

**CITY OF MOUNTAIN VIEW**  
**HEARING OFFICER DECISION PURSUANT TO**  
**THE COMMUNITY STABILIZATION AND FAIR RENT ACT (“CSFRA”)**

<b>Rental Housing Committee Case No.:</b>	C22230019, C22230025
<b>Address and Unit(s) of Rental Property:</b>	2489 Whitney Drive [REDACTED], Mountain View, CA 94043
<b>Petitioner Tenant Name(s):</b>	Celestina Sierra
<b>Respondent Landlord Name(s):</b>	West Washington Properties, LLC
<b>Date(s) of Hearing:</b>	May 4, 2023 and December 20, 2023
<b>Place of Hearing:</b>	Online via Zoom
<b>Date Hearing Record Closed:</b>	January 31, 2024
<b>Date of Decision:</b>	March 20, 2024
<b>Date of Mailing:</b>	See attached Proof of Service.
<b>Hearing Officer:</b>	Barbara M. Anscher

**I. PROCEDURAL HISTORY**

1. On February 3, 2023, Petitioner Celestina Sierra (“Petitioner,” “Tenant,” or “Ms. Sierra”) filed with the City of Mountain View Rent Stabilization Division (the “Rent Stabilization Division”) two Petitions for a downward rent adjustment, specifically Petition A: Downward Rent Adjustment—Unlawful Rent, and Petition B: Failure to Maintain Habitable Premises or Decrease in Housing Services or Maintenance as Defined by the CSFRA (individually, “Petition A” or “Petition B,” and collectively, the “Petitions”) for 2489 Whitney Drive [REDACTED] (the “Affected Unit”).
2. On March 6, 2023, the Rent Stabilization Division served on the parties a Notice of Acceptance of Petitions A and B.
3. Also on March 6, 2023, the Rent Stabilization Division served on Respondent a Follow-up Information for Petition, with attached filed copies of Tenant Petitions A & B, Workbook A & B, and Notice of Submission and Proof of Service to Landlord of Petition, Hearing Information Sheet, Response Notice, and Authorized Representative Form.
4. On March 22, 2023, Respondent filed a Petition Response Notice with supporting documents.

5. On April 3, 2023, the Rent Stabilization Division served a Notice of Prehearing Meeting on the parties, setting a Prehearing Meeting date for April 11, 2023 at 1:00 p.m. and a tentative Hearing date of May 4, 2023 at 10:00 a.m. Attached to the Notice were a Hearing Information Sheet and Proof of Service.
6. A Prehearing Meeting was held by videoconference on April 11, 2023 at 1:00 p.m., as duly noticed.
7. A Notice of Hearing Officer Prehearing Order and Notice of Hearing were served on the parties by the Rent Stabilization Division on April 12, 2023.
8. A Hearing was held on May 4, 2023 at 10:00 a.m., as duly noticed (the "First Hearing"). The Record was closed on May 4, 2023 after the Hearing.
9. On November 9, 2023, the Rent Stabilization Division served a Notice of Reopening Record, New Assignment, and Setting New Prehearing Meeting and Hearing Dates (the "November 9th Notice"). The November 9th Notice stated that "[t]he Rent Stabilization Division's internal review process has led us to conclude that a new hearing would be in the best interest of both parties. As a result of delays and issues with the evidence, the record will be reopened and a new hearing will be held." A new Hearing Officer was also assigned. A Prehearing Meeting was set for November 30, 2023 at 10:00 a.m. and a tentative Hearing Date was set for December 20, 2023 at 10:00 a.m.
10. A Prehearing Meeting was held by videoconference on November 30, 2023, as duly noticed. At the Prehearing Meeting, the Hearing Officer explained hearing procedure and the burden of proof, answered the parties' questions, and discussed whether additional evidence would be requested.
11. On November 30, 2023, after the Prehearing Meeting, the Hearing Officer issued an Order, setting a deadline of December 11, 2023 for filing additional documents and witness lists. A Notice of Hearing Officer Prehearing Order and Notice of Hearing were served on the parties by the Rent Stabilization Division on November 30, 2023.
12. On December 6, 2023, the Hearing Officer inspected the common areas of the Property accompanied by James Olson, Building Inspector with the City of Mountain View Fire Department.
12. On December 7, 2023, the Hearing Officer issued an additional Prehearing Order, which was served on the parties by the Rent Stabilization Division on December 7, 2023.
13. The Hearing was held on December 20, 2023, as duly noticed (the "Second Hearing"). (The First Hearing and Second Hearing are referred to collectively as the "Hearings.")
14. On December 21, 2023, the Hearing Officer issued a Post-Hearing Order requesting further evidence from the parties on or before January 22, 2024, and giving the parties an opportunity to respond to the evidence on or before January 29, 2024. The Rent Stabilization

Division served a Notice of Hearing Officer Post-Hearing Order on all parties on December 21, 2023.

15. On January 9, 2024, the Hearing Officer issued an Additional Post-Hearing Order requesting additional evidence from Respondent on or before January 22, 2024. The Rent Stabilization Division served a Notice of Hearing Officer Additional Post-Hearing Order on all parties on January 9, 2024.
16. On January 29, 2024, the Hearing Officer issued a Second Additional Post-Hearing Order requesting a correctly completed and signed Authorized Representative Form from Respondent on or before February 5, 2024. The Rent Stabilization Division served a Notice of Hearing Officer Second Additional Post-Hearing Order on all parties on January 30, 2024.
17. The Hearing Officer issued a Post-Hearing Order re Closing the Record on January 31, 2024. A Notice of Hearing Officer Post-Hearing Order Regarding Closing the Record was served on the parties by the Rent Stabilization Division on February 14, 2024.
18. The Record was closed on January 31, 2024.

## **II. HEARING ATTENDANCE**

### First Hearing

Petitioner Celestina Sierra

Mark Katz and Teri Henson (collectively, "Property Manager" and individually, "Mr. Katz" and "Ms. Henson") of CM Property Management, Inc. ("CM Property Management"), on behalf of Respondent West Washington Properties, LLC. ("Respondent "or "Landlord")

### Second Hearing

Petitioner Celestina Sierra

Mark Katz and Teri Henson of CM Property Management, Inc., on behalf of Respondent West Washington Properties, LLC.

██████████, Maintenance Manager for Respondent, appeared as a witness.

██████████, on-site property manager for Respondent, appeared as a witness.

Patricia Black and Joann Pham attended the Hearings on behalf of the Mountain View Rent Stabilization Division.

## **III. WITNESSES**

The following persons, duly sworn, testified at the First Hearing and presented the following testimony:

Celestina Sierra

Ms. Sierra testified that she lives in the Affected Unit with her mother and her son, who have been there since she moved in. She said that the property manager knew that they were living there when she moved in, and she does not know why they are not on the lease.

Ms. Sierra testified that the Landlord increased the rent by \$350.00 in 2016. In October 2015, the rent was \$1465.00, and on July 1, 2016, it went up to \$1850.00. She let the property manager know in October 2015 about the base rent being \$1,465.00, but they kept charging her the higher rent. A rent increase notice was sent on March 24, 2016. She received a notice dated April 19, 2017 that the base rent was \$1,600.00 and that it had been \$1,600.00 on October 19, 2015.

Ms. Sierra also testified that the water bill keeps going up even though the pool and the laundry room were not functioning. She pays utilities bills through Multi-Family Utility Company every month; there are no separate meters, and the utilities are calculated by the number of people in the rental unit.

Ms. Sierra stated that since there has been no resident manager in the apartments, they are lacking services. There are no extra keys if a tenant gets locked out, emergency repairs take until the next day because tenants have to call the office. To get things fixed, tenants have to send emails. She is not talking about inside her rental unit, but the common areas. Ms. Sierra said that there has been no on-site resident manager since 2020. She stated that she was never formally told that [REDACTED] is the on-site manager; she has known [REDACTED] since 2010 and was never told by her that she is the on-site manager.

She said that the parking lot is dark at night, there is trash, the laundry rooms aren't all working, and in the walkway in the hallways, the lights, which are on a timer, do not go on until nine or ten p.m. Ms. Sierra stated that she had reported the condition of the parking lot by email in 2022, but the problem has not been resolved.

Ms. Sierra testified that the laundry room was vandalized around June 3, 2022, and some of the washers and dryers are still not working. There were three laundry rooms, and two still are not functioning. When she moved in, there were six washers and six dryers, but only two washers and two dryers are working now. The machines in her building are working.

Ms. Sierra stated that she had always used the pool during the summer. Now the swimming pool is dirty and it has ducks in it, which come every year. It was in good condition when she moved in. Respondent sent Tenants a notice around September 2022 that they were going to remove the pool. They had stopped maintaining it in 2019, and there were ducks in the pool. Also, during Covid, Tenants could not use the pool.

With respect to trash, Ms. Sierra testified that the lease says that Tenants may not put big items in the trash. The neighbors dump large items everywhere. The Tenants are supposed to have large trash hauled themselves. She also said that some of her neighbors go into the dumpsters

to collect bottles. Ms. Sierra said that Respondent has had the extra trash collected probably three times. She recalls extra pickups twice last year and once this year. Sometimes the dumpsters are full, and she had not been able to dispose of household trash. The dumpster is emptied once a week.

Ms. Sierra testified that there has been a problem of smoking in the rental units since 2019. At that time, her downstairs neighbor was smoking inside his rental unit. Since 2021, there have been additional neighbors smoking in their rental units. The smoke comes in through the door, the windows, the bathroom, and the kitchen sink. There are signs posted prohibiting smoking. As a result of second-hand smoke entering her rental unit, she has had shortness of breath, and one time she fainted.

Ms. Sierra stated that property management does not believe her about the smoking problem. They come from San Jose and by the time they get to the Property, they cannot smell anything. The rental units that have been troublesome are [REDACTED] [REDACTED] and [REDACTED]

The Fire Department came and gave notice about no smoking on the Property, and they caught the Tenant in Unit [REDACTED] smoking inside three times. A firefighter came on August 21, 2022, and the next day, Ms. Sierra received a three-day notice to pay rent or quit. It was just after she had [REDACTED] Before she had the [REDACTED] she told management that Community Services Agency would be helping to pay rent. She gave management the papers to fill out in order to get payment, but they did not do it, so payment was delayed. She believes the three-day notice was in retaliation for her complaint about smoking. She was in the hospital at the time. Ms. Sierra stated that there is still smoking every day.

Ms. Sierra testified that recently there was a fire in a rental unit, and no smoke alarm went off. She did not know what caused the fire, but she believes the Tenants remove their smoke detectors so they can smoke.

#### Mark Katz and Terri Henson

Mr. Katz testified that regarding utilities, the RUBS system of billing was imposed during a time CM Property Management was not managing the Property. Ms. Henson said there is one master meter, and the calculation of RUBS charges are based on the number of tenants, the number of rental units, and the number of bedrooms. It is the standard in the industry. Water bills are going up for everyone. Mr. Katz said that Petitioner is paying less than she should because two other people living in the rental unit are not listed on the lease. He also said that she is paying less than others in comparable units who moved in around the same time she did.

Mr. Katz stated that CM Property Management has been managing the Property since 2014, except that in 2020 through 2021, Vasona took over management.

Mr. Katz stated that \$1465.00 was the correct rent for the Affected Unit in 2018. There is an adjustment of \$1534.50 in the rent ledger which corrects the balance.

Mr. Katz testified that the fire that Ms. Sierra mentioned was in a vacant rental unit in which pipes were being sweated and that there was some smoke but no fire.

Mr. Katz stated that the Property is not legally required to have an on-site property manager because there are no more than 15 rental units in each building. There is a property manager, [REDACTED], who lives in [REDACTED], and she has been there for several years. There had been another person who acted as on-site manager who lived in [REDACTED], but she moved out around January 31, 2020. With regards to providing keys if someone is locked out, management does not provide lockout service and has never provided it. The lease says tenants are responsible for lock-outs. Ms. Henson stated that she always tells Tenants to go to [REDACTED] for help, especially with smoking issues. She said that it is common knowledge that [REDACTED] is the on-site manager.

With respect to the lights in the parking lot, there are vagrants who come onto the Property and take out the bulbs. The owner's maintenance person at the Property comes once or twice a week, and the bulbs are replaced. The owner employs most of the maintenance people. The Tenants tell Mr. Katz or Ms. Henson, and they tell [REDACTED], the owner's maintenance coordinator, who sends out maintenance people. Sometimes the property manager uses an outside vendor if the owner's maintenance people are not available. Maintenance gets done about 50 percent of the time by the owner's maintenance people and 50 percent by someone the property managers hire.

Ms. Henson testified that the lights on the stairwells are on a timer which turns them on at sundown and off at sunup. The lights are supposed to be on all night and are adjusted twice a year for daylight saving time.

Mr. Katz stated that there were three laundry rooms on the property, but they were vandalized, so they had to shut them down. The laundry room in Ms. Sierra's building has been reopened using a phone-app based payment method, and it has two washers and two dryers. They are in the process of getting phone-app based machines for the other laundry rooms. Any Tenant can use any laundry room in any building.

Ms. Henson stated that if a dryer stops working, she is notified by [REDACTED], and then she makes calls to get it fixed. She said that 2491 Whitney and 2485 Whitney have one washer and dryer that work. There had been two washers and dryers in 2491 Whitney in the past. Mr. Katz said there had also been two washers and dryers in 2489 Whitney and one in 2485 Whitney. He said that currently four washers and four dryers out of five are working. He said that the vandalism started in 2021, that the owner decided to switch to phone-app based machines six or seven months ago, and that they had the laundry rooms closed for about one month in the late fall of 2022.

Mr. Katz testified that the pool is open and chemically sound. He said that there is monthly pool service but later stated that there is weekly pool service. He said that there were ducks in the pool which they are not allowed to capture or kill, according to vector control, animal control,

and the City of Mountain View. He said it is expensive to maintain a pool with ducks; they spent thousands of dollars trying to maintain the pool with the ducks there. He testified that there was a period in 2022 when the pool could not be used, but it is now open since the ducks left last year. Last year, the owner looked at other uses for the pool area, but that was not acted on.

Mr. Katz testified that the trash is an ongoing issue. There are two bin areas for trash, and one of them is at an open access point, so people can drive in from outside and dump trash. Also, tenants when they move out dump trash. The bulk trash pick-up is weekly, and the property manager sends someone else to pick up trash once a month, although Ms. Henson said once a quarter. He said that the owner is housing formerly unhoused tenants, and as a result there are always five or six shopping carts on the property. There was a different clientele three to five years ago; the trash comes with the clientele. They are aware that it is a problem, and they have posted letters on the rental units saying that bulk trash should go to the dump.

Mr. Katz said that a couple of the biggest hoarders have moved out. Ms. Henson said that if a dumpster is overfull, [REDACTED] will take a picture of it, and she will deal with it. She is constantly working on the trash issue, but some things are out of her control.

With respect to smoking, Mr. Katz said that Ms. Sierra constantly complains about rental unit [REDACTED], but that the tenant in that unit does not smoke inside the unit. The property is smoke-free. The problem started when they brought in previously unhoused people.

Ms. Henson said that she has never seen anyone smoking on the property. She inspected rental unit [REDACTED] twice, and there was no smell of cigarettes. The City conducts quarterly inspections, and they have been inside the unit with firefighters, and there is no smell of smoke. Ms. Henson did admit that there could be times when people are smoking on the property, but she cannot control that. She has never caught anyone smoking on the property, and she does not find cigarette butts on the property. Mr. Katz said that of the three units that Ms. Sierra mentions as having smokers, one tenant left and one has a new tenant.

Mr. Katz said that if a tenant says that someone is smoking inside their unit, he goes there to check. He said that the tenant in unit [REDACTED] feels harassed. Ms. Henson said if she gets a complaint, she posts a notice of a lease violation. Mr. Katz said that they can post a three-day notice, and then the tenant says they stopped smoking, and then they do it again. Smoking is grounds to post a notice to cease, but not to evict; it is difficult to evict someone for smoking because it is difficult to have proof.

With respect to the three-day notice to pay or quit that was served on Ms. Sierra, they received a message that someone would be paying for her, but if it gets to the 20<sup>th</sup> of the month, even if an outside agency is paying, they post a three-day notice. There was no retaliation involved.

Mr. Katz also raised the issue that there are two people living with Ms. Sierra who are not on the Lease.

The following persons, duly sworn, testified at the Second Hearing and presented the following testimony:

Celestina Sierra

Ms. Sierra testified that she moved into the Affected Unit around August 1, 2010. The rent at that time was around \$1,100.00 per month. By around June 1, 2016, the rent was \$1,465.00. While the rent ledger posts the rent as \$1,600.00 per month from May of 2017 through March of 2018, she was paying \$1,465.00. The Landlord said that her rent was supposed to be \$1,600.00. She asked them about the increase to that amount, and they never responded, but they did not charge her \$1,600.00, only \$1,465.00. She was given a “rent control refund” of \$1,000.00, but she does not know how that amount was calculated. In 2015, Ms. Sierra sent emails to the property management saying that she had received notice that the rent would be increased from \$1,600.00 to \$1,850.00 and that her rent had never been \$1,600.00 but instead was \$1,465.00. On May 1, 2017, the rent was increased to \$1,850.00 per month. On October 1, 2021, the rent was \$1,655.00 and a month later was \$1,650.00. She believes the difference was due to her being charged for renter’s insurance, but she is not certain.

