought a replacement refrigerator to the unit, but the replacement also appeared to be leaking while it was being installed. Petitioner notified local management several times in the next several days about the leak and the resulting

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[6] Respondent's attorney represented that their company was not allowed to make any repairs at certain times during the relevant time period, due to the various Covid-19 Orders and that she could obtain details of the time periods when this occurred if requested to do so. This issue was covered in sufficient detail in the pre-hearing Summary and Order, which means Respondent had sufficient notice to document these asserted facts by the time of the December 1, second hearing. Also, the Hearing Officer requested that Respondent make a specific request to leave the hearing record open if Respondent could establish that there was a genuine surprise issue that they wanted to address. Counsel for Respondent did not make this request when the Hearing Record was closed at the end of the December 1 Hearing, even when the Hearing Officer specifically asked if any party was requesting to hold the record open as a result of a genuine surprise.

damage to the carpet. Management finally replied that carpet cleaning was no longer being offered as a benefit, but Petitioner tried to make the point that this carpet cleaning was required to clean the stain from the leak caused by the maintenance staff when they replaced her refrigerator. Eventually, after several further follow-up communications, Petitioner stated that she was told someone would come to the unit, but no one did. Approximately 8 days later, she hired her own cleaning service and threatened to deduct the cost from her rent. At that point, the two maintenance employees came to her unit and offered to give her $100, which she understood would be coming from their own "pockets". She declined their offer, stating that she preferred to have the carpets cleaned when she vacated.

Respondent answered that the testimony concerning the maintenance staff statement should not receive weight because it was a matter of "hearsay." Respondent also repeated its general response that this length of delay to a maintenance request was not a service decrease within the meaning of the CSFRA.

Mold Infestation Unit 2013

Petitioner Sergio Gaspar stated that there was apparent mold in his unit, beginning in 2016, resulting from condensation around many of the windows in the unit during the winter months. This condition is most significant for the windows in the bathroom that face the building exterior. He and his wife first noticed the mold during the winter of 2016-2017. He has photos depicting the presence of mold, attached to his Petition.[7] He does not have any written documentation of bringing this condition to the attention of management, but he did verbally mention it to management, as did his wife. He cannot identify a specific date when he complained, nor can his wife, but it was before 2019 because he received a leaflet about contacting the "Housing Program" that summer. He did not have the mold tested.

Respondent replied that there is no record of any work orders addressing any mold complaints or repairs. It objects to any reference to any problems encountered by neighbors. Petitioner is urged to send a written work order that would generate an effort to address this condition.

Overall lack of Management Response to Maintenance Issues

Petitioners assert that the specific experiences they have described when seeking maintenance repairs, have been part of a broader pattern of delaying or not responding to maintenance issues and requests for maintenance service.

Petitioner Elaina Jones from Unit 411 stated that there was a general failure by management to respond to maintenance requests and a failure to notify tenants when conditions such as repairs were about to occur, for example by giving notice through email. One example involving her unit was a broken ventilator fan which was not repaired from June 6 until June 30 despite filing several maintenance requests. In September, her garbage disposal went unrepaired for eleven days, despite the four maintenance requests she filed.

Petitioner Schoeman believes that the carpet damage described above is another example.

Petitioner from Unit 2011 stated that he only received a promised referral fee from management after contacting them "several times over a couple of months" to request the payment.

[7] This Petitioner asserted that his neighbor was forced to move out of his unit because of being sick from the mold in his unit, but there was no credible evidence presented to collaborate this assertion regarding the neighbor.

Respondent asserts that the general speed of management's response to service requests is not per se a service decrease within the meaning of the CSFRA. The issue is whether the management's responses were reasonable under the circumstances of the specific service request at issue.

The Birthday Party Incident and Subsequent Confrontations Experienced by the Petitioners from Unit 2013

Petitioner Sergio Gaspar and his family asserted that they have been unable to use the lawn area for a children's birthday party or other party since an incident that occurred in June 2019. Petitioner described the incident as follows. On that day, they had invited guests for a birthday party for one of his children. One of the invited guests parked in the wrong space near the leasing office but parked there only briefly to let his children out of the car. ███" who worked in the office at the time, approached Petitioner and shouted that Petitioner's guest had been very rude to him. ██ threatened to stop the party and forbid any future parties unless that guest left immediately. By this time, his guest had already moved his car to a permissible space, but the guest then left to avoid any further "trouble for you guys." This same member of staff, ██ and another member of staff routinely parked in the handicap spaces despite not having handicap placards. Since then, Petitioner has been afraid to hold any similar party. He also is concerned about the uneven application of rules, illustrated by the enforcement of parking rules against him while management staff were violating the parking rules themselves. ██ no longer works regularly in the office but Petitioner has "seen him around." When Petitioner complained to Deanna about these actions, she promised to take action but never did. Later, in October 2019, when Petitioner took a photo of ███ car parked in the handicap space, ██ became angry and Deanna then threatened to call the police, saying that Sergio was refusing to leave the office, even though he wasn't in the office. Petitioner tried to file an online complaint that same day through the property management website, but never received a response.

Respondent asserts that this type of experience is not within the CSFRA definition of a housing service decrease. In regard to the facts, the attorney represents that a parking violation sticker was placed on the window of the guest who was parked in a non-permitted space. Thereafter the guest was "very negative" toward the staff. The specific member of staff involved in this confrontation is not available to testify because he "does not work at the property any more."[8] However, it is not correct to assume that he no longer works for the company in any other capacity.

In response to the representations from Respondent's attorney, Sergio stated that placing the sticker on the guest's car occurred after the confrontation. He said that at some later time, stickers were placed on all the cars parked by the guests, including those marked for "future guests." Petitioner also states that he has seen Joe on the property recently, apparently dealing with visitors there.

This same Petitioner described another situation in which he and his family were accused of damaging the lawn near their unit. He says they were told they would be responsible for the cost of re-seeding the lawn. Petitioner Meyer stated that the email sent to Gaspar left him feeling uncomfortable about using the lawn for his family.

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[8] Respondent's attorney asserts that the petitioner's testimony constitutes hearsay, but for purposes of this hearing that testimony is found to be credible and has more weight than the representations of legal counsel presented as rebuttal. Counsel also expressed a concern about the impact on future relationships if conflicting testimony was submitted, but regardless of the validity of such a concern, the evidence needs to be weighed accordingly.

Respondent's attorney represented that the email was sent to Petitioner Gaspar because several neighbors had complained about the noise from his family activities, which was disturbing their quiet enjoyment. She also stated that the only limit actually imposed on Petitioner's family was the overall limit on gatherings imposed by the pandemic Orders. Petitioner Gaspar stated that the complaints were solely the response of one neighbor and that there could not have been complaints from other surrounding neighbors because most of the units in the area were vacant.

Petitioner Schoeman stated that Oscar and another employee from the leasing office approached her and admitted that there was no noise disturbance occurring when their families were playing.

VI. Findings of Fact Supporting the Decision

General Background

1) The petitions in this case were filed by tenants residing at the rental property located at 100 North Whisman, Mountain View. This property, publicly known as Central Park at Whisman Station, contains 354 rental units. The property is owned by SI VI, LLC and managed by Greystar Management.
2) Petitioners' rental units are located within a rental property that is subject to the jurisdiction of the CSFRA. [CSFRA Section 1702(d); 1703(a); 1704].
3) The tenant Petitioners initially rented their units at various times between 2016 and 2019. Their initial monthly rental rates ranged between $3350 and $4105.

Amenities as a Housing Service

4) In addition to the individual rental units, there are significant "amenities" on this rental property. They include two swimming pools, one of which has a nearby barbeque grill and lawn area. The amenities also include a fitness center, a business center and a club house.

   Prior to the Covid-19 pandemic, these amenities were marketed to potential tenants by Respondent as significant incentives to rent units at this property. This marketing activity included an online site accessed by potential tenants that prominently featured images and videos of the amenities. The property tours given to potential tenants also emphasized these amenities. [9]
5) Petitioners in this case testified credibly that these amenities were a principal inducement when they decided to lease units at this property. As Petitioner Schoeman, from Unit 414 explained, the attraction of having these amenities at this property compensated for drawbacks in the actual rental units. The testimony of Petitioners Brian Walker and Eric Espinosa from Unit 412 described how carefully they assessed the amenities during their process of deciding whether to rent, going so far as to check the water temperature in the pool. Petitioners Meyer, [Unit 2011], and Gaspar, [Unit 2013], stated that both their families selected their specific units because of the units' proximity to the pool. Petitioner Gaspar made his selection after seeing the pool area during the initial tour of the property. Gaspar stated that at the time he was being given a tour of the property, he was promised that the

[9] Several of the Petitioners submitted examples of the marketing materials featuring the amenities, for example Case No. 20210003 Pet. Ex. 7,18.

property was converting a laundry unit to a fitness center for tenant use, which was an additional incentive in his family's decision to rent.

6) After the impact of the Covid-19 pandemic and continuing through the present time period, Respondent has continued to feature these same amenities in its marketing efforts, including its website, Craig's List ads, virtual tours and in-person tours. [See for example, Case 20210003, Petitioner Ex. 7]. [10]

7) The Respondent's current website was accessed by Petitioner Brian Walker during the December 1 Hearing. The images shown on that website during the Hearing included prominent views of the pools, hot tub, fitness center, and club house. [Case 20210003, Petitioner Ex. 21].

8) The fact that access to the various amenities have been significantly limited since the pandemic has never been mentioned in any of the Respondent's marketing outreach to potential tenants.

9) The Lease form signed by all the Petitioners [for example, Respondent Exhibit 24 in Case 20210002[11]], includes a provision marked as Paragraph 46 and entitled "Use of Premises." This paragraph 46 states, in the relevant part, that:

> "The furnishing by Landlord to Resident of any storage space, use of laundry, electronic access controls and gates, or any other common area facilities outside the premises shall be deemed to be furnished gratuitously and Landlord makes no representations or guarantees as to the availability, adequacy, or fitness of such space, service, or facilities. Resident acknowledges that Landlord will not provide lifeguard service at the swimming facilities, and Resident agrees to take adequate and reasonable care in use of all recreational facilities to ensure the safety of Resident, other occupants and Resident's guests."

10) One of the addendum attachments to the lease form, entitled "Community Policies" includes a paragraph which describes the amenities in detail, and is initialed by the tenant. This Addendum does not have the same language as paragraph 46, although it does state

"Landlord may change the rules and regulations at Landlord's discretion".

11) None of the Petitioners remember the Respondent's leasing staff pointing out these provision or explaining their importance at the time they were deciding whether to lease. None of the marketing materials or tour narratives mention that the Respondent's lease form gives Respondent the unilateral right to cease providing theses amenities to tenants.

12) Petitioners admitted that they read both of these lease provisions at the time they signed their leases.

13) Petitioners testified credibly that they believed that the CSFRA would not permit enforcement of these lease provisions if they were applied to constitute a waiver of their right to seek a rental reduction for a housing service decrease.

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[10] Respondent did not dispute the evidence describing its marketing activities. It did clarify that the use of in-person tours after March 2020 fluctuated depending on the specific lockdown limitations imposed at various points in time. It did not dispute that its staff has not mentioned the limited access to amenities since March.

[11] A similar lease form with various addendum and disclosure attachments was a Respondent Exhibit in all other cases.

Impact of the Various Covid-19 Orders

14) Prior to the impact of the pandemic in March 2020, the amenities were open for all tenants to use, although the grass area around the pool could be reserved by tenants for private parties.

15) In response to the Covid-19 pandemic, a series of Orders and Directives, were issued by various governmental authorities beginning in March 2020. [hereafter collectively escribed as “the Orders”] [12] The relevant portion of each of these Orders is summarized as follows:

16) The March 16 Santa Clara County Order, [Resp Ex. 6], ordered county residents to shelter in place at their “residences.” It prohibited most activities outside of residences by persons other than members of single households, but it allowed limited social distanced outdoor activities, including “hiking, walking and running.”

17) The March 31 County Order, [Resp Ex. 7], replaced and clarified the prior Order. It maintained the same shelter in place approach but strengthened the various limitations such as the those applicable to travel while providing further details on requirements such as social distancing. The term “residence” in relation to rental properties was defined as the individual rental units on those properties. It defined “residence” as including associated spaces such as single family patios, porches and backyards. It maintained the exception for social distanced hiking, walking and running but added details of the activities permitted and prohibited the use of any shared recreational facilities including pools.

18) The next County Order, [Resp Ex. 8], was issued on April 29. It continued the shelter in place/except for essential activities approach. It expanded the outdoor activities permitted although it continued to prohibit other activities such as those where equipment was shared by non-household members.

19) A new County Order was issued on May 4, [Resp Ex. 9]. It continued to allow the same outdoor activities by single persons or single-family units maintaining social distancing. It specifically prohibited the use of closed recreational facilities such as gyms, including those on rental properties, and it required that pools remain closed.

20) The next County Order was issued on May 18, effective May 22 [Resp Ex. 10]. It noted the improvement in controlling the virus and indicated that certain additional activities would be permitted. It included Appendices which were made effective as of June 5. One of the additional activities permitted in the Appendices was access to outdoor swimming pools, including those on rental properties. Included was a detailed “Guide to Use of Shared Outdoor Swimming Pools.” Among the restrictions was a requirement of no more than 1 swimmer per 300 sq. feet in a pool unless all swimmers were members of the same household. It required that persons in the pool remain 6 feet apart from anyone not a member of their family, and that they wear masks when not actually swimming. It required the presence of a non-lifeguard at the pool whose responsibility was to monitor compliance with these restrictions. Alternatively, if the pool was “unstaffed,” it required the implementation of a sign-up/reservation system that would result in staggered use based on family units.

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[12] The various orders and directives were submitted by Respondent as exhibits for each of the Petitions. They were marked as Exhibts 6-20 in Case No. 20210002. When referring to specific “Orders”, these exhibit numbers have been utilized.

21) Another County Order issued on July 2 superseding the May 18 Order, [Resp Ex. 11]. This Order noted further progress combatting the virus, which justified now allowing "most activity." The basic social distancing requirement was continued but it allowed outdoor gatherings of up to 60 people as long as they occurred in a space sufficiently large to allow the participants to socially distance. The rules for outdoor pools remained primarily the same as those that had been in place since June 5, including the requirements for social distancing, 1 person per 300 sq ft and mask wearing by persons not swimming. Use of hot tubs by one person at a time was allowed. Indoor gatherings of up to 20 persons were now permitted, limited to 1 person per 200 sq ft. Indoor activities which required mask removal, such as indoor dining or indoor swimming, remained prohibited.

22) A Mandatory Directive for Gyms and Fitness Centers was also issued by the County on July 2, effective July 13. [Resp Ex. 13]. It applied to both indoor and outdoor activities. It permitted use of these facilities if social distancing rules were maintained. It required wearing a mask indoors, even while actually exercising. It totally prohibited cardio/aerobic exercise. Wearing a mask while exercising outside was not required, if the 6 feet of separation from non-family members was observed.

23) Concurrent State Orders issued on March 16 and thereafter mostly echoed or backed up the restrictions in the Orders issued by Santa Clara County and other local jurisdictions. [Resp Ex. 14-19].

Respondent's Actions Limiting Access to the Amenities

24) In the period between March 16, 2020 and June 4, 2020, Respondent closed access to all the amenities at issue here. The stringent terms of the Orders issued during this period, with very little advance notice, left no realistic avenues for Respondent to restore any of the amenities.

25) Respondent could have complied with the various Orders that became effective on June 5 and thereafter while still allowing greater access to amenities. As noted hereafter, it failed to do so despite continuing to collect rent that included the full value of access to the amenities.

26) Beginning on June 4, 2020, after the various Orders were changed and clarified, there were opportunities for Respondent to restore some level of tenant access to the amenities while still complying with the clarified Orders. Except for allowing access to one of the pools, Respondent did not make a reasonable effort to assess its options to provide greater access, and, as noted, did not in fact actually permit access to any of the other amenities. Even under Respondent's own proposed standard -- that it only was required to comply to "the best of [its] abilities," -- Respondent's actions fail to demonstrate that it did attempt to comply to the best of its abilities.

27) Examination of Respondent's actual conduct after June 5 reveals that its implementation of the Orders was too restrictive in some respects and also too careless in its compliance with other provisions.

28) Respondent has totally prevented access to one of the pools, the hot tub, the fitness center, and the club room at all times since March 16, 2020. It did allow access to the swimming pool near its on-site office, but only from 11:30 am to 5:00 pm and it only allowed one family to use the entire pool at any one time.

29) Respondent did not present convincing evidence to demonstrate that it made a reasonable effort to assess or study whether it could take steps to further restore access to any of these

amenities. The record on this subject is bare, despite the specific request made for any such evidence in the Pre-Hearing Telephone Conference Summary and Order. [HO Ex. 2].

30) Respondent's attorney represented that Respondent had no choice but to implement the Orders in the manner it applied here. That representation is not convincing in the absence of testimony from any member of Respondent's staff who was the actual decision-maker or who assessed the options available to implement the Order.

31) The only testimony or evidence presented by Respondent to establish that it assessed access to the amenities during this entire time period consisted of testimony about an assessment of the utilization of the pool near the office that was conducted by a representative of the City of Mountain View. Nadia Zep, the Respondent's Assistant Property Manager, stated that an employee from the City of Mountain View Health Department came to the property at one point to measure the pool near the office, although she cannot recall when that visit occurred. The resulting directive was that only one family could occupy the pool at a time.

32) This testimony is not entitled to significant weight in light of the lack of foundation for it. This witness could not provide the date for this assessment or identify the Mountain View employee involved. Respondent failed to produce a report of this assessment prepared by any Mountain View employee. Respondent did not produce any contemporaneous written documentation of this visit prepared by its own staff.

33) Respondent made no effort to negotiate possible further access to the amenities with the Petitioners or any other tenants, even though Petitioner Elaina Jones, offered to provide her immunology expertise as a Stanford Fellow, to help address these issues.

34) Respondent failed to provide credible explanations for why specific steps were not taken, such as allowing greater access to the pool near the office or opening the second pool. The explanations it did offer through its attorney were not persuasive.