When Ms. Sierra signed a lease for the Affected Unit in 2010, she was only required to pay for electricity and no other utilities. She thinks that the Landlord started charging her for all utilities in 2014. She is behind on her payment of utilities bills because she was sick last year and fell behind in payments, and she could not get any help to pay her bills. She is up to date with her rent.

Ms. Sierra said that she received a three-day notice for non-payment of rent on August 22, 2022. She had [REDACTED] on August 16, 2022, and she let the management know prior to the [REDACTED] that she would be getting help with rent payment through Community Services Agency. Management was required to fill out paperwork in order to get paid, but they did not do it on time, so her payment was delayed. She received the three-day notice the day after the firefighters caught her neighbor smoking in her apartment, on August 21, 2022. After that the rent was paid, and the Landlord did not try to evict her.

Ms. Sierra is currently paying \$1,650.00 in monthly rent. She received a notice of rent increase, but is not paying the higher amount pending the outcome of the Petition.

During Covid, sometime in 2020, a lot of tenants left the property because they could not pay their rent, so the Landlord starting bringing new tenants. Prior to the new tenants moving in, there were problems with smoking, but there were no security issues. The smoking problem started in 2019.

When Ms. Sierra moved in, there was an on-site property manager who lived in [REDACTED]. He would clean the pool, pick up trash, take care of recycling, make repairs right away, and let tenants in if they were locked out. If he could not fix something, he would call in an outside company to fix it. Also, everything was always working in the laundry room. Things



started to change in 2014 when the new property management company took over. There was another on-site manager in 2014, but not like the prior on-site manager.

When CM Property Management took over in 2014, tenants had to send their checks to a different location, whereas before they had given the payments to the prior on-site manager. There had been a property management office on site then. Also, tenants had to call CM Property Management for repairs, and things took longer to get done. She said a toilet was leaking in the bathroom of the Affected Unit in 2018, and she sent an email to the property manager, [REDACTED]. She ended up paying out of pocket to get the leak repaired because it was an emergency, and she never received a refund. She said she did not know how management deals with emergency repairs.

When CM Property Management took over, a tenant who was already living on the property became the on-site manager. There is a different person there now. Ms. Sierra does not know what the former on-site property manager did on the property. She thinks that outside parties dealt with the pool and all repairs. According to CM Property Management, [REDACTED] is now the on-site property manager. The tenants were never formally told that [REDACTED] is the on-site manager. Ms. Sierra believes that [REDACTED] is supposed to take care of the trash and the laundry room. Ms. Sierra said the [REDACTED] is never available and that most of the time she is not on the property.

Ms. Sierra testified that the smoking problem is still ongoing. There are cigarette butts all over the property, and she can smell smoke at night coming into her rental unit. She received a notice of the Hearing Officer's inspection of the property and saw pictures of cigarette butts in the inspection report. There are "no smoking" signs everywhere, but people are still smoking. She asks [REDACTED] to come and check when the smoking is occurring, and she is never available. She believes that having a full-time resident manager would help the situation.

Ms. Sierra sent an email to Mr. Katz on August 21, 2022 saying that he did not believe her that her next-door neighbor was smoking in his rental unit. She thinks he does not believe her because he told her that she was lying and that he could not prove that the tenant was smoking. When she calls property management about her neighbor smoking, they have to drive from San Jose to the property and by then, they cannot smell anything. [REDACTED] tried to mediate with the neighbor, but he was aggressive towards her, so she stopped doing it. That is when Ms. Sierra called the fire department. They came out on August 21, 2022, and caught the neighbor in unit [REDACTED] smoking. The tenant in [REDACTED] was also smoking, but has been gone since May 2023, and the one in [REDACTED] left on July 13, 2023. The new tenant in [REDACTED] is now smoking, and she called the firefighters on June 6, 2023, and they caught him smoking. Ms. Sierra said that the tenant in [REDACTED] is not smoking inside his rental unit, but she could smell smoking from the parking lot and through her door. Ms. Sierra has kept a log of the times when the various neighbors were smoking, which she submitted into evidence.

There had also been a smoking problem with the tenant in unit [REDACTED] which is below the Affected Unit, during 2019. She believes her next-door neighbors who were smoking moved in in 2021 and 2022. The tenant in unit [REDACTED] moved out in 2021 or 2022. In an email that Ms. Sierra submitted, the property manager [REDACTED] told her that management was going to get her apartment tested for smoke, but that never happened.

There was a meeting on August 12, 2022 with [REDACTED] and a number of tenants about smoking and other problems on the property. After the meeting, [REDACTED] sent Mr. Katz an email, which was copied to the tenants who had been present, about the meeting. Ms. Sierra never received a response from Mr. Katz.

The fire department gave Ms. Sierra's neighbors a notice about the new Mountain View no smoking ordinance.

Ms. Sierra testified that in the past, she always used the laundry room in her building. Management posted a notice on the door on June 3, 2022 that due to vandalism, the laundry room was closed. The laundry room had a lock on it that only tenants could open, but sometimes people would leave the door open when they did laundry. The laundry room was reopened on September 22, 2022. During the time that the laundry room in her building was closed, there were no other laundry rooms open. She said that one of the laundry rooms was reopened on September 22, 2022 and two were reopened on April 17, 2023. Ms. Sierra said that she does not do laundry at the property anymore because the laundry rooms smell bad.

Ms. Sierra testified that since she moved into the Affected Unit, her son used to swim in the pool recreationally every summer, from May through September. He swam on the weekends. Ms. Sierra said that they stopped using the pool on July 1, 2018 because the pool was dirty, and there were ducks swimming in it. She does not recall talking to management about the problem. The neighbors started using the pool again in July 2023.

Ms. Sierra discussed some of the photos she had submitted from 2022 of bulky trash on the property, of her neighbor's car vandalized, of remnants of someone's fireworks in the parking lot, of nonresidents dumping trash, of cigarette butts, of broken doors and windows, of the dark parking lot with very few functioning lights, of the pool with leaves and dirt in it, of the pool with a duck in it, of rat droppings on the bottom of her outside stairs, of a storage locker broken into, of bulk trash being picked up after an inspection, and of a dumpster moved to behind her car in the parking lot. From 2023, she showed a picture of the interior of the washing machine in 2491 Whitney with stains in it. She said that she did not follow up and take photos several days after taking the original photos.

Ms. Sierra testified that in 2020, she sent a picture to the previous management, Vasona, of a dead rat under her stairs. Ms. Sierra testified that someone left a box of fruit on her stairs which she believes attracts rats. There were rat droppings on the property, but the current management has brought in pest control, and the issue was resolved in December 2022.

Ms. Sierra testified that the parking lot is dark at night time because the lights are broken and one of them is missing. She notified Mr. Katz by email in July 2022, but the lights are still not working properly. She presented photos of the dark parking lot.

Ms. Sierra testified that the lock to the exterior door of her rental unit was broken by a neighbor. She said she caught the incident on video, but the perpetrator's face is not visible. Nothing was stolen because a door mat kept the perpetrator from being able to open the door. Property management repaired the lock about 12 days after she called them. She did not have a dead bolt inside her door, so she put a sofa in front of it to keep people from coming in. She has subsequently installed a dead bolt on the door.

Property management repaired a wall outlet that was required to be updated to a three-prong outlet pursuant to an inspection report. She sent an email to Mr. Katz on September 1, 2022, and they repaired it on October 7, 2022.

Ms. Sierra testified that the water heater was leaking next to the laundry room. She informed them on September 22, 2022, and it was repaired on October 9, 2022.

Ms. Sierra testified that she was informed by management that there was water leaking from the Affected Unit bathroom into the parking lot. It was repaired within a month.

Ms. Sierra testified that there are holes in the wooden ceiling inside the Affected Unit. Ms. Henson looked at them, and the holes are still there and getting bigger. There has been no water damage or leaks as a result of the holes, nor have any animals come in through the holes.

Ms. Sierra testified that because her neighbor's car was vandalized, she stopped using her regular parking space, and she now parks her car in the parking lot where her camera can film it from the Affected Unit. She said that one car on the property was stolen and three were vandalized. She notified management in an email that her car alarm was triggered by a rock that was thrown at her car. She said that the light right next to her car in the parking lot is not working.

Ms. Sierra testified that she was followed by a neighbor who was scaring her. She sent an email on November 14, 2022 to management about it. The tenant subsequently moved out; however, he keeps returning to the property. She said that she has not encountered any other threatening behaviors by other tenants because she works at nighttime and is sleeping during the day, so she does not come into contact with the neighbors. However, there was a recent text message from Ms. Henson on November 27, 2023 telling Ms. Sierra to call the police because a former resident who is not allowed on the property had returned and was outside screaming at 7:00 a.m.

She said that the biggest problems that have not been resolved are the trash, the lights in the parking lot and outside, and smoking.

Mark Katz, Teri Henson

Mr. Katz testified that the property has been owned by the same entity since prior to 2014. CM Property Management started managing the property in October 2014. From September 2020 until October 2021, another property manager, Vasona, managed the property.

The property consists of four buildings on four separate parcels. Two buildings—2483 Whitney and 2485 Whitney--have five rental units each; and two buildings—2489 Whitney and 2491 Whitney--have 15 units each. At the time of the Hearing, all of the rental units were occupied. The Affected Unit is a one-bedroom unit.

While he was not in charge of the property at the time, it is Mr. Katz's understanding that after the CSFRA was passed, some tenants at the property complained about rent increases. There was mediation through the Rent Stabilization Program at that time, and the Rent Stabilization Program calculated the amount of Ms. Sierra's rent reduction as well as those of the other tenants.

Mr. Katz stated that the Affected Unit was switched from the tenants paying only electricity to paying all utilities under a RUBS system prior to October of 2014, but he does not know exactly when. While those tenants who are on subsidies do not pay for utilities, the remaining tenants do not incur higher RUBS charges. Utilities bills have increased for everyone due to rate increases by the utility companies. Ms. Henson said the RUBS invoices are determined by the number of units, the square footage of each unit, and the number of bedrooms. All of the rental units at the property are included in the calculation. Respondent is billed for the water usage of the tenants who are not paying their utilities, and Respondent pays for that usage. Respondent has not been able to locate any documents that were sent to tenants when the RUBS system was initiated.

Ms. Henson said that she has been working for CM Property Management since August 2022. Her job responsibilities are to oversee the property: collecting rents, serving notices, posting rents, making sure the property is well-maintained, scheduling maintenance if there is a request, doing inspections, showing available units, marketing rental units, screening tenants, dealing with the owner, responding to tenant complaints, i.e., all the basic property manager responsibilities. She said that [REDACTED] is "her eyes and her ears" at the property, and that she works about six to 10 hours a week. Ms. Henson said that she is at the property between one and three or four days a week. CM Property Management is located in San Jose.

Ms. Henson said that [REDACTED] locks the laundry room at night and unlocks it in the morning. She sweeps the laundry room and wipes everything down once a week. She collects rent from some people, although most rent is paid online. While [REDACTED] has another job, it is not full time, and she is on the property a lot. She knows many tenants who would say [REDACTED] is available. She is in constant communication with [REDACTED]. A lot of people are working together to make sure that the community is a comfortable place to live.

Ms. Henson testified that she always tells people who send in maintenance requests or who have locked themselves out that [REDACTED] is the on-site manager. She sent out a letter this year to remind the tenants that [REDACTED] is the on-site manager. When Ms. Henson started working at CM Property Management, it was common knowledge that [REDACTED] is the on-site manager, but she sent the letter as a courtesy reminder. They have posted signs on the property indicating that [REDACTED] is the on-site manager. They have also posted signs with CM Property Management's contact information, which was requested by the police department. She reiterated that she can send out notices, but she cannot control other people's behavior.

Mr. Katz stated that [REDACTED] has been the on-site manager since March 2022. He also said that legally they are not required to have an on-site manager on the property. After the last on-site manager left, they decided after careful thought that it would be better to have someone on-site.

Regarding the fact that a three-day notice was served on the Affected Unit on August 26, 2022 for not having a three-pronged plug, Ms. Henson said that after a Multi-Family Housing inspection, the three-day notice was served so that Ms. Sierra would remove extension cords that were listed as a violation in the inspection report. Mr. Katz said that every rental unit that was flagged in the inspection report was served a three-day notice. Ms. Henson said that they served the three-day notice because sometimes it is difficult to get tenants to schedule maintenance. In the last year and a half, they have had a difficult time scheduling maintenance with Ms. Sierra because she has been sick. The three-pronged outlet was replaced by management. Mr. Katz said the three-day notice was not retaliatory.

With respect to the three-day notice on August 22, 2022, Mr. Katz said they sent out the notice so that Ms. Sierra would know that her rent is due. They did not begin the eviction process. They do not like to evict tenants because it is expensive and time-consuming. Mr. Katz said that Ms. Sierra submitted paperwork after the notice was sent for them to be paid by an outside agency, and in September, her back rent was paid by the agency.

Ms. Henson said that the three-day notice was required for the rental assistance subsidy and that all agencies and non-profits that give rental assistance require three-day notices. Mr. Katz said that they could not do evictions during Covid and that they started doing them again around April 2022, but there was a backlog in the courts and in the sheriff's department. Evictions became easier around January 2023.

Mr. Katz testified that in the past, Ms. Sierra said that people were smoking inside their rental units, but now she says that people are smoking outside. It is a non-smoking property. Ms. Henson said that nonresidents are walking through the parking lot and smoking, and she cannot control that. She also said that the new tenant in [REDACTED] does not smoke. When she rented to that tenant, she made sure that on the application it said that that tenant does not smoke. She asks

all new tenants moving into the same building as the Affected Unit whether they smoke and will not rent to someone who smokes.

Ms. Henson said that management does all it can to enforce the smoking ordinance. “No smoking” signs are posted. If she knows of a tenant who is smoking or whose guests are smoking, she serves them with a lease violation. Gardeners come every week and they pick up cigarette butts. Management cannot control people’s behavior, especially those who come from outside the property.

With respect to the Fire Department report from August 22, 2022 regarding smoking and the request for a response as to property management’s plan to address it, Mr. Katz said he believes they met with Jim Olson from the fire department and someone from the City and there were phone conversations and meetings that followed. He did not recall sending any written response, but assumes the issue was taken care of. The plan was to give three-day notices, which they did, and to do evictions, which they did. They also sent out notices about the prohibition of smoking on the property. Subsequently, Mr. Katz located an email to the fire department dated August 22, 2022.

With respect to the email sent to him by [REDACTED] about her meeting with tenants on August 21, 2022, Mr. Katz said that a number of the tenants discussed in the email are no longer living on the property. He said that this happened a year and a half ago, and one should look at what they have done to improve the conditions at the property since then. Ms. Henson said that this is an example of [REDACTED] doing her job. Mr. Katz said that they worked to rectify the issues that were raised in the memo. He said that they had conversations and began a process of dealing with the issues, but he could not give detailed information about exactly how they were addressed around the time that the email was sent to him.

Ms. Henson said that typically the process would be to serve lease violations to tenants and to talk to the offenders about not smoking on the property. They posted more notices about the prohibition on smoking on the property. She said that most of the offending tenants had been removed from the property. These issues can take months to solve, and they have done everything they could to resolve them. Ms. Henson said that providing documentary evidence of steps that were taken to resolve these issues “does not feel like the most effective use of my time,” since it was a year and a half ago and these problems do not exist anymore. Mr. Katz said that within a week after receiving the email from [REDACTED], he sent [REDACTED] an email telling her to post notices about the smoking prohibition on the property.

Ms. Henson said that she served lease violations to the tenant in unit [REDACTED] for smoking, and that the tenant denied it. She continued to get complaints, so she served another lease violation on August 22, 2022. She said that she then inspected his unit and did not smell any evidence of cigarette smoke. If someone is smoking regularly in their rental unit, the smell of smoke lingers. She inspected the rental unit within 24 hours. She said that she had seen the tenant in [REDACTED] smoking out on the sidewalk in front of the property, but not on the property. Mr. Katz said he

did not see any reports from the fire department about the tenant in that unit smoking and that he inspected the unit and did not smell or see any evidence of smoking. Mr. Katz said that the notices of lease violation and the inspections occurred in August 2022. The lease violations were not served in response to any report by the fire department, but in response to the complaints from Ms. Sierra. The tenant felt that Ms. Sierra was harassing him. He moved out in August 2023.