35) For example, Respondent asserted that it could not provide greater access because of its need to monitor the pool usage. However, Respondent failed to establish that its staff could have monitored any usage of the pool near the office once the office windows were covered with opaque material in July and August.

36) If Respondent intended to seriously regulate usage of that pool, it failed to explain why the gate to that pool area has often been left unlocked. [Video example, Case No. 20210003 Pet. Ex. 23].

37) In early July, a group of the Petitioners organized in part by Petitioner Elaina Jones, held group workout sessions on community areas around the rental property, including some parking spaces. The purpose of these sessions was to partially compensate for the loss of access to the amenities such as the fitness center. 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. She also testified that the parking spaces were utilized with the permission of the tenants to whom those spaces were assigned.

38) On July 7, Respondent's attorney Todd Rothbard served a Notice to Cease on the participating petitioners accusing them of violating provisions in their leases and threatening them with eviction. [Case No. 20210002, Respondent Ex. 4]. As a result of receiving this Notice, Petitioners ceased their group exercise activity. According to Respondent, this Notice was sent because the activity violated the Orders in place at the time and the activity had generated complaints from other tenants.

39) Other than its Exhibits 22 and 23, Respondent failed to document the justification for the Desist Notice. It did not present any foundation evidence to explain these two exhibits, for example the name of the person who took the photos in its Exhibit 22, or the dates they were taken. Respondent failed to provide witnesses who observed or otherwise were able to document the violations of the Orders asserted by Respondent, other than its own witness Nadia Zep.[13] Respondent failed to produce testimony from any tenants who allegedly complained about the activities. The Notice itself includes allegations that were clearly unsubstantiated, such as the allegation that these Petitioners were unlawfully operating a business.

40) It is even more striking to note that to the extent Respondent had any legitimate concerns about whether the exercise activity was consistent with the Orders or was generating complaints from other tenants, Respondent made no effort to work with the Petitioners to modify the exercise activities to alleviate these concerns.[14] In addition, Respondent made no effort to unilaterally issue guidelines or regulations to alleviate these concerns.

41) Examples of reasonable steps to increase access to the amenities that Respondent failed to take, and failed to even consider, include:

    a. Providing greater access to the pool near the office for more swimmers to use at the same time and for greater overall hours. Since that pool is approximately 1200 sq ft, Respondent could have allowed more access by observing the one swimmer per 300 sq ft rule. Instead, it allowed only one family at a time, although it could have allowed non-family members at the same time within the 300 square foot and social distancing guidelines. Respondent also limited all access to the pool to the hours between approximately 11:30 am and 5:00 pm. No provisions in any of the Orders effective after June 5 required such limits on the hours of use. To the extent Respondent asserts that stricter limitations were required to monitor the pool use, such an assertion lacks credibility. In practice, Respondent did not carefully enforce the pool rules. For example, there was no evidence that it assigned a person to monitor the pool usage. Its office staff was unlikely to be able to carefully monitor the pool, including the sign-in sheet, in light of their other duties such as conducting tours, and in light of the several months when their office windows were blocked with an opaque covering.

    b. Opening the second pool for limited use. Respondent could have complied with the Orders by implementing a sign-in system as permitted or assigning staff to monitor its use.

    c. Allowing exercise and other use of the lawn area, with appropriate limitations on the total number of persons exercising and appropriate enforcement of social distancing. Instead, Respondent chose to issue a Desist Order. It made no further effort to help organize some type of exercise activity that would comply with the Orders, either on the lawn area or in some other suitable location.

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[13] Although not entirely clear from the content of Ex. 23, it appears that the complaint was lodged by member of management Nadia Zep although the actual author is not identified. Its date places this complaint at the time when Petitioners first began their exercise activity.

[14] Petitioners Jones and Schoeman described efforts to approach Respondent's office staff to discuss these events both in person and via email, and they also offered to participate in mediation. Those efforts were rebuffed or ignored. For example, see email in Case No. 20210002, Pet. Ex. 6.

d. Partially re-opening the fitness center with social distancing and other limitations. This level of access could have been allowed when fitness centers were approved in the July 2 Order [effective July 13] for partial re-opening.

42) Any administrative cost, including staff monitoring, that Respondent would have incurred to permit the increased access to these amenities should not have prevented such efforts. Although Respondent never studied the costs, any resulting costs, such as additional staffing, were likely to have been covered by the portion of the rent being collected for the value of the amenities.

Value of the Service Reduction Decreases Resulting from Respondent's Failure to Provide Sufficient Access to the Amenities

43) Petitioners had no other reasonable alternatives to replace the benefits they lost when their access to the amenities on the rental property were precluded, unless they were willing to incur additional costs such as memberships in other facilities providing the same amenities while still paying rent to Respondent for the amenities.

44) After the Petitions in this case were filed in October 2020, changes in the Covid-19 impact and the resulting stringent Orders constituted changed circumstances from those alleged in the Petitions. As a result of the different circumstances that arose after October, the scope of this Decision will not extend past September 30, 2020.

45) Respondent has decreased rents since the impact of the pandemic partially due to a falling rental market but also partially in recognition of the loss of the amenities for tenants. Respondent reduced the rent for those Petitioners willing to change units, including for example, Petitioners Walker and Espinosa.

46) Respondent has not offered lower rental rates, or offered to negotiate lower rental rates directly due to loss of the amenities, for those Petitioners who have remained in their units. From March 2020 through the present, Respondent has continued to collect rent from those Petitioners in the same amount they were paying before that date.

47) The monthly rental value of the amenities service decrease of each of the amenities, to each Petitioner household that did not negotiate lower rent is based on the value of comparable services such as gym memberships,[15] for each such unit during the specified time periods described above, the resulting reductions are:

a. Access to the two pools from June 5 through September 30, 2020 is valued at $175 per month;

b. Access to the fitness center and hot tub from July 2 through September 30 is valued at $125 per month.

c. Access to the lawn and surrounding area for exercise or family gatherings or other activities within the applicable Order guidelines, from July 2 through September 30 is valued at $75 per month.

48) The monthly rental value amenities service decrease, to each Petitioner household that did negotiate lower rent in exchange for agreeing to move to a new unit is based on the value of comparable services such as gym memberships, for the specified time periods described above, discounted for the approximate savings realized by relocating:

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[15] See for example, Bay Club Membership showing monthly charges of $229 for an individual, $340 for a couple

a. Access to the two pools from June 5 through September 30, 2020 is valued at $140 per month;

b. Access to the fitness center and hot tub from July 2 through September 30 is valued at $100 per month.

c. Access to the lawn and surrounding area for exercise or family gatherings or other activities within the applicable Order guidelines, from July 2 through September 30 is valued at $60 per month.

Other Service Decrease Claims

Cancellation of the annual carpet cleaning benefit

49) There is no convincing evidence that this benefit continued to be available to Petitioners or other similarly situated tenants after 2016. Petitioners who were tenants at the time became aware this service was being eliminated in 2016, apparently in reaction to the passage of the CSFRA. The record does not demonstrate that these Petitioners served any notice of the loss of the benefit to Respondent between 2016 and 2020.

50) The claim for loss of this benefit in the October 2020 Petitions was asserted four years after 2016. This four-year delay, both in notifying Respondent and in filing a Petition to assert the resulting housing service decrease, was unreasonable and beyond any applicable time limit.[16]

Failure To Provide The Valet Waste Removal Service

51) Petitioners testified credibly that they have been charged a mandatory monthly fee of $25 by the Respondent for a contractor to provide a mandatory valet waste removal service. They also testified credibly that this service was so unreliable that they received no benefit from it.

52) Since Respondent collects the mandatory fee, the contractor serves as its agent. As a result, Respondent is responsible for the contractor' failure to adequately perform.

53) Petitioner living in Unit 414 is the only tenant who raised this issue in her Petition.

54) Respondent became aware of the need to correct this defective service in the case of the Petitioner from unit 414 when she sent an email to Respondent in July 2020.[17]

55) Respondent failed to provide a credible explanation for the failure of this service to perform reliably. Respondent failed to provide any evidence describing its efforts to improve the performance of this service. At the time Petitioners complained, the only response from management staff was to instruct her to communicate with the contractor. Petitioner tried to do so but there was no improvement in the service.

56) Respondent's attorney asserted that other tenants have been happy with the service but Respondent did not produce testimony or statements from any of the purported happy tenants.

57) This Petitioner continues to be charged this monthly fee despite the continuing failure of the contractor to perform.

[16] As noted in the Discussion, 3 years is designated as the longest possible limitation period.

[17] Case No. 20210005, Petitioner Ex. 8. Unlike the cancellation of the carpet cleaning amenity, the failure of this service to adequately peform occurred every month. It was therefore a continuing monthly violation.

Loss of Hot Water

58) On October 1, 2020, Petitioners Walker and Espinosa from unit 412 reported to the property office that there was no hot water in their unit. The hot water service was not restored until the evening of October 7.

59) For one of these days, these Petitioners had no water at all. Petitioners stated that when they talked to maintenance about this problem, they were told the office would email them to explain the status of the repairs, but they heard nothing from the office. When they asked office staff for a response the next day, there was no response. There was no response from the office when asked again later in the day. They only learned that the repair had been made when they turned on the water after October 7 and realized it was hot.

60) These Petitioners had not experienced a similar loss of hot water in the past.

61) Several other units in the same "block" section of the property experienced the same loss of hot water. Specifically, Petitioner Stacey Schoeman also lost the hot water in her unit, number 414. She tried to report the issue to the office but did not receive any follow up. She approached [redacted], the maintenance employee on site to ask him about the hot water. He responded that it had been fixed and that all the blocks had hot water; she replied to him that it had not been fixed.

62) Respondent presented testimony regarding the hot water repairs, from Miguel Perez, Assistant Supervisor for the property. His testimony was confusing and not convincing. He stated that "there was hot water" during the October time period in question. He stated that he measured the water temperature in unit 412 during one of the days when there was a claim of no hot water. His measuring gauge showed that the water was "hot," on the same day that the Petitioners filed their maintenance request. He stated that the gauge measured 107 degrees, before the outside plumber was brought in to make the repairs.

63) In rebuttal, Petitioner Brian Walker stated that he accompanied Miguel and saw that the temperature shown on the gauge was never above 90 degrees.

64) Petitioner Schoeman from 414 stated that the water temperature in her unit during this time period was never correct and that no one ever measured it.

65) The failure to provide hot water was a serious service decrease and arguably a failure to provide an element of habitability, [California Civil Code Section 1941.1(3). However, the habitability issue was not alleged in the Petitions or at the time of the Pre-Hearing Telephone Conference.

66) Despite the unconvincing testimony from Miguel Perez, Respondent's attorney made the following credible representations. Respondent's own staff first tried to repair the condition when notified of the loss of hot water, but then realized the repair would require contracting with an outside plumbing specialist. When the specialist was located and hired, the necessary repairs were made. Petitioners did not contradict these representations.

67) The total time without hot water suffered by these Petitioners was between October 1 and October 7. This length of time was reasonable under the specific circumstances of this loss of hot water, including the difficulty assessing the cause for the loss and then securing an outside contractor to restore the service.

68) There was no evidence that this problem had occurred on any other occasions.

Toilet Leak and Broken Fan in Unit 412

69) When these petitioners moved into unit 412 on July 21, 2020, they noticed on a daily basis that the water in the downstairs toilet was intermittently draining without refilling the toilet bowl. When this happened, an unpleasant "sewer"-like odor would emit from the toilet.

70) They filed a maintenance request on September 2. Their request also noted that the ventilation fan in that bathroom was broken, which aggravated the lingering impact of the escaping odor. The odor continued for nine days before the toilet drainage was fixed. The fan was fixed 12 days after the September 2 maintenance request.

71) The dysfunctional toilet and broken exhaust fan in Unit 412 rendered that bathroom unusable, particularly in light of the noxious fumes being emitted. This condition was a serious service decrease, which arguably might have been a violation of California Civil Code Section 1941.1(2).

72) This condition lasted for more than two months in the summer of 2020, but the Petitioners in this unit did not file a service request to notify Respondent until September 2. Thereafter, Respondent repaired the condition on a reasonably timely basis, nine days for the toilet and twelve days for the exhaust fan.

Carpet Stain Resulting from Replacement of a Refrigerator in Unit 414

73) Petitioner Stacey Schoeman testified credibly that she requested replacement of the leaky refrigerator in her unit in the summer of 2020 and that when the Respondent's maintenance staff installed the replacement, leaky fluid spilled on her carpet, resulting in a stain.

74) This Petitioner notified management about the stain[18], but management took no action to clean the carpet, even though Petitioner was promised that someone would come to her unit to deal with the stain. Petitioner paid for the carpet to be cleaned eight days later and notified Respondent that she intended to withhold the resulting cleaning bill from her rent.

75) When Petitioner submitted her intent to withhold rent, the maintenance staff came to her unit to offer to pay her $100. She refused to accept the payment because she believed the money was coming "out of pocket" from the maintenance staff. She asked instead to have the carpet cleaned for free when she vacated, a request that she believed was agreed upon.

76) Regardless of the source of the payment offered, it constituted a reasonable attempt to compensate this Petitioner for the damage that constituted a service decrease. Her refusal might be viewed as a waiver of compensation, but assuming that Petitioner does receive the promised cleaning at a later time, the harm will be remedied.

Mold Infestation in Unit 2013

77) Petitioner Gaspar testified credibly that mold has been present around the windows in his unit 2013 and also in other locations in the unit since the winter of 2016-2017. The mold is primarily noticeable during the winter months. During the December 1 Hearing, this Petitioner testified that the mold was still present and he described the mold in real time while he was testifying.

78) Petitioner admitted that none of his family members have become ill from the mold and no doctor has advised him that the mold represents a health danger.

[18] Case No. 20210005, Petitioner Ex. 3 and 4.

79) This Petitioner has no record of having made a written request to Respondent to address the mold infestation. He testified that he has mentioned the problem to management verbally, but he could not provide any details such as the date he did so or the specific member of management that he informed. After he filed his Petition, management did undertake some repairs such as replacing the silicone in the shower and painting over one area. The Petition itself[19] does not list the mold infestation as one of the claims for a housing service decrease. The first that time mold in unit 2013 is described in writing as a housing service decrease is in the Pre-Hearing Summary and Order issued on November 9.[20]

80) Respondent's attorney represented that there are no records documenting complaints from this Petitioner about the mold infestation. This representation is accepted as true in light the absence of any documentation to the contrary and in light of the failure of Petitioner Gaspar to list the mold condition in his Petition.

81) Petitioner therefore failed to establish facts showing notice of the mold infestation to Respondent with a reasonable opportunity to correct it prior to November 2020.

Overall lack of Management Response to Maintenance Issues

82) Petitioners testimony documents a number of management delays, or failure to respond at all, when they made the various maintenance requests corresponding to the service decrease claims here. Examples other than for the amenities include Petitioner Schoeman'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.

83) Petitioners testified that they have experienced this same pattern of delay or no response to other maintenance requests.

84) Prompt and responsive response to service requests is a "benefit" to be expected by a tenant in a property within the jurisdiction of the CSFRA.

85) The monthly value to each of the Petitioning units of the frustration and stress resulting from the denial of this benefit is determined to be $40.

86) The record is unclear regarding the actual length of time that this service decrease has occurred, but it is held to have lasted for at least one year prior to the date the Petitions were filed.

87) This Decision makes no finding about whether this service decrease has been continuing since October 1, 2020.

The Birthday Party Incident and Subsequent Confrontations Experienced by the Petitioners from Unit 2013; Neighbor Complaints About His Family Activities

88) Petitioner Gaspar in Unit 2013 credibly described a specific incident in June 2019. At that time, [redacted]" a member of Respondent's staff, harassed one of Petitioner's guests at a party on the public area of the property. The confrontation arose from a parking dispute. The confrontation was sufficiently serious to result in the guest leaving and Petitioner becoming afraid of holding a similar event.

[19] Petitioner Exhibit 1, case number 20210009

[20] Hearing Officer Exhibit 2, case number 20210009

89) Although it appears that the member of staff no longer regularly works for Respondent at this rental property, he continues to have some type of employment relationship with Respondent. Despite that continuing relationship, he was not produced as a witness. Respondent chose instead to rely on representations made by its attorney.

90) Based on Petitioner's credible testimony and the failure of Respondent to produce a rebuttal witness, Petitioner's account is accepted as the accurate version of the event.

91) The party at issue was held in a recreational area on the rental property which means holding the event was a "benefit or privilege" associated with Petitioner's occupancy of his unit.

92) Petitioner testified that he complained verbally to Respondent's Assistant Manager, Deanna Verduzco, about the behavior of ███" and that she promised to follow up but never did. Later when Petitioner photographed another parking violation, Ms. Verduzco threatened to call the police. This part of Petitioner's testimony is also accepted as credible, particularly because Ms. Verduzco was participating in the Hearing process but was not called as a witness to give her version of these events. Petitioner filled out Respondent's online complaint form but did not receive a response. Petitioner has not sought to hold a similar event since this confrontation, but he has complained about other violations of parking rules committed by Respondent's staff.

93) Petitioner testified credibly that the impact of this confrontation and the subsequent confrontation with staff prevented him from holding parties or other gatherings after it occurred.

94) It is unclear that any such party could have been held within the limits of the various Orders after March 2020. Therefore, the value of the serviced decrease is assessed only between June 2019 and February 2020.

95) The monthly value of the service decrease between June 2019 and February 2020 is held to be $50.

96) To the extent there was an issue raised about complaints from Petitioner Gaspar's neighbors about his family play activities and other activities near his unit, that dispute is primarily a neighbor-to-neighbor dispute, not a service decrease dispute.

VII. DISCUSSION OF THE APPLICABLE LEGAL ANALYSIS

<u>There is jurisdiction under Section 1710 of the CSFRA to determine the Petitioners' claims for the loss of the amenities.</u>

Initially, Respondent questions whether the amenities claims raised by the Petitioners can be processed under the terms of the CSFRA. The objection enunciated by Respondent is that the Petitions are not procedurally "appropriate" under the CSFRA. However, this Decision treats the objection as more accurately focusing on whether there is jurisdiction under the CSFRA to determine whether loss of access to these amenities could constitute housing service decreases.