Mr. Katz said that if a three-day notice to perform or quit is served on a tenant, if the tenant stops smoking within three days, there is not much that they can do. If they start smoking again after that, they have to post another three-day notice. They served another notice on May 26, 2023, and the tenant moved out in August 2023. Ms. Henson said they probably sent the notice because Ms. Sierra was complaining again. Mr. Katz said someone had complained and they followed up with a three-day notice. They never tested rental unit [REDACTED] for cigarette or marijuana smoke. Ms. Henson said that she did try to move the tenant in that unit to a different rental unit, but that did not occur. They have also never tested the Affected Unit for evidence of cigarette or marijuana smoke.

With respect to the fire department report from June 6, 2023, since they did not see any rental unit number listed in the narrative portion of the report, Mr. Katz and Ms. Henson said it could be for either unit [REDACTED] or unit [REDACTED]. Ms. Henson said that Ms. Sierra complained only once about the new tenant in unit [REDACTED], and Ms. Henson served a lease violation on him, and she has not heard anything since. She said that she spoke to the tenant and his case manager and felt comfortable that he was not smoking.

With respect to Unit [REDACTED], Mr. Katz said he had never been there. He said that a three-day notice had been sent on May 21, 2020 instructing the tenant to cease smoking in his rental unit and on the property. Mr. Katz and Ms. Henson said that they did not deal with that rental unit at the time, and they have no idea whether it was ever tested for smoke.

Mr. Katz testified that there is nothing management can do about ducks in the pool. He said that the ducks were a big issue for several years. Management spoke to vector control and to the City of Mountain View—he does not recall which department—and was told that they could not capture, relocate or kill ducks which are in the swimming pool. Duck droppings create algae and fungus in the pool, and it takes a lot of time and effort to get it out. They put blow-up toys in the pool to try to get the ducks to leave. Also, there has always been pool service. Mr. Katz stated that the pool was unusable due to the ducks in 2018 for several months and in 2022 for several months.

Ms. Henson said that they had pool service during the time that the ducks were in the pool, and they were maintaining the pool as best they could. Ms. Henson said that prior to the current pool service that comes twice a week, they had a service that came once a week. They were billed monthly for that. She said that the pool was closed briefly because the City required that

they repair the mechanism on the pool gate that makes it close automatically. The pool was closed for a week or two for that issue.

Ms. Henson said that there would be times when there would be leaves in the pool; it just takes one windy day for them to accumulate.

With respect to the leak that Ms. Sierra said was coming from the water heater in the laundry room, it was actually coming from the pool equipment room, not the laundry room, and it has been repaired. It had nothing to do with the water heater.

Mr. Katz said that Ms. Henson is in regular contact with the Mountain View police department and meets with them regularly at the property. The police are driving by the property more frequently in order to keep crime down. Ms. Henson and [REDACTED] have also worked closely with Jim Olson from the fire department, and he has signed off on the property.

Mr. Katz testified that the owner of the property “has a heart for people that are down on their luck and have issues, and he has opened up his property generously to people that are unhoused, to people on subsidies, to people that have a past that might be questionable, and unfortunately, some of the neighbors who live around our property were not happy with that, some of the tenants in our property are not happy with having people living next to them who might have been homeless beforehand.” He said that the owner has been very generous in allowing this segment of the population to come onto the property. He stated that that segment of the population sometimes brings problems with it. Every time he is at the property, he takes three to five shopping carts off the property so that they can be picked up by the service that collects them. The tenant who was aggressive was relocated to a facility that is more appropriate to address his mental health issues.

Mr. Katz said that initially they were renting to tenants whose rent would be paid for a certain number of months by various agencies or non-profits and then the tenants were expected to start paying the rent themselves. They were supported by a number of different programs. Those tenants were never able to pay the rent on their own. They no longer rent to people with more severe mental health or behavioral issues and only accept people who have permanent supportive housing subsidies. All except one of the tenants who had issues are gone, and the property has been more stable for the past eight to ten months. There were issues at the property, but seeing photos from Ms. Sierra at a single point in time does not show any of the follow up work that was done to improve things at the property. He said that a garbage dumpster would be full if it has not been picked up for three days, but it would most likely be picked up that day or the next day. Ms. Henson said that they are no longer taking tenants from rapid rehousing programs but from other programs that provide subsidies. Mr. Katz estimated that at least 10 rental units were rented to rapid rehousing tenants. All of the former rapid rehousing tenants have vacated the property. Currently 50 percent of the property consists of subsidized rental units.



Ms. Henson said that the dumping of trash on the property is an issue that she deals with on a daily basis. If [REDACTED] sees bulk trash dumped on the property, she will send a picture to Ms. Henson, and Ms. Henson will contact their trash haulers to pick it up. They spend thousands of dollars each year hauling bulky trash that was dumped on the property. She is constantly calling the grocery shopping cart hotline for them to pick up shopping carts. She says they are working to make sure that the property is clean and that there are no trespassers.

The dumpsters on the property are emptied twice a week by the City. The City will not pick up the dumpsters if they cannot close because there is too much trash, so they often have to get someone to take trash out of the dumpster and haul it away. They use several different services for hauling trash. Ms. Henson estimated that they have bulky trash hauled from the property one to three times a month. Mr. Katz feels that the trash situation has gotten a lot better; Ms. Henson said that despite their efforts, tenants as well as nonresidents still leave trash on the property. She said that she does not think the situation has improved.

Ms. Henson said that usually [REDACTED] will send them a photo of trash that needs to be picked up. If it is a smaller load, it usually gets picked up the next day. If it is a larger load that takes more scheduling time, it could take two to three days to get picked up. If something gets dumped over the weekend, [REDACTED] might not get notice of it until Monday, which delays the process of removing it. They have had discussions of whether there is a solution to the trash problem, and they do not see that there is one.

Mr. Katz said that he thinks the location of the property is conducive to people coming from outside to dump their trash. Their driveway faces onto a Google facility, not a residential area, so no one in the neighboring area notices the dumping.

Mr. Katz said that one tenant is a hoarder. Ms. Henson is working with the Multi-Family Housing inspector and with his County social worker, and she has served several lease violations. There is a final inspection scheduled for January 2024. Ms. Henson said that it is challenging to deal with people who have issues.

Ms. Henson stated that she does not believe having locked gates at the property would help. She said they break constantly and people vandalize them. They have thought about getting a security patrol, but that would not be effective because people figure out when the patrol will be there. They have not looked into having a regular bulk trash pick-up, but they do not want to do that because they think that will encourage people to dump more than they are now, and there would still be trash dumped between pick-up dates. Ms. Henson said that they are trying to manage the problem as best they can with great effort and expense and are always open to suggestions.

Mr. Katz said that the theft from coin-operated laundry machines, theft to mailboxes, and car break-ins have become a major issue at the properties that they manage. Mr. Katz said that the laundry rooms have never been closed to the tenants. Initially there were four washers and four dryers that were in 2489 Whitney, 2485 Whitney, and 2491 Whitney. Tenants could use the

machines in any building. There was never a time when all the machines were out of service. Ms. Henson said it was possible that the laundry room in 2489 Whitney was closed when they were switching from coin-operated to app-operated machines. According to an invoice presented by property managers, the work of switching over was done on September 8, 2022. Invoices for the laundry room appliances were paid by the owner and sent directly to their office. Ms. Henson and Mr. Katz did not recall the laundry rooms being closed due to vandalism; however, they acknowledged that a notice had been sent out to tenants in all of the buildings that all of the laundry rooms would be closed as of June 3, 2022 due to vandalism. Mr. Katz said that a notice was sent out to the tenants about how to use the new app-based machines on September 28, 2022.

Mr. Katz said that there are no security cameras on the property due to legal issues. Tenants may have cameras only that capture the area of their front door and their parking space.

With respect to the parking lot lights, Ms. Henson said that people breaking lights in parking lots is a problem everywhere. She said that all they can do is keep on top of replacing them when they get broken. The process for reporting that lights in the parking lot are out is to call the office, send an email, or put in a maintenance request through the online portal, or they can notify [REDACTED] who would let Ms. Henson know. Ms. Henson would then put out a group text to Mr. Katz and [REDACTED]. [REDACTED] would schedule the maintenance. Sometimes it takes 48 to 72 hours for maintenance to be done if there are other requests that take precedence.

[REDACTED]

[REDACTED] testified that the County and City received anonymous calls about the pool, and they have come out to inspect the pool for algae and pH levels, and she and the pool vendor have met with them. The pool has passed inspection every time. The pool vendor comes out twice a week to maintain the pool. The vendor cleans the pool, takes leaves out of it, tests the level of pH in the water, and checks the pool equipment. The current vendor started on July 5, 2023. She does not have knowledge of the prior pool service. With respect to when the pool was closed due to a gate lock malfunction which was cited by the City, it was repaired within a week.

[REDACTED] testified that the ducks were in the pool in March and April 2022 and they returned in 2023. She said they stay about two months.

[REDACTED] said that she goes to the property once a week, and the owner's office manager goes to the property once a week and takes pictures. The trash is picked up Wednesday or Thursday morning. The office manager's pictures reveal that everything has been cleaned up or is in the process of being cleaned up. If there is an issue, the office manager sends Ms. Henson a picture, and she makes sure the issue is taken care of.

She stated that they had just replaced the roof.

She said that the lights are on a timer and that the timer had to be adjusted because it was coming on either too early or too late. The lights are timed to be on for seven or eight hours. She said that all of the lights are functioning. They also put wall sconces at every rental unit, and they painted the property.

██████████ said that the parking lot lights are also on a timer that had to be adjusted. She said that during the Hearing, she called a contractor to install additional, motion-sensor lights in the parking lot which would not need to be on a timer.

With respect to the laundry rooms, there were three different incidents of vandalism in which people broke into the coin boxes. As a result, the owner decided to put in app-based payment mechanisms. When the vendor came to install the app-based payment system, they damaged the internal equipment, and they had to wait for parts to come in. They get weekly automated reports from the vendor that informs them if there are any problems with the equipment. The vendor comes out to do repairs if anything is broken.

She stated that she did not think that all of the laundry rooms were closed at the same time.

With respect to the trash, ██████████ said that locking the dumpsters does not work because people just put trash on the ground next to them. If they were to add another dumpster, that would encourage people to bring more trash. The only thing they can do is to constantly monitor the situation.

██████████

██████████ testified that her job involves keeping the laundry rooms clean and communicating with Ms. Henson and Mr. Katz in order to keep things running smoothly. Sometimes tenants come to her with such issues as missing keys or problems with other tenants. Sometimes she has to ask trespassers to leave. She also deals with nonresidents found sleeping on the property. She also interacts with the police.

██████████ said that the amount of time she works each week as on-site manager varies. She has a part-time job as well as her own business. During the holiday times, she is very busy with her own business, which involves entertainment. But even when she is busy, she still takes care of things on the property.

She said that there are three functioning washers and dryers and that one laundry room has been closed permanently. She stated that people were sleeping in the laundry room, so it was not safe. Before the laundry room was closed, there were four washers and four dryers. The functioning machines are in 2489 Whitney and 2491 Whitney.

At first, management put in a key opener to the laundry rooms to try to stop the vandalism. She does not recall when that was. That plan did not work because the tenants started giving the code to their friends, and their friends would go sleep in the laundry rooms. Out of frustration, at one point, they did not have laundry rooms for about eight months or a year. She does not

remember when that was. Now there is an extra lock on the door, and the laundry rooms are locked at night and opened in the morning. That has resolved a lot of the issues.

██████████ said that some of the issues with the vandalism of the machines happened when Vasona was property manager.

██████████ testified that the owner considered removing the pool. She does not remember when that was. She was told it was too expensive to remove the pool and put in another amenity and that the new pool servicer would be able to solve the problems with the pool.

██████████ said that the initial group of tenants who received aid from agencies started moving in in early 2021.

#### **IV. EVIDENCE**

The following documents were submitted prior to the Hearings and marked and entered into evidence without objection at the Second Hearing:

##### Hearing Officer's Exhibits

Exhibit #1: Notice of Acceptance of Petitions A and B, dated 3/6/2023, with proof of service

Exhibit #2: Follow-up Information for Petition, dated 3/6/2023, with attached filed copies of Tenant Petitions A & B, Workbook A & B, and Notice of Submission and Proof of Service to Landlord of Petition, Hearing Information Sheet, Response Notice, Authorized Representative Form, and Proof of Service

Exhibit #3: Notice of Prehearing Meeting and Hearing Date, dated 4/3/2023, with proof of service

Exhibit #4: Notice of Hearing Officer Prehearing Order and Notice of Hearing, dated 4/12/2023, with proof of service

Exhibit #5: Fire Safety Notices dated 3/8/2011, 7/19/2012, 6/2/2016, 5/30/2018, 7/25/2019, 11/6/2020, 4/25/2021, 10/7/2022

Exhibit #6: Multifamily Housing Inspection Reports dated 8/3/2022, 11/1/2022, 12/21/2022, 3/14/2023

Exhibit #7: Mountain View Public Record Request #23-60

Exhibit #8: Hearing Recording, dated 5/4/2023

Exhibit #9: Notice of Reopening Record, New Assignment, and Setting New Prehearing Meeting and Hearing Dates, dated 11/9/2023, with proof of service

Exhibit #10: Notice of Hearing Officer Prehearing Order and Notice of Hearing, dated 11/30/2023, with attached Prehearing Order dated 11/30/2023, CSFRA Hearing Information Sheet and Proof of Service

Exhibit #11: Notice of Hearing Officer Prehearing Order, dated 12/7/2023, with attached proof of service and Prehearing Order, dated 12/7/2023

Petitioner's Exhibits

Exhibit #1: Petition A: Downward Rent Adjustment—Unlawful Rent, dated 1/19/23

Exhibit #2: Workbook for Petition A with three worksheets

Exhibit #3: Petition B: Downward Rent Adjustment—Unlawful Rent Failure to Maintain Habitable Premises or Decrease in Housing Services or Maintenance, dated 2/3/2023

Exhibit #4: Workbook for Petition B with three worksheets

Exhibit #5: Updated Workbook for Petition B with three worksheets

Exhibit #6: Notice of Submission and Proof of Service of Petition A and B to Landlord, dated 2/3/2023

Exhibit #7: Receipt from UPS Store of package from Petitioner to CM Property Management, Inc., dated 2/3/2023

Exhibit #8: Tenant Ledger for the Affected Unit, undated

Exhibit #9: Multifamily Utility Company Statements for the Affected Unit, dated 12/5/2015 through 9/5/2018; 11/5/2018; 1/5/2019 through 1/5/2023

Exhibit #10: Rent Check Payment Receipts Nos. 1527, 1528, 1530, 1536, 1441, 1445, 1448, 1452, 1454, 1459, 1465, 1468, 1470

Exhibit #11: Electronic Rent Payment Receipts dated 10/2/2022 and 3/1/2023

Exhibit #12: Checking Account Statements for 12/31/2016 through 1/31/2017 and 11/1/2018 through 11/30/2018

Exhibit #13: Utility Check Payment Receipts Nos. 1236, 1242, 1246, 1252, 1257, 1260, 1265, 1271, 1300, 1306, 1314, 1274, 1282, 1291, 1328, 1334, 1337, 1418, 1425, 1428, 1436, 1347, 1352, 1357, 1571

Exhibit #14: Rent Increase Notice dated 3/25/2016

Exhibit #15: Document Titled "Letter Establishing Base Rent," dated 4/19/2017

Exhibit #16: Rent Increase Notice 7/30/2018, with Attachment to Notice of 2018 Annual General Adjustment dated 7/30/2018

Exhibit #17: Rent Increase Notice dated 8/26/2019

Exhibit #18: Mayfield Apartment Homes Lease Expiration and Renewal Letter, dated 8/13/2021

Exhibit #19: Letter from CM Property Management, Inc., re rent rollback refund, dated 4/12/2018

Exhibit #20: Covid-19 Rent Payment Document

Exhibit #21: Email from Petitioner to Joann Pham, dated 10/12/2022

Exhibit #22: Email from Petitioner to Joann Pham, dated 11/1/2022

Exhibit #23: Email from Petitioner to Joann Pham, dated 11/14/2022

Exhibit #24: Email from Petitioner to Joann Pham, dated 12/29/2022

Exhibit #25: Email from Petitioner to Joann Pham, dated 3/1/2023

Exhibit #26: Thirty-four page smoking log from 2019 through 2022

Exhibit #27: Three-day Notice to Perform Conditions and/or Covenants or Quit, dated 8/26/2022

Exhibit #28: Email from Petitioner to Joann Pham, dated 1/11/2023

Exhibit #29: Email from Petitioner to Joann Pham, dated 1/25/2023

Exhibit #30: Email from Petitioner to Joann Pham, dated 4/26/2023

Exhibit #31: Medical Records, 14 pages

Exhibit #32: Photos of Property, 134 pages

Exhibit #33: Lease for the Affected Unit, dated 8/17/2010

Exhibit #34: Emails between Petitioner and various property managers for the Property, dated from 2015 through 2022, 107 pages