The various amenities such as the pool, fitness center and other facilities are clearly within the CSFRA definition of "housing services" in CSFRA Section 1702(h). Each of the amenities is a

"benefit...or facility connected with the use or occupancy of a rental unit." In this case, the Petitioners testified credibly that they considered the amenities to be a very important benefit of their tenancies.

The remaining jurisdictional issue is whether Section 1710(c) of the CSFRA can be applied to require a downward adjustment of the Petitioners' rent. Ordinarily, if a landlord unilaterally prohibited access to the pools and other facilities used by tenants on the rental property, there would be no question about the applicability of Section 1710(c). The Respondent argues that in this case there is no jurisdiction to apply Section 1710(c) because the service decrease "must be a result of the landlord's action." It argues that the removal of access to these amenities was due to the Covid-19 Orders, rather than any action on the part of the landlord. This proposed limitation on the application of Section 1710(c) is rejected.

There is no general language in CSFRA Section 1710, or specifically in Section 1710 (c), indicating that a downward rent adjustment can only be ordered when the decrease in services was due to the landlord fault, or due to conditions under the control of the landlord. There is a strong policy and equitable basis for not recognizing this limitation. Under CSFRA Section 1702(p), "rent" is defined as the tenants' payment for the "use or occupancy of a rental unit…and attendant housing services." Tenants should not be required to pay rent for a significant housing service they bargained for after they are no longer receiving it, regardless of the reason why they are no longer receiving it. When they continue to pay for services and benefits they are not receiving, they are receiving nothing in return for this portion of their rent payments.

To the extent Respondent asserts that it is being punished for failure to commit the illegal act of violating the Orders, that assertion is incorrect. This Decision does not punish the Respondent. This decision does hold that the Petitioners were denied a valuable benefit when the Respondent denied access to amenities they are paying for. Even if the tenants' loss of the benefit is the result of compliance with the Orders, the CSFRA places the burden of the resulting economic consequence on the landlord not the tenants.[21]

Respondent relies on the legislative history of the CSFRA and the associated legislative findings to support its interpretation of Section 1710 (c). However, analyzing these factors is only appropriate when the language of a statute is ambiguous. Here the plain language of CSFRA Section 1710 (c) applies to all housing service decreases. This plain language does not exclude decreases based on the landlord's control or fault. Therefore, examination of the legislative history and findings is not relevant.

Respondent argues that other rent stabilization ordinances exclude downward adjustments in tenants' rent for service decreases that are not due to landlord fault or under the landlord's control. That argument merely affirms that the framers of the CSFRA were aware of the possibility of making this distinction and chose not to do so.

Even if Respondent's proposed interpretation of Section 1710 (c) requiring landlord "action" were to be accepted, this Decision would not change because Respondent's actions after June 4 did cause the service decrease. Respondent took action when it limited access to the amenities and it took

[21] As is emphasized hereafter in this Decision, Respondent actually could have provided more access to the amenities after June 4, without violating the Orders.

further "action" when it decided not to provide more access after June 4. To the extent, Respondent argues that it had no choice when it took these actions, this Decision finds that Respondent did "have a choice" after June 4.

Respondent has a related argument that does have merit. If it could not restore the amenities without the violating the Orders, it had no "opportunity" to correct resulting service decrease which is a requirement under Section 1710(c). However, Respondent did have a choice after June 4, which means it did have a reasonable "opportunity" to correct the service decease after that date.

This Decision does not impose a rent reduction for the period between March and June, the time when Respondent had little or no discretion to mitigate the loss of the amenities. The Decision applies the rent reduction to the period after June 4, when Respondent could have adjusted access to the amenities while also complying with the Orders. Therefore, this Decision does not punish Respondent for complying with lawful Orders during a time period when it had little or no opportunity to correct the service decrease. It does require a rent reduction after June 4, when the Respondent failed to adequately utilize its opportunity to correct the loss of services while also lawfully complying with the Orders.

<u>The caselaw cited by Respondent does not require a decision in its favor.</u>

Respondent asserts that two court decisions support it position here. Respondent relies on <u>United States v. City of Hayward</u>, 36 F.3rd 832 (1994). In that case, an arbitrator imposed a service reduction when a mobilehome park owner rescinded its "adults only" residency policy. The arbitrator found that allowing families with children in the park was a "service reduction" because it interfered with an "adults only" benefit being enjoyed by existing tenants. The arbitrator ordered the park owner to reduce rent in recognition of this "service reduction". The federal court set aside the arbitrator's service reduction award. It held that the arbitrator's award penalized the park owner for complying with federal fair housing law. The federal court noted that the only change that the park made was to change his adults only policy. The court specifically noted that the arbitrator's service reduction decision,

> "…provided no explanation how changing the adults-only policy reduced housing services, other than to reflect the lost value of a discriminatory practice. If [the owner] *had terminated certain services, there might have been a legitimate basis for reducing the rent,* but because [the owner's] only act was to terminate the adults-only policy, the reduction in the value of housing services was caused solely by the change in policy." [emphasis added] Id. At p.836

Unlike the basis for the holding in <u>City of Hayward</u>, here the Respondent went beyond merely changing its policy in light of the Covid-19 Orders. When Respondent cut access to the amenities, it terminated actual services that were very valuable to the Petitioners. Under the reasoning of the <u>City of Hayward</u> court decision, loss of these valuable services provides a legitimate basis for reducing the rent. [22]

[22] The <u>City of Hayward</u> Decision later notes at p.836 that true senior housing includes special services and facilities tailored to the needs of seniors. The park owner could have maintained the park as a senior park by meeting the new federal Fair Housing Act requirements for a senior park by offering the required special services, but he chose not to do so. Instead, he decided to convert to a family park. If the park was providing special senior services but the owner removed those senior services and facilities as part of converting to a family park, the Court indicated it decision would have been different. However, in the case of this mobilehome park, "The only change at [the park] was the termination

Respondent also relies on Golden Gateway Center v. SF Rent Stabilization & Arbitration Bd, 73 C.A. App 4th 1204 (1999). In that case, the Court found that the tenants' loss of access to their patios while safety repairs were being made might arguably be a service reduction. However, the Court held that the safety repairs to those patios were also a housing service, one that was more important than short-term access to the patios. Here, the Respondent was not providing any alternative service or benefit, it merely prevented access to the facilities because it deemed that action to be required by the Orders. In Golden Gate Center, the landlord had no ability to safely grant further access to the tenants' patios. This Decision holds that Respondent could have safely provided further access to the amenities while still conforming to the Orders. Respondent's own Memorandum, at page 12, recognizes the distinction highlighted in Ocean Park Associates v. Santa Monica Rent Control Board, 114 C.A. 4th 1050 (2004) where the court found that the interruption in housing services was not unavoidably required by legitimate safety issues. Similarly, Respondent's drastic limitation on access to the amenities was not unavoidable after June 4.

The Respondent argues that forcing it to give back rental payments for circumstances outside its control is unfair and might even amount to an unconstitutional "taking." However, the Respondent is not being penalized by the imposition of a rent reduction. The rent reduction is an effort to apportion the economic loss being suffered as a result of the Covid-19 Orders.[23] 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 tenants. Changing that allocation would require amending the CSFRA, which is beyond the power of this Hearing Officer to consider.

Nor is Respondent suffering a complete economic loss. By eliminating access to the amenities, Respondent should have recognized some level of saving, such as the cost of cleaning and maintaining the amenity facilities. Here Respondent made no effort to refund any amount of the rent being paid by the Petitioners despite these likely savings.

The language in Petitioners' lease documents does not preclude Petitioners' claims for a downward rental adjustment due to the loss of the amenities

Respondent asserts that the "gratuity" paragraph 46 in the lease agreement form signed by all the Petitioners gives it unlimited authority to remove the various amenities or end access to them without any reduction in the rent being charged. It asserts that there is further support for this authority in the language in the lease Community Policies Addendum.

Even if the language in these provisions can be interpreted to confer this unlimited authority on Respondent, it waived that authority by its heavy emphasis on the presence of the amenities when it induced the Petitioners and other tenants to rent. It further waived that authority when its leasing staff omitted any mention of this gratuity language at the time Petitioners and other tenants were agreeing to rent.

The disconnect between the presence of this language and Respondent's other actions is further highlighted by the evidence that Respondent has continued the same heavy marketing emphasis on

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of the adults-only policy, not the elimination of significant services or facilities." Contrary to the actions of the park owner in City of Hayward, here Respondent did eliminate significant services and facilities precluding access to the amenities.

[23] The Orders themselves do not address this issue of balancing the economic impact.

the availability of the amenities after March 2020, when tenant access was actually being severely limited.

This Decision determines that this disconnect can be harmonized by determining that the lease language does not constitute an unlimited grant of authority to Respondent to deny access to the amenities without adjusting the rent being collected. A careful review of the relevant language reveals that this language is insufficient to grant such unlimited authority to Respondent.

Paragraph 46 states,

> "The furnishing by Landlord to Resident of any storage space, use of laundry, electronic access controls and gates, or any other common area facilities outside the premises shall be deemed to be furnished gratuitously and Landlord makes no representations or guarantees as to the availability, adequacy, or fitness of such space, service, or facilities. Resident acknowledges that Landlord will not provide lifeguard service at the swimming facilities, and Resident agrees to take adequate and reasonable care in use of all recreational facilities to ensure the safety of Resident, other occupants and Resident's guests."