Exhibit #35: Two notices to tenants from property management re laundry machines, dated 6/3/2022

Exhibit #36: Two notices to tenants from property management re swimming pool, dated 6/13/2022 and 10/3/2022

Exhibit #37: Notices re no smoking from property management, dated 5/21/2020, 4/20/2021, 2/15/2022, 7/29/2022, 8/24/2022

Exhibit #38: Notice of Smoking Complaint from City of Mountain View, undated

Exhibit #39: Community Information Notice from property management re noise, smoking, etc., dated 3/12/2021

Exhibit #40: Notices of Development Application, dated 8/13/2019 and 9/3/2019

Exhibit #41: Notice of Change of Property Management, dated 7/24/2020

Exhibit #42: Notices of City Building Re-Inspection, dated 7/29/2022 and 10/27/2022

Exhibit #43: Notice re Cockroach Spraying, dated 12/1/2022

Exhibit #44: Notice re Renter's Insurance, dated 4/1/2021

Exhibit #45: Notices re Personal Property in Common Areas, 8/25/2022 and 8/31/2022

Exhibit #46: Multifamily Utility Company Statements, dated 1/5/2023 through 11/5/2023 and 9/5/2018

Exhibit #47: Utility Payment Check Receipt #1291

Exhibit #48: Rent Check Payment Receipt No. 1460, dated 6/1/2021

Exhibit #49: Rental Assistance Check from Community Legal Services for East Palo Alto, dated 12/7/2022

Exhibit #50: Thirty-Day Notice of Change of Monthly Rent, dated 1/23/2023

Exhibit #51: Rent Ledger, dated 12/11/2023, for the time period 10/1/2014 through 12/1/2023

Exhibit #52: Emails dated 8/21/2022, 12/11/2023, and 11/27/2023 re concerns about the common areas and letter from Management to Tenants, undated

Exhibit #53: Notices from CM Property Management re inspection, dated 11/30/2023; re pool rules, undated; re on-site property manager, undated

Exhibit #54: Photos of Property, 57 pages

Exhibit #55: Video Recording of Yelling, 2/19/2023

Exhibit #56: Ring Video re Hoarding, dated 9/15/2023

Exhibit #57: Video of Neighbor's Fighting, 6/14/2023

Exhibit #58: Video of Police at Property, 5/1/2023

Exhibit #59: Video of Car Being Vandalized, 9/16/2022

Exhibit #60: Video of Paramedics Attending to Someone on the Property, 10/1/2022

Exhibit #61: Fire Department Report re Smoking, dated 8/21/2022

Exhibit #62: Fire Department Report re Smoking, dated 9/17/2022

Exhibit #63: Fire Department Report re Smoking, dated 4/17/2023  
Exhibit #64: Fire Department Report re Fire, dated 5/1/2023  
Exhibit #65: Fire Department Report re Smoking, dated 6/6/2023  
Exhibit #66: List of Police Reports, 8/1/2023 through 11/27/2023  
Exhibit #67: List of Police Reports, 2/29/2020 through 7/28/2023  
Exhibit #68: Utility Check Payment Receipt No. 1543, dated 12/14/2023  
Exhibit #69: Multi-Family Utility Company Statement, dated 12/5/2023  
Exhibit #70: Fire Department Notice of Violation, issued 8/22/2022

Respondent's Exhibits

Exhibit #1: Petition Response Notice, dated 3/22/2023  
Exhibit #2: Lease Agreement, dated 9/4/2012  
Exhibit #3: Lease Agreement, dated 8/17/2010  
Exhibit #4: Thirty-Day Notice of Change of Monthly Rent, 1/23/2023  
Exhibit #5: April 2023 Rent Comparison  
Exhibit #6: Email from Teri Henson to Joann Pham et al. re additional documents submitted, dated 12/11/2023  
Exhibit #7: Email from Teri Henson to Joann Pham et al. responding to Hearing Officer's Prehearing Order dated 12/7/2023  
Exhibit #8: General Ledger of expenses, undated  
Exhibit #9: Invoices for gardening, hauling, pool service  
Exhibit #10: Notice re on-site property manager and five photos re management  
Exhibit #11: Email from Multi Family Utility, dated 12/8/2023  
Exhibit #12: Multi Family Housing Inspection Reports for 2483 Whitney Drive, dated 12/1/2017; 11/2/2018; 10/23/2019; 9/10/2020; 9/8/2021; 8/3/2022; 11/1/2022; 12/22/2022; 3/14/2023; 5/17/2023; 5/24/2023; and Fire Safety Inspection Reports, one undated, others dated 7/19/2012 and 3/8/2011.  
Exhibit #13: Multi Family Housing Inspection Report for 2485 Whitney Drive, one page, dated 3/14/2023



Exhibit #14: Additional Multi Family Housing Inspection Report for 2489 Whitney Drive, one page, dated 3/14/2023

Exhibit #15: Additional Multi Family Housing Inspection Report for 2491 Whitney Drive, one page, dated 3/14/2023

Exhibit #16: Invoices re laundry, documents re roof replacement, invoices re hauling

Exhibit #17: Rent Ledger for the period from 10/1/20-14 through 12/1/2023

Exhibit #18: Three emails from Teri Henson to Joann Pham et al. attaching MFH Inspections, hauling invoices, and rent ledger, dated 12/12/2023

The following documents were submitted after the Second Hearing and marked and admitted into evidence without objection:

#### Hearing Officer's Exhibits

Exhibit #12: Notice of Hearing Officer Post-Hearing Order, dated 12/21/2023, with proof of service and Post-Hearing Order, dated 12/21/2023, attached

Exhibit #13: Notice of Hearing Officer Additional Post-Hearing Order, dated 1/9/2024, with proof of service and Additional Post-Hearing Order, dated 1/9/2024, attached

Exhibit #14: Notice of Second Additional Hearing Officer Post-Hearing Order, dated 1/30/2024, with proof of service, and Second Additional Post-Hearing Order, dated 1/29/2024, attached

Exhibit #15: Notice of Post-Hearing Order Regarding Closing the Record, dated February 14, 2024, with proof of service, and Post-Hearing Order re Closing the Record, dated 1/31/2024, attached

#### Petitioner's Exhibits

Exhibit #71: Multi-Family Utility Company Invoices, dated 10/5/2015 and 11/5/2015

Exhibit #72: Email from Petitioner to J. Pham, dated January 17, 2024

Exhibit #73: Photos, 66 pages, with dates, 6/7/2021 through 12/26/2022

Exhibit #74: Photos, 65 pages, with dates, 12/26/2022 through 12/10/2023

#### Respondent's Exhibits

Exhibit #19: Representative Authorization Form, dated 8/12/2023, submitted 1/20/2024

Exhibit #20: Three-Day Notices for Rental Unit [REDACTED] dated 8/22/2022 and 5/26/2023

Exhibit #21: Agua Bella Invoices, dated 12/1/2021 through 6/1/2023

Exhibit #22: Galloway Appliances Invoices, dated 3/15/2022 through 8/10/2023

Exhibit #23: Property Management Agreement between West Washington Properties, LLC and CM Property Management, Inc., dated 9/15/2014

Exhibit #24: Email from T. Henson to J. Pham et al., dated 1/12/2024

Exhibit #25: On-Site Employee Agreement, executed 2/27/2015

Exhibit #27: Rent Ledger for [REDACTED], 10/1/2014 through 1/3/2024

Exhibit #28: Rent Ledger for prior on-site property manager, 10/1/2014 through 2/21/2020

Exhibit #29: Representative Authorization Form, dated 1/30/2024

## **V. ISSUES PRESENTED**

1. Whether Respondent failed to calculate the Base Rent correctly because utilities were not included in the calculation.
2. Whether Respondent imposed unlawful rent increases above the lawful Annual General Adjustment permitted under the CSFRA in 2017, 2018, 2019, 2020, 2021, and 2023.
3. Whether Respondent failed to maintain the Property in a habitable condition by (a) allowing smoking on the Property; (b) failing to eliminate a rat infestation; (c) having inadequate lights in the parking lot; (d) failing to repair Petitioner's door lock within a reasonable time; (e) failing to update wall outlets to 3-prongs; (f) allowing water leakage from an area near the laundry room; (g) failing to repair holes in the ceiling of the Affected Unit; (h) not addressing a leak from the bathroom to parking lot; (i) not repairing a broken toilet in the Affected Unit; (j) allowing trash to accumulate on the Property.
4. Whether Petitioner suffered a decrease in housing services (a) because of closure of the pool; (b) because of the lack of an on-site property manager; (c) because Petitioner had to change her parking space for security reasons; (d) because of Respondent's failure to evict other tenants for nuisance behaviors, threatening safety, or committing crimes; (e) because of closure of laundry rooms.

## **VI. FINDINGS OF FACT SUPPORTING THIS DECISION**

1. The premises on which the Affected Unit is located consists of four buildings on four separate parcels. Two buildings—2483 Whitney and 2485 Whitney—have five rental units each, and two buildings—2489 Whitney and 2491 Whitney—have 15 rental units each. The premises are commonly known as the Mayfield Apartments (the "Property").
2. CM Property Management began managing the Property in 2014. From on or about August 1, 2020 through September 2021, it was managed by a different management company, Vasona Management. CM Property Management resumed managing the Property after that. The same entity has owned the Property since prior to 2014.

3. Petitioner entered into a Lease Agreement dated August 17, 2010 (the "First Lease") for the Affected Unit, with a commencement date of September 13, 2010 and a term of six months. The rent listed in the First Lease is \$1,100.00 per month.
4. Petitioner entered into a second Lease Agreement dated September 4, 2012 (the "Second Lease") with a commencement date of September 1, 2012 and a term of six months. The rent listed in the Second Lease is \$1,465.00 per month.
5. On October 30, 2015 and December 3, 2015, Petitioner sent emails to CM Property Management stating that she had received a letter indicating that her existing rent was \$1,600.00 and that her rent would increase to \$1,850.00 in 2016. She explained in the emails that her existing rent was \$1,465.00.
6. The monthly rent for the Affected Unit was increased effective June 1, 2016 to \$1,850.00, pursuant to a Sixty-Day Notice of Change of Monthly Rent, dated March 24, 2016, with a proof of service dated May 25, 2016. The Sixty-Day Notice listed Petitioner's existing rent as \$1,465.00.
7. Mountain View's Community Stabilization and Fair Rent Act became effective December 23, 2016. At that time, rents were to be rolled back to October 19, 2015 levels.
8. Petitioner received a document titled "Letter Establishing Base Rent," dated April 17, 2017, which stated that her rent on October 19, 2015 was \$1,600.00 per month and that the CSFRA went into effect on April 5, 2017.
9. According to the Tenant Rent Ledger submitted by Petitioner and Respondent, Respondent began posting the monthly rent as \$1,600.00 commencing on May 1, 2017; however, Petitioner continued to pay \$1,465.00 in monthly rent.
10. On April 12, 2018, CM Property Management sent a letter to Petitioner which stated that "[t]he City of Mountain View Rent Control Ordinance rolled back you[sic] rent to the October 2015 rent level. You overpaid the rent by \$250.00 per month from January 2017 through April 2017. The total overpayment of \$1000.00 is refunded with the enclosed check." Petitioner testified that she did not know how the \$1,000.00 was calculated. Mr. Katz testified that he believed the \$1,000.00 refund was calculated by what was then called the Rent Stabilization Program after a mediation. No documentary evidence was presented to support his testimony.
11. Petitioner received an undated document from CM Property Management titled "Thirty-Day Notice of Change of Monthly Rent" which stated that Petitioner's rent would increase from \$1,465.00 to \$1,567.00 effective September 1, 2018. Attached to the Thirty-Day Notice was a City of Mountain View form titled "Attachment to Notice of 2018 Annual General Adjustment of Rent," dated July 30, 2018. It stated that the existing rent of \$1,465.00 would be increased by the amount of \$102.00, equaling 7 percent, 3.4 percent of which was a banked Annual General Adjustment for 2017 rent.

12. The weight of the evidence shows that the premises rent for the Affected Unit on October 19, 2015 was \$1,465.00 per month.
13. Petitioner received a document dated September 1, 2019 from CM Property Management titled "Thirty-Day Notice of Change of Monthly Rent" which stated that Petitioner's rent would increase from \$1,567.00 to \$1,621.00 effective October 1, 2019.
14. Petitioner received a document titled "Lease Expiration and Renewal Letter," dated August 13, 2021, giving Petitioner the option of renewing for 9, 10, or 11 months for \$1,651.00 per month, 12 months for \$1,650.00 per month, or month-to-month for \$1,653.00 per month.
15. According to the Tenant Rent Ledger for the Affected Unit, Petitioner was charged \$1,655.00 for rent on October 1, 2021, which was then lowered to \$1,650.00 per month on November 1, 2021.
16. Petitioner received a document dated January 23, 2023 from CM Property Management titled "Thirty-Day Notice of Change of Monthly Rent" which stated that rent for the Affected Unit would increase from \$1,650.00 to \$1,732.00 effective March 1, 2023.
17. As of the date of the Second Hearing, Petitioner was paying \$1,650.00 per month for rent for the Affected Unit.
18. The First Lease and the Second Lease state in Section 12 that Petitioner would pay for all utilities except water and trash. The utilities for all tenants were switched over to a ratio utility billing system ("RUBS") prior to October 2014. Approximately 50 percent of the rental units on the Property, which have been rented out to tenants whose rent is subsidized, do not currently pay for utilities through the RUBS system. An email dated December 18, 2023 from Multi-Family Utility Company, which administers the RUBS invoicing, stated that the tenants who are on the RUBS system do not pay for the utilities of those who are not on the system; the utilities usage is only allocated among those tenants on the RUBS system.
19. The rent ledger submitted by both Petitioner and Respondent does not include utilities payments. Petitioner submitted utilities invoices from Multi-Family Utilities Company. Petitioner was billed \$64.34 for utilities for September 20, 2015 through October 20, 2015. She actually paid \$65.00 for that time period.
20. Petitioner testified that when she moved into the Affected Unit in 2010, there was a full-time resident manager. He would clean the pool, pick up trash, take care of recycling, make repairs, make sure the machines were working in the laundry room, call outside vendors if repairs needed to be made that he could not do himself, and let tenants into their rental units if they were locked out. There was also a property management office on-site where tenants could pay their rent.
21. Petitioner testified that when CM Property Management took over in 2014, they hired a different on-site manager whose role was diminished from that of the original resident

manager. She said that it took longer to get repairs done. In 2018, Petitioner sent an email to the off-site property manager, [REDACTED], about her toilet leaking. She ended up paying out of pocket to hire a plumber to fix the leak because it was an emergency, and management did not deal with it quickly enough. She never received a refund for the plumbing repairs. Petitioner testified that she did not know how to address emergency repairs under CM Property Management's system.

23. [REDACTED] ([REDACTED] has been the on-site property manager since March 2022. She works approximately six to ten hours a week. In addition to working at the Property, she has a part-time job and runs her own business. [REDACTED] keeps the laundry rooms clean, locks them at night, communicates with Ms. Henson about things that need to be done on the Property, deals with conflicts among tenants, deals with trespassers on the Property, and interfaces with the police. Ms. Henson testified that [REDACTED] is her "eyes and ears" at the Property.

24. Mr. Katz testified at the First Hearing that the on-site property manager prior to [REDACTED] moved out on January 31, 2020. He also said there had always been an on-site property manager at the Property. Respondent entered into an "On-Site Employee Agreement" as of February 1, 2015 with an on-site manager, who was required to work 10 hours per week and was paid hourly. According to tenant ledgers, that manager moved out as of January 31, 2020, which was corroborated by Mr. Katz's testimony. The tenant ledgers show that [REDACTED] began receiving a rent credit for her work as on-site property manager as of March 1, 2022.

25. Teri Henson, whose office is in San Jose, has been the general off-site property manager for the Property since August 2022. She oversees all aspects of the Property, and she stops by to visit the Property between one and four times a week.

26. Petitioner testified that she did not know what the on-site property manager prior to [REDACTED] actually did. She also stated that she did not know that [REDACTED] is the current on-site manager because no one sent out a notice when she was hired. She has known [REDACTED] since 2010 and speaks to her frequently.

27. Sometime in 2023, Ms. Henson sent out a notice to the tenants that [REDACTED] is the on-site property manager. In that notice, she also explained the process for submitting maintenance requests by phone or through an online portal, including an emergency repair phone number, and informed tenants not to dump trash on the Property and not to smoke on the Property. At the request of the police, sometime in 2023, she had signs posted on the Property with CM Property Management's contact information. Ms. Henson testified that the notice about [REDACTED] was sent out as a courtesy because it is common knowledge among the tenants that [REDACTED] is the on-site property manager.