The language of paragraph 46 is more accurately interpreted to remove any guarantee that a specific amenity will be available to a tenant at any specific time. This is a common sense protection for Respondent. It prevents a tenant from complaining about not being able to use a swimming pool when the pool is already at maximum usage or late at night when it is closed. The purpose of this language also appears to be a liability exemption related to access to the amenities, for example preventing tenants from holding Respondent liable for not providing lifeguards. Nothing in the specific language of this paragraph authorizes Respondent to continue to collect rent based on offering amenities that can no longer used. Such a drastic grant of authority would need to rest on much stronger language in the lease, and would need to be emphasized during marketing.

The language in the Community Policy Addendum adds nothing to this discussion. It merely gives Respondent a general right to change its policies and regulations. It does not give Respondent the specific right to remove amenities that induced tenants to rent and it does not give the Respondent the specific right to collect rent based on amenities it is no longer providing.

A separate and distinct basis for this element of this Decision rests on CSFRA Section 1713. This provision of the CSFRA nullifies any rental agreement language purporting to waive tenant rights to the benefits of the housing services protected by CSFRA Section 1710(c). Section 1713 of the CSFRA states,

> "Any provision of a Rental Housing Agreement…which purports to waive "any provision of this Article established for the benefit of the Tenant, shall be deemed to be against public policy and shall be void."

As noted, this Decision holds that the lease provisions at issue here do not in fact allow the landlord to remove the amenities at issue here. However, to the extent Respondent is seeking to rely on these lease provisions to unilaterally remove access to the amenity housing services, Section 1713 precludes that reliance. Asserting that the relevant lease language here allows a landlord to reduce a housing service without a downward rent adjustment is exactly the type of waiver nullified by Section 1713.

Based on the Petitioners' credible testimony, at the time they signed their leases, they were assuming that this interpretation of CSFRA Section 1713 would prevent the enforcement of these lease provisions in situations where housing services protected by the CSFRA were involved.

Respondent's duty to provide the amenity housing services begins at the time when Respondent had a notice of the loss of the amenities with an opportunity to correct that loss.

Respondent correctly asserts that Section 1710(c) requires a tenant to give notice to the landlord of the housing service decrease. It also requires a tenant to allow the landlord an opportunity to correct it, before receiving a decrease in rent resulting from the service decrease.

Beginning in March 2020, Respondent knew it was preventing access to the amenities, based on its understanding of the Covid-19 Orders. The more difficult question for this Decision is when the Respondent had an opportunity to correct that action. Prior to the June 4 clarifying directive, the stringent terms of the Orders in effect during that period provided the Respondent with little or no choice about re-opening the amenities. As noted herein, the changes in the terms of the Orders gave some leeway to the Respondent to re-open or otherwise alleviate the impact of the closed amenities after June 4.

Petitioner might still argue that they received no consideration for the rent paid for the amenities from March until June. However, the unprecedented nature of the Covid-19 impact and the multiple changes in the Orders that were being issued required landlords to take time to assess how to respond. This Decision holds that any realistic opportunity for the Respondent to correct the loss of access to the amenities could not have occurred prior to the subsequent clarifying Orders beginning in June.

Therefore, this Decision limits the remedy for the amenity housing service decreases to the period beginning on June 4. Due to the changed circumstance as a result of the subsequent worsening of the pandemic impact after the beginning of October, the remedy set forth in this Decision ends as of September 30.

To the extent Respondent expresses a concern about the economic cost it will suffer if forced to rebate the value of the amenities, that concern is unpersuasive here. As already noted, Respondent should have been saving money by limiting access. Any concern about the economic cost is further weakened by Respondent's failure to make a reasonable effort to assess whether some part of the amenities could be restored. The only effort Respondent made was to partially reopen the one pool near its office. Even in regard to this pool, Respondent failed to explain why the pool hours were drastically limited or why access was limited to one family at a time. Respondent ignored other opportunities to restore some of the amenities, for example by not working with the Petitioners to organize exercise activities within the Order guidelines.

Analysis of the Other Housing Service Claims

In determining the other service decrease claims asserted by the Petitioners, several general principles have been applied to the specific facts of each claim.

- CSFRA Section 1710(c) requires a Petitioner to prove that Respondent was on notice of the condition giving rise to the claim and that it failed to correct the condition after having a reasonable opportunity to do so. Often a finding that these requirements have been met is

based on evidence that the decrease occurred over a significant period of time or occurred repeatedly.

- The service decrease must have occurring during a time period concurrent with or reasonably prior to October 2020, the date the Petitions were filed. Since there is no specific time limit for Section 1710(c) claims in the CSFRA itself, this Decision holds that Petitioner should file a claim within at least three years after becoming aware of the service decrease.[24]
- The impact on the housing service protected by CSFRA Section 1710(c) must be meaningful. For example, Section 1710(c) states that the decrease must be "beyond ordinary wear and tear." Although "wear and tear" does not directly apply to loss of the amenities here, it does provide a standard that shows the need for the impact to be a serious one, not to be expected as part of the normal tenant-landlord relationship,
- The cost associated with the impact of the service decrease should be demonstrable and quantifiable.

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VIII. CONCLUSIONS OF LAW

The Amenities Claims

Jurisdiction to Determine the Amenities Claims

A. The definition of a housing service in Section 1702(h) of the CSFRA encompasses the service decrease claims raised by the Petitioners in this case, including those claims based on Respondent's failure to provide access to the amenities that were an important service and benefit to the tenant Petitioners.

B. Jurisdiction for this Decision exists under Section 1710 and Section 1710(c) of the CSFRA to determine whether the loss of access to the amenities has resulted in a decrease in housing services. That jurisdiction exists regardless of whether the conditions resulting in the decrease were under the control of the landlord or whether it was due to any fault on the part of the landlord.

C. The CSFRA policy rationale for addressing the harm suffered by tenants due to housing service decreases remains applicable at any time a landlord is collecting rent in exchange for a service or benefit that is no longer being provided. The harm suffered by tenants is the same, regardless of whether the service decrease is due to fault on the part of the landlord or was under the control of the landlord.

D. CSFRA Section 1710(c) does require a further analysis of whether the Respondent had reasonable notice of the circumstances resulting in the service decrease and whether the Respondent had a reasonable opportunity to correct those circumstances.

E. Respondent's limitation of the Petitioners' access to the pools, hot tub, fitness center and club room/business center tenant amenities constituted a housing service decrease within the meaning of the relevant CSFRA provisions described above. Limitation of this access did not simply constitute policy change, it resulted in a significant loss of services previously provided to the

[24] Three years is the applicable time period for the California Statute of Limitations for several types of claims including fraud and damage to property.

Petitioners, services which were an important inducement for their decisions to become tenants at Respondent.

F. The language in paragraph 46 of the lease form and in the language in the lease Community Policies Addendum, signed by all of the Petitioners, cannot be interpreted to constitute a bar to the application of Section 1710 and Section 1710(c) the CSFRA in this Decision.

G. Whatever authority was granted to Respondent under these lease provisions to restrict access to the amenities was waived by Respondent's actual practice which included actively marketing the amenities as an inducement for tenants to rent, both at the time Petitioners became tenants and continuing thereafter through the present.

H. Respondent's waiver of any such authority is further supported by its failure to advise prospective tenants in its marketing activities that the amenities might be eliminated and by its continuing marketing of the amenities after March 2020 without including any disclaimer about whether the amenities would actually be accessible.

I. CSFRA Section 1713 precludes any assertion by Respondent that these provisions provide authority to remove access to the amenities at issue in this case. Any such proposed interpretation of the relevant lease provisions would constitute an illegal waiver of tenant rights to the CSFRA remedies in Section 1710 and Section 1710(c).

J. To the extent Petitioners did sign these two provisions when they leased their units, they reasonably relied on their assumption that Section 1713 would protect their housing service rights.

K. The language in Paragraph 46 is more properly interpreted to not permit Respondent to remove housing services. The language is interpreted to instead provide more limited protection to the Respondent, for example protection against claims that it failed to provide a specific service at a specific time. The language in the Addendum is properly interpreted as providing Respondent a general right to modify any of its policies. There is no language in either of the provisions specifically granting Respondent the right to unilaterally cease providing housing services while still collecting rent for them.

<u>The Merits of the Amenities Claims</u>

L. Respondent did not have a reasonable opportunity to correct the service decrease resulting from the Covid-19 Orders until after June 4, 2020, since the prior March Orders required a complete shutdown of facilities such as the amenities here.

M. However, Respondent had a duty under the CSFRA to either provide some reasonable access to the amenities or lower the rent charged to the Petitioners to compensate for the decrease in these housing services between June 5 and October 1, 2020. This duty arose after June 5 because Respondent had the opportunity to mitigate the loss during that period.

N. Respondent failed to make a reasonable effort after June 4 to mitigate the loss of the services at issue here. As noted in the Findings of Act, it made no reasonable effort to assess whether further access to the amenities could be granted under the Orders. Respondent also failed to offer any rent reduction as direct compensation for the loss of these housing services and it actively prevented mitigation efforts by the Petitioners to organize exercise groups or other replacement services.