28. Mr. Katz and Ms. Henson testified that the procedure for a Tenant to request a repair is that the Tenant would notify Mr. Katz or Ms. Henson, and they would tell [REDACTED] who is the

owner's maintenance coordinator, and she would send out maintenance people. Most maintenance people are employed by the owner, but sometimes Ms. Henson or Mr. Katz call an outside vendor if the owner's maintenance people are not available. Mr. Katz testified that maintenance is performed about fifty percent of the time by the owner's maintenance staff and fifty percent of the time by vendors Property Manager hires.

29. Mr. Katz testified that they do not do lock-out service for their tenants. An Addendum to Petitioner's Lease states that there is a charge for letting tenants in after hours; however, there is no charge for letting them in between 9:00 a.m. and 5:00 p.m.

30. Petitioner testified that during Covid, sometime in 2020, a number of tenants left the Property. Respondent began renting to new tenants. She said that prior to the new tenants moving in, there had been no security issues on the Property.

31. Mr. Katz testified that starting in early 2021, Respondent started renting to formerly unhoused tenants whose rent was subsidized by a rapid rehousing program which was set up to pay the tenants' rent for a period of time after which the tenants were supposed to start paying rent on their own. None of those tenants were able to pay the rent on their own, and they are no longer at the Property. Mr. Katz testified that at the time of the Second Hearing, Respondent only rents to people with permanent supportive housing subsidies and no longer accepts people with severe mental health or behavioral issues. At the time of the Hearing, 50 percent of the Property consisted of subsidized rental units.

32. Mr. Katz admitted that the "segment of the population" that the owner of the Property was renting to "sometime brings problems" with it.

33. The log of police calls for the Property between February 29, 2020 and July 28, 2023 is 16 pages long with approximately 450 entries. From February 29, 2020 through October 6, 2020, a period of over seven months, there are 10 entries. For the period between December 20, 2020 and February 27, 2021, a period of just over two months, there are 16 entries. In June 2021, there are 34 calls, in July 2021, there are 29 calls, in August 2021, there are 32 calls. Among the incidents reported between December 20, 2020 and July 28, 2023, there are 106 entries for disturbing the peace, 15 entries for trespassing, 15 entries for assault or battery, seven entries for burglary, five entries for mental health holds, and seven entries for vandalism. The police log for August 1, 2023 through November 27, 2023 shows 57 entries, approximately 14 per month. Among the incidents reported, eight are for disturbing the peace, three are for trespassing, one is for assault or battery, one is for a mental health hold, and one is for a sex crime.

34. On March 12, 2021, Vasona Management sent out a notice to tenants about, among other things, noise on the Property. Petitioner began sending emails about the behavior of other tenants on the Property on or about September 12, 2021, when she complained about a tenant revving his motorcycle at 2:00 a.m. and engaging in altercations with other tenants. On July 13, 2022, she sent an email to Mr. Katz describing an altercation on the Property and telling him that it felt unsafe and she was worried someone would be injured or killed at the Property.

Petitioner presented evidence of her neighbor's and other tenants' cars that were vandalized on or about July 16, 2022, July 22, 2022, September 16, 2022, and July 19, 2023. She presented photos of tenants dumpster-diving on July 11, 2022, which she sent to Mr. Katz. She showed photos of the remnants of illegal fireworks that were set off on the Property on July 4, 2022. A Multi-Family Housing Inspection Report from May 17, 2023 discusses trespassers squatting on the Property.

35. On August 7, 2022, [REDACTED] conducted a meeting with tenants about issues at the Property, which she summarized in an email on August 12, 2022 and sent to the tenants who had been present at the meeting (the "[REDACTED] Email"). She said in the email that she had sent the summary to Mr. Katz. The [REDACTED] Email discussed, among other things, tenants who were dumpster-diving at least once a week and waking other tenants up during the night, concerns about possible drug-dealing on the Property, a drug-related death on the Property, tenants being loud at night and disturbing other tenants, tenants working on their cars on the Property, and a tenant whose rental unit had been burglarized three times.

36. On September 25, 2022, Petitioner sent an email to Mr. Katz about someone attempting to break in to the Affected Unit. She testified that the perpetrator broke the lock to her door, that she did not have a dead bolt on the inside of the door, and that she put furniture against the door until it was repaired approximately 12 days after the attempted break-in. On November 14, 2022, she sent an email about a tenant aggressively chasing her and her son. On November 16, 2022, Ms. Henson responded, telling her to call the police and press charges because that would make it easier for management to remove the tenant from the Property. Petitioner also submitted a photo from 2022 showing windows that a tenant had smashed in his own rental unit.

37. On October 19, 2023, Petitioner sent an email to Ms. Henson about a tenant in a rental unit in her building cooking on an electric stove outside 2489 Whitney Unit #1. The email said that [REDACTED] was not available. No response from Ms. Henson was submitted.

38. Petitioner contacted Ms. Henson on November 27, 2023 about a former tenant who was on the Property and was screaming. Ms. Henson sent her a text message at 7:33 a.m. telling her to contact the police.

39. Petitioner's first documented complaint to Property Manager about secondhand smoke from a neighbor's rental unit entering the Affected Unit was an email of March 15, 2019 to [REDACTED] at CM Property Management about rental unit [REDACTED] the unit below the Affected Unit. Petitioner sent another email on April 28, 2019 to CM Property Management, telling them about her chronic medical conditions and begging them to help her. Petitioner sent yet another email to [REDACTED] about her neighbor smoking on May 4, 2019, also begging for help. On July 15, 2019, Petitioner's physician wrote a letter stating that Petitioner's health condition was being exacerbated by her exposure to secondhand smoke from her neighbor's rental unit. Petitioner also sent a letter dated July 18, 2019 to CM Property Management, which said that

she was sleeping with a face mask and had experienced chest pain, headaches, dizziness, and insomnia due to the problem. On July 31, 2019, she sent yet another email to [REDACTED] stating that the smoking problem had not been addressed.

40. [REDACTED] responded on August 3, 2019, stating that the tenant in rental unit [REDACTED] had promised not to smoke. On August 8, 2019, [REDACTED] said he would be serving the tenant with a notice to perform or quit. On August 26, 2019, [REDACTED] sent an email saying that the tenant had promised to comply and not smoke. On September 15, 2019, [REDACTED] sent an email saying that the tenant insisted he was not smoking. On September 17, 2019, [REDACTED] sent an email saying that property management were going to evict the tenant for non-compliance. On May 20, 2020, [REDACTED] sent an email stating that they were going to test rental unit [REDACTED] and the Affected Unit for smoke. Petitioner testified that they never tested the Affected Unit.

41. On May 21, 2020, [REDACTED] sent an email stating that the tenant in unit [REDACTED] after receiving a notice to perform or quit, called [REDACTED] and said he would not smoke inside his rental unit anymore. On May 21, 2020, Petitioner's physician wrote another letter about the effects of secondhand smoke on Petitioner's health. On May 28, 2020, Petitioner sent yet another email to [REDACTED] telling him that she had to miss work because her neighbor's smoke had made her ill. On March 5, 2021, Petitioner was still sending emails, this time to the new property management company, Vasona Management, to complain about the smoking in rental unit [REDACTED]. By March 22, 2021, the property manager from Vasona Management told Petitioner that it would be better for her to move to a different rental unit—of which there were none available—or to move out. Petitioner testified that the tenant in rental unit [REDACTED] moved out sometime in 2021 or 2022; it appears that he was still there in August 2022, as he is discussed in the [REDACTED] Email.

42. On May 16, 2021, Petitioner began sending emails about the tenant in rental unit [REDACTED] next to the Affected Unit, smoking in his rental unit. Petitioner submitted a subsequent email about this problem from August 30, 2021. On November 5, 2021, she sent an email to Mr. Katz about the tenant in [REDACTED] smoking in his rental unit. She sent a subsequent email to Mr. Katz on December 18, 2021, saying that scheduled [REDACTED] had to be postponed because the smoke from rental unit [REDACTED] made her ill. On December 23, 2021, she sent another email to Mr. Katz complaining about the smoke in rental unit [REDACTED]. On January 2, 2022, she sent an email telling Mr. Katz that she had been in the emergency room due to the detrimental health effects of the secondhand smoke. On January 6, 2022, another physician's letter about the health impacts on Petitioner was written. On May 5, 2022, Petitioner sent yet another email to Mr. Katz complaining about the smoking in unit [REDACTED]. In that email, she discussed a life-threatening illness from which she suffers. On May 7, 2022, she sent an email once again discussing her potentially terminal illness.

43. On or around May 9, 2022, Petitioner complained to the Mountain View Multi-Family Housing ("MFH") inspection program, and Inspector James Olson said he would be inspecting



the Property. On May 18, 2022, she complained by email to [REDACTED] of CM Property Management about her neighbors smoking and referred again to her serious illness. On May 25, 2022, Petitioner sent an email to Mr. Katz letting him know that James Olson inspected and left notices for the tenants in rental units [REDACTED]. The notices discussed the section of the Mountain View Municipal Code which has prohibited smoking in multi-family properties since January 1, 2022.

44. In June 2022, Petitioner sent six emails complaining about the tenant in rental unit [REDACTED] smoking inside his unit.

45. In an MFH inspection report dated August 3, 2022, the inspector noted two rental units at 2489 Whitney where smoke detectors were missing. They also noted that the tenant in one of those units was growing marijuana in their closet. In another inspection report dated November 1, 2022, the inspector noted that the bedroom smoke detector was missing again in one of the rental units that had previously had a missing smoke detector in August. In a December 22, 2022 report, they noted once again a missing smoke detector. This is possibly an indication that the tenants were smoking and removed the detectors so as not to set them off.

46. Petitioner submitted a 34-page smoking log which documents her neighbors smoking from March 15, 2019 through September 20, 2022. The first log entry for smoking in rental unit [REDACTED] is on April 7, 2021. The first log entry for rental unit [REDACTED] is on May 7, 2022. The log states that on July 17, 2022 at 11:56 a.m., after Petitioner had complained about smoking in rental unit [REDACTED] Petitioner received a call from Mr. Katz who told her to “stop complaining. I can’t prove that they are smoking inside.” The log also states that on July 25, 2022, Petitioner went outside to get fresh air because the smoke in the Affected Unit was bothering her so much, and she fainted and fell.

47. Various property managers, both CM Property Management and Vasona Management, posted at least six notices about smoking on the Property being prohibited, on May 21, 2020, March 12, 2021, April 20, 2021, February 15, 2022, August 3, 2022, and August 24, 2022. The March 12, 2021 notice from Vasona called smoking “a large community concern.”

48. The [REDACTED] Email described the tenants who were smoking on the Property. It said, in part: “2489 - [REDACTED] continues to smoke with friends...(both [REDACTED] and Celistina [REDACTED] have been dealing with their smoke for months). Also, there is now a chemical smell coming from the apartment....2489 - [REDACTED] Has smoked in his apartment and around the facility from the day he moved in. He smoked right in front of me while he said he was feeling that he was being persecuted.” [REDACTED] described nine rental units where tenants and their associates were smoking.

49. On August 21, 2022, Petitioner sent Mr. Katz an email stating that she had called the fire department because her neighbor in rental unit [REDACTED] was smoking and the smoke was coming into the Affected Unit. She wrote, “You never believed me. Now I have the proof that you needed, and witnesses. I just had my [REDACTED]. This is affecting me and my

family.” Petitioner also sent an email to James Olson on that date, and he said that he would look for the incident report.

50. The Fire Department report from August 21, 2022 states that the fire fighter “made contact with the resident in unit 12 who initially denied smoking. A very strong odor of cigarette smoke was coming from the unit. E53 advised the resident was not allowed to smoke in the unit. The resident became agitated and stated ‘who is it hurting.’ Explaining to the resident about the ordinance was not productive. The incident was reported to the Fire Marshal's office for follow up with the complex.”

51. On August 22, 2022, Fire Marshal Eric Anderson of the Mountain View Fire Department sent an email to Mark Katz, which stated, “Here is the violation notice we discussed on the phone earlier today. As listed in the Notice, please provide a copy of the notice to the tenant in unit 12 and provide a description of follow-up actions to stop the smoking from re-occurring.”

52. The attached Notice of Violation cited Section 21.56 of the Mountain View Municipal Code and stated that the tenant in rental unit [REDACTED] had been observed by fire fighters smoking in his rental unit on August 21, 2022. It also required CM Property Management to provide a copy of the notice of violation to the tenant in rental unit [REDACTED] and to provide a written response by August 26, 2022 to the City describing what actions it would be taking to enforce the smoking prohibition in Mountain View.

53. At the Second Hearing, Mr. Katz had no recollection of receiving the email or the notice of violation, but his recollection was refreshed by consulting his records, which he did not supply to the Petitioner or the Hearing Officer. The Tenant in rental unit [REDACTED] was served a Three-Day Notice to Perform Covenant or Quit on August 22, 2022.

54. Petitioner was also served with a three-day notice on August 22, 2022; her notice demanded that she pay rent or quit. She testified that she was going into [REDACTED] in August, and she had notified CM Property Management that Community Services Agency (“CSA”) would be paying her rent for that month. She said that CM Property Management failed to fill out the forms she had given them to submit to CSA, and thus the rent was not paid. While testifying during the First Hearing, Mr. Katz admitted that they had received notice that an outside agency would be paying rent for Petitioner. However, since they had not received rent by August 20, they posted a three-day notice. It is a policy that they post a notice if rent is not received by the 20<sup>th</sup> of the month in order to remind the tenant to pay the rent. During the Second Hearing, Mr. Katz said that they did not receive the paperwork that they were supposed to fill out from Petitioner until after they served the three-day notice.

55. Petitioner submitted photos of cigarette butts and cigarette-related trash on the Property from July 11, 2022, July 14, 2022, and December 6, 2023. The Affected Unit faces onto the parking lot where tenants smoke despite “No Smoking” signs.

57. On September 8, 2022, Petitioner sent Mr. Katz an email about several tenants smoking outside on the Property. On September 18, 2022, she sent an email to Mr. Katz about the tenant in rental unit [REDACTED] smoking in his unit. An email of November 18, 2022 to [REDACTED] also notifies them of the tenant in rental unit [REDACTED] smoking in his rental unit.

58. On December 15, 2022, Petitioner sent an email to Ms. Henson complaining about the tenant in rental unit [REDACTED] saying that "I've been dealing with my neighbor...[in] [REDACTED] for a year, smoking inside his apartment. Now he is inviting the guy in [REDACTED] to come to his apartment and do it together...I've been telling [REDACTED] several times but she is not responding to my messages." Ms. Henson responded that she saw no evidence of smoking by that tenant or any others and suggested that Petitioner should move out: "I have been in apartment [REDACTED] several times and there is no smell of cigarette smoke. You are currently on a month-to-month lease so if you feel you would be safer and happier living elsewhere, please give us a 30-day notice to vacate..."

59. On June 6, 2023, Petitioner called the Fire Department because she believed the tenant in rental unit [REDACTED] was smoking. The report of the incident states in part, "The resident was advised to stop smoking and that a notification was going to be made to the Fire Marshal for the violation. The resident was also advised that by continuing to break the ordinance was grounds for possible eviction." The report lists 2489 Whitney [REDACTED] as the location of the incident.

60. Petitioner testified that when she tries to get Ms. [REDACTED] to check her neighbors' rental units at a time when she believes they are smoking, [REDACTED] is not available.

61. At the Second Hearing, Mr. Katz said that he inspected rental unit [REDACTED] in August 2022 and did not smell smoke or see any evidence of smoking. He said that the tenant in rental unit [REDACTED] moved out in August 2023. Property Management never tested rental unit [REDACTED] or the Affected Unit for smoke.

62. In her testimony during the First Hearing, Ms. Henson said that she has never seen anyone on the Property smoking, and she has never found any cigarette butts on the Property. She did not believe that the tenant in rental unit [REDACTED] was smoking because when she went to his rental unit, she could never smell any smoke. In her testimony at the Second Hearing, she stated that the current tenant in rental unit [REDACTED] does not smoke. The former tenant in rental unit [REDACTED] moved out in May 2023, and Ms. Henson testified that she fills vacancies in 2489 Whitney only with people who state during the screening process that they do not smoke.

63. Mr. Katz and Ms. Henson said that the procedure for addressing smoking complaints on the Property is to serve lease violation notices, to talk to the tenant who is allegedly smoking, and to serve three-day notices. They served a Three-Day Notice to Perform or Quit on May 26, 2023 to the tenant in rental unit [REDACTED] in addition to the Notice served on August 22, 2022. No evidence was presented that the tenant was evicted for smoking. Mr. Katz testified that they do not like to evict tenants because it is expensive and time-consuming. Ms. Henson said that they

are doing all they can to deal with the smoking problem, but they cannot control tenants' or other people's behavior.

64. Petitioner testified that as of the date of the Second Hearing, there was no smoke coming into the Affected Unit from other rental units; however, it was coming from the parking lot or outside the Affected Unit.

65. Petitioner testified that her son used to swim in the pool frequently from May through September, but that the pool has been unusable since 2018 because it was dirty and there were ducks in it. CM Property Management sent a notice on June 13, 2022 regarding the ducks in the pool and asking tenants not to feed them. The notice makes a reference to the City "allow[ing] us to open the pool back up." [REDACTED] testified that the City had closed the pool because of a defective gate latch and that it was repaired within a week. On October 3, 2022, Property Manager sent a notice that the pool was closed for the season and that it was going to be removed and Respondent would put another amenity there. That never happened. Petitioner said she was aware of tenants swimming in the pool in July 2023.

66. Mr. Katz testified that he had talked to vector control, animal control, and the City of Mountain View, but he could not remember to whom he spoke, and apparently, he did not take any notes. He said that he was told that the ducks could not be removed from the pool. [REDACTED] testified that the ducks arrive somewhere between March and May and stay for a couple of months as part of their yearly migration patterns. She said that the ducks were in the pool in 2023.

67. In testimony at the First Hearing, Mr. Katz first said that the pool was serviced once a month and later said once a week. In testimony at the Second Hearing, [REDACTED] said that there was pool service twice a week, which had started in July 2023. Respondent submitted ledger entries documenting payment for pool services monthly for December 14, 2022, February 15, 2023, March 3, 2023, April 6, 2023, May 3, 2023, and June 27, 2023. The ledger shows two payments per month in each of January 2023, July 2023 (presumably for July and August), and September 2023 (presumably for September and October). There are also additional entries for pool service for September 26, 2023 and for November 2, 2023. Respondent submitted an invoice from Pools, Etc. dated September 25, 2023 for pool service on July 31, 2023 and August 17, 2023. In the email of December 11, 2023 sending invoices to the Rent Stabilization Division, Ms. Henson wrote that she was enclosing invoices for monthly pool service, among other things. She testified at the Second Hearing that the pool had been serviced once a week prior to July 2023. Respondent also submitted monthly invoices from Agua Bella Pool Service for December 2021 through June 2023. The March 1, 2023 invoice contains a charge for "extra chemicals added to keep ducks away from pool."

68. Petitioner submitted photos of ducks in the pool in June and July 2021 and of ducks swimming in scummy water in the pool in June 2022. She also submitted photos of ducks in the pool in March and April 2023. She submitted additional photos from June 2022 showing the

pool's surface covered by leaves with algae at the bottom and one from June 2023 showing debris floating in the pool and algae at the bottom.

69. Property Manager posted a notice to tenants on June 3, 2022 on the laundry room doors stating that all laundry rooms were closed until further notice due to vandalism. They also sent a notice to tenants on that same date saying that the laundry rooms were closed and the machines disconnected until further notice. There was testimony that the appliances in the laundry rooms were converted to electronic payment as of September 12, 2022. An invoice from that date was presented that stated that seven out of eight machines were converted. As evidenced by additional invoices on April 14, 2023 and August 10, 2023, the remaining dryer had not been converted, and there were still problems with vandalism of that machine.

70. The tenants were informed about how to use the phone-app based payment system as of September 28, 2022. The machines in the laundry room at 2489 Whitney were useable at that time. Petitioner testified that in the past, she only used the laundry room at 2489 Whitney and that she stopped using the laundry room permanently because she believes the machines smell bad.

71. During the First Hearing, Mr. Katz testified that all of the laundry rooms were closed in the fall of 2022 to convert the machines to a phone-app based payment system. At the Second Hearing, neither he, Ms. Henson, nor ██████████ remembered that all of the laundry rooms had been closed at one time.

72. ██████████ testified that the laundry rooms were closed for eight months to a year, but she could not recall when that was. This was because tenants would give the code to the laundry room doors to their friends, who would sleep in them. She also testified that at the time of the Second Hearing, there were three functioning washers and dryers and that one laundry room has been permanently closed because people were sleeping in it. Prior to that closure, there had been four functioning washers and dryers. The functioning machines are at 2489 Whitney and 2491 Whitney.

73. Respondent submitted invoices indicating that the machines in the laundry rooms had been serviced in 2022 and 2023 and that on August 10, 2023, repair work was done on a washer in an unspecified laundry room because it had "standing water with a smelly odor."

74. On July 14, 2022, Petitioner sent an email to Property Manager informing them that there was inadequate lighting in the parking lot. Mr. Katz testified that tenants remove the lights so that they can engage in illicit activities in the parking lot. He said that a maintenance person comes to the Property once or twice a week and that the lights are replaced then. Petitioner submitted photos from July 17, 2022, July 26, 2022, August 10, 2023, October 16, 2023 and November 16, 2023 which show the parking lot as pitch black. The ██████████ email also states: "The lights in the parking lot are not working correctly. Much of the time at night, it is very dark." No maintenance logs were submitted to show that the issue had been corrected; however, ██████████ said that during the Second Hearing, she called her contractor about

adding motion sensor lights to the parking lot. She also said that the lights were on a timer which had been adjusted.

75. Petitioner submitted an email from July 23, 2021 complaining about shopping carts being left on the Property. Petitioner also submitted emails she sent on September 8, 2022 to Mr. Katz documenting tenants dumping trash on the Property. Additionally, she submitted 21 photos from 2022 and 23 photos from 2023 of bulky trash—mattresses, furniture, appliances, and other large personal items—being dumped outside the dumpster as well as trash piled up outside various rental units. Petitioner testified that there were times when she could not put household trash in the dumpster because it was full.

76. Property Manager sent notices to tenants regarding a prohibition on outside storage of personal property on August 25, 2022 and August 31, 2022. Ms. Henson testified that they have trash hauled away between one and three times a month. Respondent presented hauling invoices dated December 4, 2022, September 15, 2023, and December 6, 2023. There were also additional hauling charges listed in the general ledger for December 13, 2022, April 4, 2023, June 27, 2023, September 1, 2023, and October 3, 2023. Evidence of reimbursement of [REDACTED] for hauling in April 2023 was presented, but it is impossible to tell if this was in addition to other hauling in April 2023.

77. An MFH inspection report dated September 8, 2021 states: “Remove old refrigerator, mattress and furniture out back near the laundry room.” An MFH inspection report from August 3, 2022 noted ingress and egress paths that were blocked by trash and entry doors blocked by furniture as well as the interior of a rental unit with excessive trash throughout. Another MFH inspection report from November 1, 2022 notes several rental units with doors blocked by furniture and one of the same problems with blocked egress as cited earlier. One of the rental units could not be entered: “unsafe to enter for inspection due to no lighting, hoarding, and tenant’s known social issues.” In an MFH report from December 21, 2022, that rental unit could still not be inspected due to unsafe conditions. The rental unit with excessive trash was observed to still have “an excessive amount of trash” littered throughout. An MFH report from March 14, 2023 requires that items stored outside the windows of a rental unit must be removed. An MFH inspection report from May 17, 2023 states that all furniture and personal items must be removed from outside one rental unit and that “[i]t looks like someone has set up a sleeping area in the storage room in the rear of the building, remove all bedding and loose personnel [sic] items, secure this door.”

78. Ms. Henson admitted that trash is an ongoing issue on the Property. The dumpsters on the Property are emptied twice a week by the City. If a dumpster is overfull, the City will not empty it. There is no regular pick-up of bulky trash. Generally, [REDACTED] will send Ms. Henson a photo of bulky trash that needs to be picked up. If it is a smaller load, it gets picked up the next day. A larger load could take two or three days to get picked up, depending on the hauler’s schedule. If something is dumped over a weekend, it could take longer.

79. At the First Hearing, Mr. Katz testified that there are always five or six shopping carts on the Property. He said that he thought the trash problem came with the “clienteles,” which was different three to five years ago. Mr. Katz testified at the Second Hearing that nonresidents drive into the parking lot on the Property and dump trash there because it is easily accessible from the street and does not face onto the residential neighborhood. Property Manager said that they had thought about putting in a gate but rejected that idea because Tenants leave gates open. They also rejected the ideas of locking the dumpsters because people just put trash next to the dumpsters, or adding more dumpsters because that would encourage people to dump even more trash.

80. Petitioner submitted a photo from 2022 of a note left by one of her neighbors on the ground near the external stairwell which says, “stop feeding the rats.” The note is surrounded by rat droppings. She also submitted additional photos from 2022 showing rat droppings on the Property near the Affected Unit. Respondent submitted an invoice dated September 27, 2023 for rodent control. There are entries in Respondent’s accounting ledger for pest control for January 1, 2023 through November 16, 2023. Petitioner testified that the problem began in 2020 and was resolved in 2022.

81. In an MFH Inspection Report dated August 3, 2022, the inspector required that Respondent “install a GFCI for safe use of a grounded three-prong cord.” On August 26, 2022, Respondent sent Petitioner a three-day notice to perform or quit. The notice stated that she was in breach of her lease because she was using extension cords, and she was ordered to schedule work with a maintenance technician to install a GFCI three-pronged outlet.

82. Ms. Henson testified that the three-day notice was served so that Petitioner would remove extensions cords that were listed as a violation in the inspection report and would schedule a time to have the outlet repaired. Property Manager stated that everyone who was cited in the inspection report for having extension cords was served a three-day notice. They had trouble scheduling with Petitioner because she was ill in August 2022. The three-pronged outlet was replaced by Respondent on or about October 7, 2022.

83. Petitioner testified that on September 22, 2022, she informed Property Manager that the water heater next to the laundry room was leaking. It was repaired on October 9, 2022. Mr. Katz testified that it was a leak in the pool equipment room, not the water heater. Petitioner’s concern about the leak is related to her concern that her water bills have been increasing.

84. Petitioner submitted photos from 2022 showing that there are some holes in the wooden ceiling of the Affected Unit, where wood knots appear to have fallen out. She testified that she has not seen any water, animals, insects or anything else coming through the holes.

85. Petitioner testified that she was informed by Property Manager that water was leaking from the Affected Unit bathroom into the parking lot. It was repaired within a month.

86. Petitioner testified that she no longer uses her regular parking space after her neighbor's car was vandalized. She now parks her car in the parking lot, but in a space where the camera in her apartment can film it.

87. Mr. Katz brought up at both the First and Second Hearings that Petitioner's son and mother, who live with her, are not on the Lease for the Affected Unit.

## **VII. DISCUSSION**

### Unlawful Rent

Pursuant to CSFRA Section 1710(d), a Tenant may file a Petition for a downward rent adjustment if the Tenant believes that a Landlord has demanded or retained rent in excess of the lawful amount set forth in the CSFRA. The Tenant bears the burden of proof by a preponderance of the evidence. See CSFRA Section 1711(h) and Regulations Ch. 5, Section (G)(2) and (3).

### Calculation of Base Rent

Under Section 1706(a) of the CSFRA, a Landlord may not charge as rent an amount greater than the sum of the Base Rent and any lawful rent increases implemented pursuant to the CSFRA. CSFRA Section 1702(b)(1) defines Base Rent for tenancies commenced prior to October 19, 2015 as "the Rent in effect on October 19, 2015." Petitioner's tenancy commenced on September 13, 2010. Thus, it is necessary to determine exactly what the Rent for the Affected Unit was on October 19, 2015. This involves ascertaining what is meant by the term "Rent" under the CSFRA.

### Definition of Rent Under CSFRA

#### 1. Periodic Payments of Premises Rent

The definition of Rent under CSFRA Section 1702(p) includes "[a]ll periodic payments...under a Rental Housing Agreement concerning the use or occupancy of a Rental Unit and premises and attendant Housing Services, including all payment and consideration demanded or paid for parking, Utility Charges, pets...". A Rental Housing Agreement is "[a]n agreement, oral, written, or implied, between a Landlord and Tenant for the use or occupancy of a Rental Unit and for Housing Services." The weight of the evidence indicates that as of October 19, 2015, Petitioner was paying \$1,465.00 monthly for the Affected Unit (the "premises rent"). The monthly premises rent charge of \$1,465.00 falls within the definition of Rent because it was a periodic payment paid monthly under the terms of a Rental Housing Agreement for the continued use and occupancy of the Affected Unit.

#### 2. Utilities

Pursuant to CSFRA Section 1702(v), "Utility Charges" include "[a]ny charges for gas, electricity, water, garbage, sewer..., or other service relating to the use and occupancy of a Rental Unit." Commencing sometime prior to 2014, Respondent charged Petitioner for water, sewer, and



trash, all of which fall within the CSFRA's definition of "Utility Charges."<sup>1</sup> Additionally, Multi-Family Utility Company, the third-party vendor used by Respondent for record-keeping and billing services, added a monthly service charge, which constituted a mandatory fee connected to the payment of utilities and which therefore falls within the category of "other service relating to the use and occupancy of a Rental Unit" under CSFRA Section 1702(v). Under CSFRA Section 1702(p), all payments "...under a Rental Housing Agreement concerning the use or occupancy of a Rental Unit and premises" and all payments for "attendant Housing Services, including all payment and consideration demanded or paid for...Utility Charges" constitute Rent. Because the utility charges and the mandatory monthly service fee were each payment for Housing Services demanded by Respondent to be paid by Petitioner pursuant to a Rental Housing Agreement for the Petitioner's continued use and occupancy of the Affected Unit, the utility charges and service fee constitute Rent under the CSFRA.

In order to calculate the Rent actually paid by Petitioner on October 19, 2015, one must determine what Petitioner paid for the premises rent for the Affected Unit and for utilities. While Respondent billed Petitioner for utilities a month in arrears, it is necessary to look at the utilities amounts as accrued, not as billed, so as to accurately encompass what Petitioner actually paid for October 19, 2015. The Multi-Family Utilities Company invoice dated November 5, 2015 covers the period of September 20, 2015 through October 20, 2015. The total amount of utilities billed for that time period was \$64.34, and the amount actually paid by Petitioner was \$65.00, as can be seen from the December 5, 2015 Multi-Family Utilities Company invoice. The Rent paid for October 19, 2015 is calculated by adding what Petitioner paid for premises rent and utilities, \$1,465.00 + \$65.00, which total \$1,530.00. Thus, the Base Rent as of October 19, 2015 was \$1,530.00.

### The Rent Rollback

The CSFRA became effective on December 23, 2016. As of that date, for tenancies commencing prior to October 19, 2015, Landlords were required to roll back rents to their level on October 19, 2015.<sup>2</sup>

The Base Rent for the Affected Unit was \$1,530.00 as of October 19, 2015. Respondent had increased Petitioner's rent from \$1,465.00 to \$1,850.00, effective June 1, 2016. Respondent told Petitioner that it was rolling back her rent to \$1,600.00 as of April 5, 2017, and the Tenant Rent Ledger posts the rent charged as \$1,600.00 starting on May 1, 2017; however, it appears that Petitioner actually paid \$1,465.00 for May 1, 2017 through September 1, 2018. Respondent

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<sup>1</sup> Under the CSFRA, the addition of utilities payments for water and trash when Petitioner had not been paying for them previously would constitute a decrease in Housing Services. However, in this case, since the CSFRA was not effective until December 23, 2016, it does not apply to any actions on the part of Respondent prior to that date.

<sup>2</sup> See, CSFRA Sections 1702(b)(1) and 1706(a); see, <https://www.mountainview.gov/our-city/departments/housing/rent-stabilization/outreach-and-information/faqs>

subsequently credited Petitioner with a “rent control refund” of \$1,000.00, covering January 2017 through April 2017.

As discussed above, the date for rolling back rent under the CSFRA was December 23, 2016, not April 5, 2017. As of December 23, 2016, rent for the Affected Unit was supposed to be rolled back to \$1,530.00, the amount that Petitioner paid on October 19, 2015 for premises rent and utilities. Petitioner paid \$1,850.00 plus utilities for the Affected Unit from June 1, 2016 through April 30, 2017. Respondent thus owed Petitioner the difference between \$1,850.00 plus utilities paid and \$1,530.00 from December 23, 2016 through April 30, 2017. That amount is \$105.81 for December 23, 2016 through December 31, 2016 and \$1,539.50 for January 2017 through April 2017, totaling \$1,645.31. Respondent paid Petitioner \$1,000.00 as a rent refund for January 1, 2017 through April 30, 2017, calculating it as the difference between \$1,850.00 and \$1,600.00 multiplied by four months ( $\$250.00 \times 4 = \$1,000.00$ ). Thus, Respondent owed Petitioner an additional \$645.31.<sup>3</sup> See, Table 1, below, for details.

Under CSFRA Section 1707(f)(1), a Landlord may not increase rent if they are not in substantial compliance with all provisions of the CSFRA and all regulations promulgated by the Rental Housing Committee. Pursuant to CSFRA Regulations, Chapter 12, Sections (B) (1) and (2), a Landlord is deemed not to be in substantial compliance with the CSFRA if they have failed to roll back rent as required by CSFRA Section 1702(b)(1) and/or they have charged more than the lawful rent allowed under CSFRA Sections 1706 and 1707 and have not refunded the amount charged above the lawful allowed rent. Under Regulations, Chapter 12, Section (B), a Landlord’s failure to be in substantial compliance prohibits that Landlord from raising rent.