O. In light of Respondent's failure to take reasonable action to mitigate the loss of the housing service amenities, Petitioners are entitled to a reduction in their monthly rental payments between June 4 and October 1, 2020.

P. The amount of the rent reduction is based on the cost of comparable services as more specifically set forth in the Findings of Fact.

Q. Due to a significant change in circumstances of the Covid-19 pandemic impact on property in Mountain View, the scope of the remedy in this Decision will not be extended past September 30, 2020. Nothing in this Decision should be interpreted as a determination of any factual or legal issue between Petitioners and Respondent after September 30, 2020. [25]

<u>Other Service Decrease Claims</u>

<u>Elimination of the annual carpet cleaning benefit</u>

R. Petitioners failed to prove that they were specifically denied this benefit at the time they filed their Petitions or that this benefit would have been offered to them or any similar tenant within at least three years prior to October 2020.

S. Petitioners failed to raise this claim on a timely basis and therefore they are not entitled to a downward rent adjustment based on the claimed loss of this benefit.

<u>Loss of Hot Water</u>

T. The failure to provide hot water service to units 411, 412 and 414 for approximately seven days in October 2020 constituted a loss of an important tenant housing service, one within the scope of CSFRA Section 1710)(c). Providing hot water is specifically listed among the housing services included in the CSFRA Housing Services definition in Section 1702(h). The same failure falls within the elements of habitability listed in California Civil Code Section 1941.1, specifically Section 1941.1(3).

U. Under the terms of CSFRA Section 1710(c), Respondent was entitled to a reasonable opportunity to correct that condition by making the necessary repairs. The length of the reasonable time allowed Respondent depends on the specific circumstances of the condition causing the service reduction. There was no evidence in the record to support a prior pattern of similar hot water failures. In addition, the complexity of the plumbing defect preventing the furnishing of hot water, included the need to obtain a "specialist" plumbing contractor. Under these circumstances, the seven days that passed prior to correction of the problem was within the reasonable time frame allowed to a landlord under Section 1710)(c).

V. Based on this conclusion, Petitioners are not entitled to a downward adjustment of their rent occasioned by their loss of hot water service.

<u>Elimination of the Valet Waste Services Raised by Unit 414</u>

W. The Petitioner in Unit 414 and other Petitioners testified credibly that they have been charged a mandatory monthly fee of $25 for this service which was so unreliable that they received no benefit from it. This service is within the scope of "janitor services" listed among the components of "Housing Services" in CSFRA Section 1702(h). The Respondent charged its tenants for this

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[25] This Decision should also not be viewed as rendering an opinion about whether new petitions addressing conditions in October or after might be valid.

janitor service, which makes the valet service its agent and which makes it responsible for the service decrease that occurred when its contractor/agent failed to perform.

X. Based on the record here, Respondent was notified of the waste removal deficiency in a July 2020 email. [Case 20210005, Pet. Ex. 4]. Respondent failed to provide a credible explanation for the failure of this service to perform reliably and it failed to provide credible evidence describing any efforts it made to correct the performance of its agent once it became aware of the defective service.

Y. Although the failure of the service to perform was not an overwhelming disruption, the fact that it has continued over a significant period of time and the fact that there is a specific fee associated with the service, places the resulting decrease within the scope of Section 1710(c).

Z. Petitioner living in Unit 414 is the only tenant who raised this issue in her Petition and her unit is the only unit indicated as relevant to this issue in the Pre-Hearing Summary and Order. She is entitled to a downward adjustment in her "rent" in the form of the amount of the monthly fee, beginning as of the July 2020 date of her written notice to Respondent and continuing until the fee is cancelled or until she indicates in writing that she is now satisfied with the agent's performance.

Mold Infestation in Unit 2013

AA. Petitioner proved the existence of the mold infestation he has claimed, at least as of the date of the December 1 second hearing in this case. He did not document any medical harm to himself or his family.

BB. Petitioner did not include a description of the mold infestation in the Petition he filed, and he has not documented Respondent's knowledge of the mold condition prior to the November 9 Pre-Hearing Telephone Conference held in this case. He also has not documented a complaint to Respondent with an opportunity to correct as required by CSFRA Section 1710.

CC. Due to his failure to meet the above requirements, Petitioner is not entitled to a downward rent adjustment based on this mold condition.

Overall lack of Management Response to Maintenance Issues

DD. Prompt and responsive response to service requests is a "benefit" to be expected by a tenant in a property within the jurisdiction of the CSFRA.

EE. Based on Respondent's multiple failures to provide this housing service, the Petitioners in this case are entitled to a reduction in their monthly rental payments in the amount of $40 for the period between October 1, 2019 and October 1, 2020.

FF. This Decision makes no conclusion of law regarding any subsequent service decrease due to the Respondent's subsequent failure to provide this benefit, if any.

The Birthday Party Incident and Subsequent Confrontations Experienced by the Petitioners from Unit 2013; Neighbor Dispute

GG. Use of the "lawn" area for tenant parties was a specific amenity offered to the tenants at this property.

HH. Petitioner Gaspar was effectively denied the benefit of this amenity as a result of the confrontations with management staff. These confrontations appear to be at least in part due unacceptable behavior by management staff.

II. Petitioner is entitled to a reduction in his monthly rental payments between June 2019 and February 2020 in the amount of $50.

JJ. Although Respondent did not make this argument during the hearing, the Community Policies lease Addendum language gave Respondent some discretion to change its policies. Allowing its staff to violate the property's parking rules would be within that discretion. Furthermore, there was no evidence of any harm suffered by Petitioner due to uneven enforcement. Therefore, Petitioner did not suffer a service decrease resulting from any uneven enforcement of the parking policies.

KK. The dispute with Petitioner Gaspar's neighbors about his family play activities and other activities near his unit is not subject to CSFRA jurisdiction. It is not within the scope of a housing service decrease because it arises primarily from a neighbor-to-neighbor dispute, not a service decrease dispute within the scope of CSFRA Section 1710(c).

DECISION

a. Petitioners are entitled to a downward adjustment in their monthly rent based on the housing service reductions they incurred within the terms of CSFRA Section 1700 and Section 1710(c), as detailed above for each such decrease.

b. The specific calculation of the downward adjustment for each Petitioner unit is set forth in the attached Appendix B.

c. The amount of the downward adjustment shall be applied as a credit to the monthly rent for each of the units subject to this Decision, due 30 days after this Decision becomes final.

d. As a minimum, 25% of the total downward adjustment owed each unit should be applied as a credit for each subsequent month after this Decision becomes final until the full downward adjustment has been credited. Respondent at its discretion may pay the amount of the adjustment owed at a faster rate or in a lump sum.

e. If the Petitioners in any unit subject to the downward adjustment terminate their tenancy prior to the date that the applicable downward adjustment has been fully credited to their ongoing monthly rent, any remaining credit amount shall be due and fully payable thirty days after the unit is vacated.

f. If any monthly rent due for any of the units has not been fully paid since April 1, 2020 because of any COVID-19 rent moratorium, any credit due for the downward adjustment awarded herein shall first be applied to any such unpaid rent, prior to being treated as a credit for any future rent.

Dated: December 31, 2020

Martin Eichner
Hearing Officer

APPENDIX A – EXHIBIT LISTS

HEARING OFFICER EXHIBITS - ADMITTED IN EVERY CASE:

EXHIBIT #	
1	Notice of Hearing
2	Written Order and Summary of Prehearing Telephone Conference
3	Supplemental Written Order and Summary

PETITIONER EXHIBITS ADMITTED IN SPECIFIC CASES

Case Number: __20210002 [Unit 411]

EXHIBIT #	
1	Petition
2	Written Order and Summary of Prehearing Telephone Conference
3	Supplemental Written Order and Summary
4	Statement re "cease and desist"
5	Cease and desist notice
6	Email corresp with LL re cease and desist
7	Email from Landlord re withdrawing amenities
8	Landlord's website marketing materials describing the amenities
9	Email from Landlord re ending the carpet cleaning benefit
10	Email from Landlord restricting pool usage to one household at a time
11	Email from Landlord restricting pool usage to one day per week
12	Current market rates for our rental unit
13	Maintenance requests for garbage disposal and bathroom fan
14	Maintenance request to fix hot water supply
15	Documentation of family membership cost at Bay Club
16	Documentation for cost of carpet cleaning service for a residence with 2 bdrms, etc
17	Cease and Desist Notice
18	Email response to Cease and Desist Notice

Case Number: __20210003 [Unit 412 and 2326]

EXHIBIT #	
1	Petition
2	Statement and Argument Regarding Amenities
3	Statement and Argument re Loss of Carpeting Cleaning and Pool Scheduling Issues
4	Statement and Argument re Maintenance Issues in the prior Unit 412, including faulty toilet and Loss of Hot Water
5	Table Summarizing Value of Lost Housing Services
6	Correspondence re Amenities
7	Landlord's Marketing Materials regarding the Amenities
8	Correspondence Re Ending Carpet Cleaning
9	Correspondence re Restricting Access to the Pool
10	Correspondence re Maintenance Requests re Toilet, Hot Water, etc.
11	Documentation of Value of Housing Services at Issue
12	Rent History Table
13	Correspondence from LL re Covid-19 Impact
14	Correspondence re Ending Carpet Cleaning Service
15	Correspondence re Pool Re-Opening
16	Tables of Maintenance Issues in the Unit
17	Rent Table for Whisman Station
18	Documentation of Marketing of Amenities and Aerial Map of the Community
19	Documentation of Cost for Bay Club
20	Documentation of Cost for Carpet Cleaning
21	Images from Respondent's marketing website depicting the various amenities at issue
22	Written post-hearing argument
23	Video of gate to the pool area near the office

Case Number: _20210005 [Unit 414]

EXHIBIT #	
1	Amended Petition
2	Addendum to Petition – including written statement and argument re amenities, copy of Notice to Cease, correspond re amenities including pool re-opening and use of pool
3	Addendum to Petition – including written statement and argument re individual service reduction claims and leasing office behavior
4	Email correspond between T and LL re individual service reduction issues
5	Written argument and documentation re value of amenities service reduction

6	Correspond from LL re closing amenities and exchange of correspond tween T and LL re use of amenities
7	Virtual tour and other materials re marketing amenities
8	Statement and correspond re "valet" waste service
9	Statement and correspond re paving activities
10	Community map
11	Correspond re carpet cleaning

Case Number: __20210006 [Unit 416]

Exhibit #	
1	Petition
2	Correspondence re Amenities and Pool Re-Oping
3	Rental Application Documents
4	Documentation of Comparable Rental rates at other Properties
5	Lease for Unit 416
6	Correspondence re Using the Pool and Re-Opening the Pool
7	Correspondence from LL re Covid Impact on Amenities
8	Marketing Materials re Amenities
9	City Sports Special Offer
10	Map of Community Showing Repaving Project
11	Table of Maintenance Issues in this Unit
12	Table of Comparable Rental Rates at Other Propeties
13	Floor Plan with Rental Rates
14	Argument and Statement re Loss of Amenities
15	[Amended] Petition
16	Argument and Statement re County Guidelines Not Followed, Correspondence re Use of Pool

Case Number: __20210008 [Unit 2011]

Exhibit #	
1	Amended Petition
2	Argument and Statement re Amenities and Marketing for Them/ Summary and Documentation the Value of the Lost Amenities
3	Statement and Correspondence re Hot Water, Carpet Cleaning, Leasing Office Behavior and Oth Failures to Provide Maintenance
4	Statement re "Other Issues" including Referral Bonus, Pool Booking, etc
5	Table Showing Rent History
6	Separate Exhibit Containing Correspondence re Amenities
7	Marketing Material regarding the Amenities
8	Aerial Map of the Community
9	Correspondence from Management to these Tenants Regarding Rent Adjustment
10	Correspondence re Credit for Referral
11	Correspondence re Pool Booking

Case Number: __20210009 [Unit 2013]

Exhibit #	
1	Amended Petition
2	Statement and Argument regarding Amenities
3	Statement And Argument Regarding Reduction In Maintenance And Hazardous Issues/Leasing Office Behavior/
4	Calculations For Relevant Rent Reduction Values
5	Statement re Neighbor Complaint and Leasing Office Reaction July 2020 and related Correspondence
6	Photos labelled as "Lawn Damage"
7	Statement and Photos re Mold Damage
8	Statement and Photos re Birthday Party and Parking Issues
9	Statement and Correspondence re Pool Reservations and other Covid Issues Affecting Amenities
10	Statement re Other Maintenance Issues and Valet Living
11	Exhibit "B", Marketing and Virtual Tour Materials re Amenities/Map of the Community

RESPONDENT'S EXHIBITS – ADMITTED IN EVERY CASE

EXHIBIT #	
2	LL Written Response
3	LL Exhibit List
4	Notice to Cease
5	LL Witness List
6	3-16-20 Health Officer Order
7	3-31-20 Health Officer Order
8	5-4-20 Health Officer Order
9	FAQs 5-4-Order
10	5-22-20 Health Officer Order
11	7-2-20 Health Officer Order
12	7-13-20 Mandatory Directive Pools
13	7-13-20 Mandatory Directive Gyms and Fitness
14	3-16-20 California Guidance re gatherings
15	3-19-20 Executive Order N-33-20
16	5-4-20 Executive Order N-60-20
17	9-12-20 Further California Guidance
18	10-9-20 California Guidance re outdoor gatherings
19	California Guidance re Fitness facilities, etc
20	San Jose and Alameda Covid-19 Urgency Ordinances
22	Photo of Group Exercise
23	Complaint of Group Exercise
24	Landlord Response to Tenant Petition
25	Copy of Respondent's Lease from with attached "Notice to Cease"

RESPONDENT EXHIBITS ADMITTED IN SPECIFIC CASES:

Case Number: __20210002 [Unit 411]

EXHIBIT # 1 LL written response to this petition

Case Number: __20210003 [Unit 412 and 2326]

EXHIBIT # 1 Lease documents for these units

Case Number: __20210005 [Unit 414]

EXHIBIT # 1 Lease documents for Unit 414

Case Number: __20210006 [Unit 416]

EXHIBIT # 1 Lease for Unit 416

Case Number: __20210008 [Unit 2011]

EXHIBIT # 1 Lease documents for Unit 2011

Case Number: __20210009 [Unit 2013]

EXHIBIT # 1 Lease documents for Unit 2013

APPENDIX B

Calculation of Downward Adjustment by Petitioning Unit

Petition + Unit #	Housing Service and Amount of Reduction in Rent per Month						Time Period for Reduction	Total Reduction			
	Pool Access Loss	Fitness center & Hot Tub Loss	Loss of Lawn & surrounding areas	Valet Trash Service Issues	Lack of Management Response to Maintenance Issues	Loss of Use of Grassy Rec Area			*per diem*	*pro-rated*	
20210002 [Unit 411]	$ 175.00						June 5, 2020 - September 30, 2020 (3 mo + 25 d)	$670.83	*$ 5.83*	*$ 145.83*	*25 days*
		$125.00	$ 75.00				July 2, 2020 - September 30, 2020 (2 mo + 29 d)	$587.10	*$ 6.45*	*$ 187.10*	*29 days*
					$ 40.00		October 1, 2019 through October 1, 2020 (12 mo)	$480.00			
							TOTAL REDUCTION UNIT 411:	$1,737.93			
20210003 [Unit 412 and 2326]	$ 140.00						June 5, 2020 - September 30, 2020 (3 mo + 25 d)	$536.67	*$ 4.67*	*$ 116.67*	*25 days*
		$100.00	$ 60.00				July 2, 2020 - September 30, 2020 (2 mo + 29 d)	$469.68	*$ 5.16*	*$ 149.68*	*29 days*
					$ 40.00		October 1, 2019 through October 1, 2020 (12 mo)	$480.00			
							TOTAL REDUCTION UNIT 412/2326:	$1,486.34			
20210005 [Unit 414]	$ 175.00						June 5, 2020 - September 30, 2020 (3 mo + 25 d)	$670.83	*$ 5.83*	*$ 145.83*	*25 days*
		$125.00	$ 75.00				July 2, 2020 - September 30, 2020 (2 mo + 29 d)	$587.10	*$ 6.45*	*$ 187.10*	*29 days*
					$ 40.00		October 1, 2019 through October 1, 2020 (12 mo)	$480.00			
				$ 25.00			July 2020 and ongoing (6 mo thru date of decision)	$150.00	*$25 reduction per month will continue until condition on p. 31, Sec. Z is met*		
							TOTAL REDUCTION UNIT 414:	$1,887.93			
20210006 [Unit 416]	$ 175.00						June 5, 2020 - September 30, 2020 (3 mo + 25 d)	$670.83	*$ 5.83*	*$ 145.83*	*25 days*
		$125.00	$ 75.00				July 2, 2020 - September 30, 2020 (2 mo + 29 d)	$587.10	*$ 6.45*	*$ 187.10*	*29 days*
					$ 40.00		October 1, 2019 through October 1, 2020 (12 mo)	$480.00			
							TOTAL REDUCTION UNIT 416:	$1,737.93			
20210008 [Unit 2011, then 2014]	$ 140.00						June 5, 2020 - September 30, 2020 (3 mo + 25 d)	$536.67	*$ 4.67*	*$ 116.67*	*25 days*
		$100.00	$ 60.00				July 2, 2020 - September 30, 2020 (2 mo + 29 d)	$469.68	*$ 5.16*	*$ 149.68*	*29 days*
					$ 40.00		October 1, 2019 through October 1, 2020 (12 mo)	$480.00			
							TOTAL REDUCTION UNIT 2011/2014:	$1,486.34			
20210009 [Unit 2013]	$ 175.00						June 5, 2020 - September 30, 2020 (3 mo + 25 d)	$670.83	*$ 5.83*	*$ 145.83*	*25 days*
		$125.00	$ 75.00				July 2, 2020 - September 30, 2020 (2 mo + 29 d)	$587.10	*$ 6.45*	*$ 187.10*	*29 days*
					$ 40.00		October 1, 2019 through October 1, 2020 (12 mo)	$480.00			
						$ 50.00	June 2019 through February 2020 (9 months)	$ 450.00			
							TOTAL REDUCTION UNIT 2013:	$2,187.93			