Because Respondent failed to refund all the rent due to Petitioner, it charged Petitioner more than the lawful rent. Thus, when Respondent refunded \$1,000.00 instead of \$1,645.31, it failed to be in substantial compliance with the CSFRA and consequently could not lawfully raise rent above the rolled back amount of \$1,530.00. This failure to be in substantial compliance nullifies all of the rent increases for the Affected Unit starting with the increase to \$1,567.00 on September 1, 2018.

As discussed below, the rent increases are also invalid for another reason, the failure to properly calculate Base Rent.

#### Unlawful Rent Increases—2017, 2018, 2019, 2021, 2023

CSFRA Section 1706(a) states that “no Landlord shall charge Rent in an amount that exceeds the sum of the Base Rent plus any lawful Rent increases actually implemented pursuant to this Article.” Pursuant to Sections 1706(b) and 1707(a), the Base Rent may be increased only by the amount of the Annual General Adjustment (“AGA”), which is announced by the Rental Housing

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<sup>3</sup>Even looking only at premises rent and not utilities payments, Petitioner did not receive the correct refund. Petitioner should have been refunded a total of \$1,639.35 if one looks only at premises rent.

Committee each year. Once the initial Base Rent is established, a Landlord may increase the rent by no more than the AGA every 12 months.

Given that as of December 23, 2016, the effective date of the CSFRA, the Base Rent for the Affected Unit, which includes premises rent *and* utilities, was \$1,530.00, any subsequent rent increase was required to use that amount as the starting point. From that Base Rent, Respondent could only lawfully impose a rent increase in the amount of the Annual General Adjustment announced by the Rental Housing Committee pursuant to CSFRA Section 1707(a).

As discussed above, Respondent did not properly calculate the rent rollback and thus failed to refund the appropriate amount of overcharges for December 23, 2016 through April 30, 2017, so all subsequent rent increases are disallowed.

Additionally, the rent increase imposed by Respondent effective September 1, 2018 was in itself unlawful. Respondent increased the Rent from \$1,465.00 to \$1,567.00 as of September 1, 2018. The AGA for September 1, 2018 through August 31, 2019 was 3.6 percent. Respondent's documentation for the rent increase states that they applied a seven percent increase, which added 3.4 percent in banked rent from 2017 to the applicable AGA. A lawful rent increase effective September 1, 2018 and including banked rent should have added no more than 7.0 percent to a Base Rent of \$1,530.00, which would have resulted in total monthly rent of \$1,637.10, inclusive of premises rent *and* utilities. Respondent erred in calculating the September 1, 2018 rent increase because they used \$1,465.00 as the Base Rent without the inclusion of utilities, instead of calculating the correct Base Rent of \$1,530.00 including premises rent and utilities. Because of their error in determining the Base Rent and in applying the AGA, Respondent ended up calculating the premises rent *without utilities* as \$1,567.00 when the Rent for the Affected Unit could only lawfully have been \$1,637.10 *inclusive of utilities*. As an example of the overpayment that occurred, the utilities statement dated February 5, 2019 charges \$87.67. Petitioner paid \$1,567.00 in premises rent and \$87.67 for utilities in the month of February, a total of \$1,654.67, when the premises rent and utilities combined should have been no more than \$1,637.10. Table 1, below, sets forth all of the amounts that Petitioner overpaid due to Respondent's error in calculating the Base Rent. Because Respondent issued a rent increase effective September 1, 2018 that exceeded the lawful amount allowed under the CSFRA, that increase must be nullified.

Because the 2018 rent increase was unlawful, the increases imposed as of October 1, 2019, October 1, 2021, and March 1, 2023 were also unlawful and must be nullified. As stated above, the Base Rent for the purposes of calculating all future rent increases is \$1,530.00, including premises rent and utilities.

There is no statute of limitations under the CSFRA with respect to a tenant's right to collect a refund for payment of unlawful rent. *See, also, Minelian v. Manzella*, 215 Cal. App. 3d 457 (1989) (no statute of limitations on tenant asserting an offset against payment of unlawful rent.)

## Calculation of Damages for Unlawful Rent

When it is found that there has been a collection of unlawful rents, a refund of amounts paid in excess of the lawful rent is appropriate. (See CSFRA Section 1714(a)).

Table 1 below shows the premises rent and utilities overpayments for December 23, 2016 through December 2023.

**TABLE 1**

Month/Year of Rent Payment	Premises Rent Paid	Utilities Paid	Rent Payments to Landlord	Lawful Rent	Payment in Excess of Lawful Rent
12/23/2016	\$477.42 <sup>4</sup>	\$23.23 <sup>5</sup>	\$500.65	\$394.84	\$105.81
1/2017	\$1,850.00	\$84.00	\$1,934.00	\$1,530.00	\$404.00
2/2017	\$1,850.00	\$89.00	\$1,939.00	\$1,530.00	\$409.00
3/2017	\$1,850.00	\$67.00	\$1,917.00	\$1,530.00	\$387.00
4/2017	\$1,800.50	\$69.00	\$1,869.50	\$1,530.00	\$339.50
5/2017	\$1,465.00	\$67.00	\$1,532.00	\$1,530.00	\$2.00
6/2017	\$1,465.00	\$68.00	\$1,533.00	\$1,530.00	\$3.00
7/2017	\$1,465.00	\$72.00	\$1,537.00	\$1,530.00	\$7.00
8/2017	\$1,465.00	\$72.00	\$1,537.00	\$1,530.00	\$7.00
9/2017	\$1,465.00	\$75.00	\$1,540.00	\$1,530.00	\$10.00
10/2017	\$1,465.00	\$80.00	\$1,545.00	\$1,530.00	\$15.00
11/2017	\$1,465.00	\$80.00	\$1,545.00	\$1,530.00	\$15.00
12/2017	\$1,465.00	\$92.25	\$1,557.25	\$1,530.00	\$27.25
1/2018	\$1,465.00	\$74.73	\$1,539.73	\$1,530.00	\$9.73
2/2018	\$1,465.00	\$89.05	\$1,554.05	\$1,530.00	\$24.05
3/2018	\$1,465.00	\$89.51	\$1,554.51	\$1,530.00	\$24.51
4/2018	\$465.00 <sup>6</sup>	\$90.11	\$555.11	\$1,530.00	(\$974.89)
5/2018	\$1,465.00	\$76.00	\$1,541.00	\$1,530.00	\$11.00
6/2018	\$1,465.00	\$75.38	\$1,540.38	\$1,530.00	\$10.38
7/2018	\$1,465.00	\$102.06	\$1,567.06	\$1,530.00	\$37.06
8/2018	\$1,465.00	\$97.53	\$1,562.53	\$1,530.00	\$32.53
9/2018	\$1,567.00	\$87.00	\$1,654.00	\$1,530.00	\$124.00
10/2018	\$1,567.00	\$88.37	\$1,655.37	\$1,530.00	\$125.37
11/2018	\$1,567.00	\$85.80	\$1,652.80	\$1,530.00	\$122.80
12/2018	\$1,567.00	\$86.38	\$1,653.38	\$1,530.00	\$123.38
1/2019	\$1,567.00	\$101.17	\$1,668.17	\$1,530.00	\$138.17
2/2019	\$1,567.00	\$87.67	\$1,654.67	\$1,530.00	\$124.67
3/2019	\$1,567.00	\$87.67	\$1,654.67	\$1,530.00	\$124.67

<sup>4</sup> Calculated as  $(\$1,850.00/31) \times 8$ .

<sup>5</sup> Calculated as  $(\$90.00/31) \times 8$ .

<sup>6</sup> Includes \$1,000.00 rent rollback refund.

Month/Year of Rent Payment	Premises Rent Paid	Utilities Paid	Rent Payments to Landlord	Lawful Rent	Payment in Excess of Lawful Rent
4/2019	\$1,567.00	\$78.74	\$1,645.74	\$1,530.00	\$115.74
5/2019	\$1,567.00	\$77.86	\$1,644.86	\$1,530.00	\$114.86
6/2019	\$1,567.00	\$75.67	\$1,642.67	\$1,530.00	\$112.67
7/2019	\$1,567.00	\$96.43	\$1,663.43	\$1,530.00	\$133.43
8/2019	\$1,567.00	\$79.18	\$1,646.18	\$1,530.00	\$116.18
9/2019	\$1,567.00	\$93.30	\$1,660.30	\$1,530.00	\$130.30
10/2019	\$1,621.00	\$83.72	\$1,704.72	\$1,530.00	\$174.72
11/2019	\$1,625.00	\$94.00	\$1,719.00	\$1,530.00	\$189.00
12/2019	\$1,625.00	\$82.00	\$1,707.00	\$1,530.00	\$177.00
1/2020	\$1,625.00	\$80.00	\$1,705.00	\$1,530.00	\$175.00
2/2020	\$1,625.00	\$81.84	\$1,706.84	\$1,530.00	\$176.84
3/2020	\$1,625.00	\$79.26	\$1,704.26	\$1,530.00	\$174.26
4/2020	\$1,625.00	\$79.35	\$1,704.35	\$1,530.00	\$174.35
5/2020	\$1,625.00	\$82.30	\$1,707.30	\$1,530.00	\$177.30
6/2020	\$1,625.00	\$82.30	\$1,707.30	\$1,530.00	\$177.30
7/2020	\$1,625.00	\$97.56	\$1,722.56	\$1,530.00	\$192.56
8/2020 <sup>7</sup>	\$1,625.00	\$82.81	\$1,707.81	\$1,530.00	\$177.81
9/2020	\$1,625.00	\$0.00	\$1,625.00	\$1,530.00	\$95.00
10/2020	\$1,625.00	\$200.00	\$1,825.00	\$1,530.00	\$295.00
11/2020	\$1,625.00	\$83.29	\$1,708.29	\$1,530.00	\$178.29
12/2020	\$1,625.00	\$83.00	\$1,708.00	\$1,530.00	\$178.00
1/2021	\$1,625.00	\$82.00	\$1,707.00	\$1,530.00	\$177.00
2/2021	\$1,625.00	\$82.00	\$1,707.00	\$1,530.00	\$177.00
3/2021	\$1,625.00	\$0.00	\$1,625.00	\$1,530.00	\$95.00
4/2021	\$1,625.00	\$178.00	\$1,803.00	\$1,530.00	\$273.00
5/2021	\$1,660.00	\$159.70	\$1,819.70	\$1,530.00	\$289.70
6/2021	\$1,660.00	\$84.56	\$1,744.56	\$1,530.00	\$214.56
7/2021	\$1,660.00	\$86.00	\$1,746.00	\$1,530.00	\$216.00
8/2021	\$1,660.00	\$93.32	\$1,753.32	\$1,530.00	\$223.32
9/2021	\$1,690.00	\$90.15	\$1,780.15	\$1,530.00	\$250.15
10/2021 <sup>8</sup>	\$1,690.00	\$86.85	\$1,776.85	\$1,530.00	\$246.85
11/2021	\$1,690.00	\$0.00	\$1,690.00	\$1,530.00	\$160.00
12/2021	\$1,690.00	\$0.00	\$1,690.00	\$1,530.00	\$160.00
1/2022	\$0.00	\$0.00	\$0.00	\$1,530.00	(\$1,530.00)
2/2022	\$0.00	\$0.00	\$0.00	\$1,530.00	(\$1,530.00)
3/2022	\$0.00	\$97.00	\$97.00	\$1,530.00	(\$1,433.00)

<sup>7</sup> An additional payment of \$34.00 for this month which is listed in the Petition A is not included as it is not clear what the payment is for.

<sup>8</sup> An additional payment of \$35.00 for this month listed in the Petition A is not included as it is not clear what the payment is for.

Month/Year of Rent Payment	Premises Rent Paid	Utilities Paid	Rent Payments to Landlord	Lawful Rent	Payment in Excess of Lawful Rent
4/2022	\$1,670.00	\$98.00	\$1,768.00	\$1,530.00	\$238.00
5/2022	\$1,670.00	\$0.00	\$1,670.00	\$1,530.00	\$140.00
6/2022	\$1,650.00	\$0.00	\$1,650.00	\$1,530.00	\$120.00
6/2022	\$4,950.00 <sup>9</sup>	\$0.00	\$4,950.00	\$4,590.00	\$360.00
7/2022	\$1,650.00	\$105.00	\$1,755.00	\$1,530.00	\$225.00
8/2022	\$1,650.00 <sup>10</sup>	\$400.00	\$2,050.00	\$1,530.00	\$520.00
9/2022	\$1,650.00	\$0.00	\$1,650.00	\$1,530.00	\$120.00
10/2022	\$1,530.00	\$150.00	\$1,680.00	\$1,530.00	\$150.00
11/2022	\$1,650.00	\$150.00	\$1,800.00	\$1,530.00	\$270.00
12/2022	\$1,650.00 <sup>11</sup>	\$200.00	\$1850.00	\$1,530.00	\$320.00
1/2023	\$1650.00	\$200.00	\$1850.00	\$1,530.00	\$320.00
2/2023	\$1,650.00	\$160.00	\$1,810.00	\$1,530.00	\$280.00
3/2023	\$1,650.00	\$0.00	\$1,650.00	\$1,530.00	\$120.00
4/2023	\$1,650.00	\$0.00	\$1,650.00	\$1,530.00	\$120.00
5/2023	\$1,650.00	\$160.00	\$1,810.00	\$1,530.00	\$280.00
6/2023	\$1,650.00	\$365.00	\$2,015.00	\$1,530.00	\$485.00
7/2023	\$1,650.00	\$0.00	\$1,650.00	\$1,530.00	\$120.00
8/2023	\$1,650.00	\$155.00	\$1,805.00	\$1,530.00	\$275.00
9/2023	\$1,650.00	\$0.00	\$1,650.00	\$1,530.00	\$120.00
10/2023	\$1,650.00	\$200.00	\$1,850.00	\$1,530.00	\$320.00
11/2023	\$1,650.00	unknown	\$1,650.00	\$1,530.00	\$120.00
12/2023	\$1,650.00	unknown	\$1,650.00	\$1,530.00	\$120.00
Totals	\$134,429.92	\$7,432.10	\$141,862.02	\$133,504.84	\$8,357.18
Total Overpayment- 12/23/2016 through 12/2023					\$8,357.18

For Rent overpayments for the period of December 23, 2016 through December 31, 2023, Respondent owes a refund to Petitioner of \$8,357.18. For any months thereafter during which Petitioner has paid more than \$1,530.00 for Rent (including both premises rent and utilities), Respondent shall refund to Petitioner the difference between the total amount paid by Petitioner to or on behalf of Respondent for that month, including premises rent and utilities,

<sup>9</sup> An additional \$4,950.00 was paid by the State of California’s Covid-19 Rent Relief Fund for January 2022, February 2022, and March 2022.

<sup>10</sup>The amount of \$1650.00 was paid by CSA Rent Relief.

<sup>11</sup> The amount of \$3,300.00 was paid on Petitioner’s behalf by a non-profit (CLSEPA), for rent for December 2022 and January 2023.

and the lawful rent of \$1,530.00. Additionally In the event that Petitioner pays any past utilities invoices which increase the total payment above \$1,530.00, that amount shall be refunded.

#### Failure to Maintain Habitable Premises/Decrease in Housing Services Claims

The parties' testimony revealed frustration and tension on the part of Petitioner and Property Manager who have been facing a difficult situation for some time. It must be remembered that the case at issue is not about whether Property Manager is trying hard in the face of adversity. The question here is whether Respondent as a Landlord is honoring the duties imposed upon them by the CSFRA and other state or local laws. The relevant law addresses whether there are habitability issues on the Property and whether there has been a decrease in Housing Services.

#### Habitability

Under CSFRA Section 1710(b)(1), “[f]ailure to maintain a Rental Unit in compliance with governing health and safety and building codes, including but not limited to Civil Code Sections 1941.1 et seq. and Health and Safety Code Sections 17920.3 and 17920.10, constitutes an increase in Rent. A Tenant may file a Petition with the Committee to adjust the Rent downward based on a loss in rental value attributable to the Landlord's failure to maintain the Rental Unit in habitable condition.”

Additionally, Section 1710(b)(2) states that “[a] Tenant Petition filed pursuant to this Subsection must specify the conditions alleged to constitute the failure to maintain the Rental Unit in habitable condition and demonstrate that the Landlord was provided with reasonable notice and opportunity to correct the conditions that form the basis for the Petition.”

In bringing a Petition under Section 1710(b), the Tenant bears the burden of proof by a preponderance of the evidence. See CSFRA Section 1711(h) and Regulations Ch. 5, Section (G)(2) and (3).

California Civil Code Section 1941 provides that a Landlord of a “building intended for the occupation of human beings must...put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenable...”

Under California Civil Code Section 1941.1(a), “[a] dwelling shall be deemed untenable for purposes of Section 1941 if it substantially lacks any of the...affirmative standard characteristics [listed in that Code section] or is a residential unit described in Section 17920.3... of the Health and Safety Code...”

#### Smoking

The City of Mountain View enacted a multi-unit residential smoking prohibition effective January 1, 2022. See, Mountain View Municipal Code, Chapter 21, Article II, Sections 21.46 et seq. (the “Anti-Smoking Ordinance”). In enacting the Anti-Smoking Ordinance, the Mountain View City Council made legislative findings that “tobacco smoke is detrimental to the health, welfare and comfort of the general public and [the City Council] recognizes the right and need

of those who wish to breathe fresh air. Accordingly, it has been determined that the health, safety and general welfare of the residents of... this city would be furthered by the prohibition and regulation of smoking in enclosed places or defined places.” See, Anti-Smoking Ordinance, Section 21.46.

Section 21.56(a) of the Anti-Smoking Ordinance provides that “Smoking is prohibited, and no person shall smoke inside any new or existing unit of a multi-unit residence, in any enclosed or unenclosed common area of a multi-unit residence or within a reasonable distance of any operable doorway, window, opening or vent of a multi-unit residence.” Landlords are required to keep the premises free of smoking waste, post “no smoking” signs, and include a smoking prohibition in leases. See, Anti-Smoking Ordinance, Sections 21.56(d), (e), (f). The informational notice served on several tenants at the Property by the MFH inspector from the Fire Department states that smoking is prohibited “[w]ithin 25 feet of any operable door, window, opening and vents of this and neighboring multi-unit residences.”

In addition to the local ordinance, California Health and Safety Code Section 17920.3(c) provides “Any building or portion thereof including any dwelling unit, ... or the premises on which the same is located, in which there exists any of the following listed conditions to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof shall be deemed and hereby is declared to be a substandard building: (c) Any nuisance.”

Pursuant to California Civil Code Section 3479, “[a]nything which is injurious to health..., or is indecent or offensive to the senses, or an obstruction to the free use of property...is a nuisance.” In *Birke v. Oakwood Worldwide*, 169 Cal. App. 4<sup>th</sup> 1540 (2009), the court held that a tenant whose child’s health conditions were exacerbated by secondhand smoke in common areas was not precluded from suing his landlord to abate a public nuisance.

The substantial weight of the evidence supports a conclusion that other tenants’ smoking on the Property has seriously affected Petitioner’s health, safety, and welfare. Petitioner suffers from a [REDACTED] and other serious chronic conditions as well as a serious, life-threatening illness for which she has required [REDACTED]. She has been bombarded in the Affected Unit by smoke from three other rental units for over four years. This exposure has caused her to have to [REDACTED], to seek treatment at hospital emergency rooms several times, to faint on the Property, and to [REDACTED] for her serious ailment.

The second-hand smoke coming from her neighbors’ rental units is well documented. With respect to rental unit [REDACTED] there are emails from the property manager at the time conveying admissions from the offender. There is also the [REDACTED] Email, in which [REDACTED] the current on-site manager, says that “#10 has smoked in his apartment and around the facility since the day he moved in. He smoked right in front of me while he said he was feeling that he was being persecuted.” With respect to rental unit [REDACTED] there is a report from the Fire Department in which the offender, having been caught smoking, is described as uncooperative.



The [REDACTED] Email also refers to the tenant in [REDACTED] as smoking with friends and describes not just Petitioner but also another neighboring tenant as having “been dealing with their smoke for months.” With respect to the current tenant in rental unit [REDACTED] there is a Fire Department report indicating that a referral would be made to the Fire Marshal due to the violation.

Property Manager expressed frustration at the Second Hearing, saying that they could not control tenants’ behavior. They posted “no smoking” signs and served notices of violation to no avail.

Property Manager denied any knowledge of the tenant in rental unit [REDACTED] smoking, even though it was documented in the [REDACTED] Email which was sent to Mr. Katz. They said that the tenants in rental units [REDACTED] and [REDACTED] and the former tenant in rental unit [REDACTED] have moved out. Thus, they argued that the focus should be on the progress that has been made, not on the past.

Property Manager also denied any recollection of being served with the Fire Department report about rental unit [REDACTED]. They testified that they went to rental unit [REDACTED] in the same month, August 2022, that the [REDACTED] Email was sent and the Fire Department caught the tenant smoking, but they did not smell any smoke, so therefore he was not smoking. They never tested either rental unit [REDACTED] or the Affected Unit for smoke, nor did they even attempt a simple solution such as installing an air filtration system in the Affected Unit. And on December 16, 2022, they suggested that Petitioner move out.

Under the CSFRA and California Civil Code Section 1941, Respondent owes Petitioner a duty to maintain the Property in compliance with governing health and safety codes, in this case California Civil Code Section 1941.1, California Health and Safety Code Section 17920.3(c), and the Anti-Smoking Ordinance, Mountain View Municipal Code Sections 21.46 and 21.56. They have failed to live up to that duty. Property Manager reiterated many times that (a) no one was smoking, which runs contrary to the evidence, or (b) they have tried to deal with the issue and they just cannot seem to find a solution, that they cannot control people’s behavior. Setting aside the question of whether they have really done all they could, being in a state of denial or throwing up one’s hands and saying that there is no solution does not absolve the Landlord from responsibility under the CSFRA. A Landlord is responsible for maintaining a rental unit and common areas in a habitable condition, and Respondent has not done so. In this particular case, Respondent chose to allow offending tenants to remain in their rental units even though they were in breach of their lease agreements for months or years; no evidence was presented that Respondent even attempted to evict these tenants for smoking on the Property. The individual smokers lived on the Property for between a little over a year to approximately three years. It took Respondent four years to decide to rent units in Petitioner’s building only to applicants who claim not to smoke. Having allowed this situation to continue for years, Respondent

cannot escape the consequences by arguing that the problem is unsolvable and thus they were justified in doing nothing.<sup>12</sup>

Petitioner documented the tenant in rental unit [REDACTED] smoking inside his rental unit as having commenced on March 15, 2019 and continued until he vacated sometime in 2022. Petitioner began sending emails about the prior tenant in rental unit [REDACTED] commencing on May 16, 2021. That tenant moved out in May 2023. Petitioner documented the tenant in [REDACTED] as smoking inside his rental unit commencing on May 7, 2022. He vacated in August 2023. While the current tenant in rental unit [REDACTED] was caught smoking by the Fire Department on June 6, 2023, Petitioner testified that at the time of the Second Hearing, none of her neighbors were smoking inside their rental units. She did state, however, that she could smell smoke outside the Affected Unit which was coming from the parking lot. Thus, the smoking problem caused by Petitioner's neighbors smoking inside their rental units lasted from March 15, 2019 until August 2023. Going forward, the problem of tenants smoking in the parking lot needs to be addressed.

#### Calculation of Rent Reduction for Smoking

Petitioner suffered from second-hand smoke entering the Affected Unit from March 15, 2019 through August 1, 2023, a total of 52 months and 17 days. At the Second Hearing, Mr. Katz questioned whether a statute of limitations would apply to the Petition. Although the CSFRA does not establish a statute of limitations for failure to maintain a rental unit and common areas in a habitable condition, under California Code of Civil Procedure Section 337(a), the period of limitations for contractual obligations is four years from the date of breach. A lease can be characterized as a contractual obligation; thus, Petitioner would have had to file the Petition complaining about Respondent's failure to live up to its duty as a Landlord no later than four years after the first reported incident of smoking, on March 15, 2019. Petitioner filed the Petition on February 3, 2023, which is within the contractual statute of limitations period.<sup>13</sup>

While Petitioner did not vacate the Affected Unit,<sup>14</sup> as she was urged to do by two of Respondent's property managers, she suffered a serious diminution in enjoyment of the Affected Unit. She never knew when she would be accosted by noxious fumes that were detrimental to her health. Being able to live in the Affected Unit without encroachment of a nuisance detrimental to her health, safety and welfare is worth ten percent of the monthly rental value of the Affected Unit.

Since Petitioner will recover rent overpayments from December 23, 2016 through the date of this Decision, all rent reductions due to claims set forth in the Petition B shall be calculated

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<sup>12</sup> Indeed, it is possible that in another forum, Petitioner could pursue an Americans With Disabilities Act complaint or a Fair Housing complaint.

<sup>13</sup> Even if the first incident of smoking penetrating the Affected Unit had been outside the limitations period, it can be argued that the smoking incidents were an ongoing series of contractual breaches within the limitations period.

<sup>14</sup> She might have had a cause of action for constructive eviction had she done so.

based on the lawful rent of \$1530.00 rather than the rent that Petitioner paid during the relevant time periods.

The period from March 15, 2019 through August 1, 2023, constitutes 52 months and 17 days. Ten percent of rent for that period would be \$8,039.90.<sup>15</sup>

The total rent reduction for Petitioner's exposure to secondhand smoke is \$8,039.90.

### Rat Infestation

The Petition B states that the Property had a rat infestation from November 10, 2020 until December 22, 2022. Petitioner presented photos of rat droppings on the Property from 2022 and a note left by another tenant saying "Please don't feed the rats." Respondent did not dispute that there had been rats on the Property. Petitioner testified that Respondent hired a pest control service which took care of the problem. Respondent submitted invoices and ledger entries showing that a pest control service treated the Property in 2023.

California Civil Code Section 1941.1(a)(6) states that a dwelling shall be deemed untenable if its "[b]uilding, grounds, and appurtenances" are not kept free from rodents. International Property Maintenance Code<sup>16</sup> Section 302.5 states that "[s]tructures and exterior property shall be kept free from rodent harborage and infestation." There was no evidence challenging Petitioner's characterization of a rat problem on the Property from November 10, 2020 until December 22, 2022, and therefore it is reasonable to conclude that there was a rat infestation during that time period which has subsequently been remedied.

### Rent Reduction for Rat Infestation

Common areas at the Property can be treated as equivalent to an additional room in the Affected Unit, increasing it to five rooms with each room worth 20 percent of monthly rent. Therefore, use and enjoyment of the entire common area on the Property would be worth 20 percent of monthly rent. The rats posed a potential health hazard, but no evidence was presented of direct health effects on Petitioner, so it would be reasonable to assign a two percent reduction to the 20 percent of monthly rent assigned to the common area for this particular violation of California law and the CSFRA. This amounts to an overall reduction of .4 percent of monthly rent.

The time period from November 10, 2020 through December 22, 2022 constitutes 25 months and 12 days. The rent reduction for that period is \$155.37.<sup>17</sup>

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<sup>15</sup> Calculated as  $(\$1,530.00 \times 52) \times .1 + ((\$1,530.00/31) \times 17) \times .1$ .  $\$7,956.00 + \$83.90 = \$8,039.90$ .

<sup>16</sup> Adopted by Mountain View as Municipal Code Chapter 8, Article V, Sections 8.60.1 et seq.

<sup>17</sup> Calculated as  $((\$1,530.00 \times 25) \times .2) \times .02 + ((\$1,530.00/31) \times 12) \times .2) \times .02$ .  $\$153 + \$2.37 = \$155.37$ .

The total rent reduction for the rat infestation in the common area is \$155.37.

Inadequate lights in the parking lot

California Health and Safety Code Section 17920.3(a)(10) states that a Property is considered substandard if it lacks “required electrical lighting” and if it suffers from “improper maintenance.” International Property Maintenance Code, Section 402.3 states that spaces other than habitable spaces, common hallways and stairwells “shall be provided with natural or artificial light sufficient to permit the safe occupancy of the space.”

On July 14, 2022, Petitioner sent an email to Property Manager informing them that there was inadequate lighting in the parking lot. Petitioner submitted photos from July 17, 2022, July 26, 2022, August 10, 2023, October 16, 2023 and November 16, 2023 which show the parking lot as pitch black. The [REDACTED] Email also states: “The lights in the parking lot are not working correctly. Much of the time at night, it is very dark.”

Mr. Katz said that a maintenance person comes to the Property once or twice a week and that the lights are replaced then. No maintenance logs were submitted to show that the issue had been corrected. Contradicting Mr. Katz, [REDACTED] testified that there is no schedule for replacing the lights in the parking lot. Ms. Henson testified that if a tenant notices a light that is out, they can call the office, send an email, fill out a maintenance request, or notify [REDACTED] [REDACTED] Ms. Henson would then send a group text to [REDACTED] and to Mr. Katz, and [REDACTED] [REDACTED] would schedule the maintenance. [REDACTED] said that it usually takes a couple of days, but it might have to wait 48 to 72 hours because emergency maintenance gets priority. Once again, no maintenance logs were presented to show that Petitioner’s complaints about the lights, or even [REDACTED]’s complaints about the lights, were resolved.

[REDACTED] said that the lights were on a timer which had been adjusted so that they would go on earlier, but once again, no maintenance logs were submitted to verify when the adjustments were made. She also said that while the Second Hearing was ongoing, she called her contractor about adding motion sensor lights to the parking lot, which can be taken as an admission that the lights at that time were inadequate. There was also no testimony from Property Manager that either [REDACTED] Mr. Katz, or Ms. Henson have been at the Property at any time when it was dark, so they had no firsthand knowledge of how dark the parking lot is at night.

Based on the evidence, it is reasonable to conclude that the lights in the parking lot were not functioning properly from July 14, 2022 until the time of the Second Hearing and thus did not allow safe use of the parking lot. Inadequate lighting in the parking area poses a safety hazard not only with respect to increasing the chance that someone will fall or be hit by a car, but also with respect to personal security. Given the evidence about the security issues on the Property and evidence that strangers frequently drive into the parking area at night, not having lighting is a serious issue. It is assumed that Respondent will install additional motion sensor lights as represented by [REDACTED]

### Rent Reduction for inadequate parking lot lights

Taking the common areas as worth 20 percent of the monthly rent for the Affected Unit, it would be reasonable to reduce rent 20 percent from that amount for inadequate lighting. This amounts to a four percent reduction of monthly rent. The period of July 14, 2022 through the date of the Second Hearing, December 20, 2023, constitutes 17 months and six days. The total rent reduction for that period is \$1,052.25.<sup>18</sup>

The total rent reduction for the inadequate lighting in the parking lot is \$1,052.25.

### Door lock broken by intruder

The Petition states that the lock on the entry door to the Affected Unit was broken by an intruder on September 25, 2022. Petitioner notified Mr. Katz by email that day. Respondent repaired the lock on October 7, 2022. Petitioner testified that the intruder did not get into the Affected Unit, that she did not have a deadbolt on the door, and that while she waited for the lock to be repaired, she put a sofa against the door so that no one could get in.

Depending upon the nature of the repair, a wait of 12 days may not be a major delay; however, for a tenant to be without a lock on their front door for 12 days puts their safety at issue. California Civil Code Section 1941.3 states that “(a)[t]he landlord...of a building intended for human habitation shall...(1) Install and maintain an operable dead bolt lock on each main swinging entry door of a dwelling unit...(b) The tenant shall be responsible for notifying the owner or his or her authorized agent when the tenant becomes aware of an inoperable dead bolt lock...The landlord...shall not be liable for a violation of subdivision (a) unless he or she fails to correct the violation within a reasonable time after he or she either has actual notice of a deficiency or receives notice of a deficiency.”

Respondent, through their agent, had actual notice that the door lock was broken on September 25, 2022. They had constructive notice that there was no dead bolt on the door, since they never installed one. By delaying 12 days to repair the front door of the Affected Unit or to install a dead bolt, leaving Petitioner without a means to lock her door, Respondent violated Civil Code Section 1941.3 and was in contravention of the CSFRA.

### Rent Reduction for the broken door lock

It is reasonable to calculate damages as what it would have cost Petitioner to replace the lock and install a deadbolt. The price range for replacing a door lock is between \$130 and \$220, which averages out to \$175. Installing a deadbolt can cost between \$40 and \$200, which averages out to \$120.00. Total damages amount to \$295.00.<sup>19</sup>

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<sup>18</sup> Calculated as  $((\$1,530.00 \times 17) \times .2) + (((\$1,530.00/31) \times 6) \times .2) \times .2$ .  $\$1,040.40 + \$11.85 = \$1,052.25$ .

<sup>19</sup> See, <https://www.angi.com/articles/change-door-locks-cost.htm>; <https://www.angi.com/articles/how-much-does-it-cost-install-deadbolt-locks.htm>

### Overflowing bulky trash

While the Petition lists the trash problem on the Property as a decrease in Housing Services, it is also a habitability issue. California Civil Code Section 1941.1(6) states a dwelling is untenable if the common areas are not “kept in every part clean, sanitary, and free from all accumulation of debris, filth, rubbish, garbage...” International Property Maintenance Code Section 302.1 states that “[e]xterior property and premises shall be maintained in a clean, safe and sanitary condition.”

There was substantial evidence that the dumping of bulky trash is an ongoing problem on the Property. The Petition B alleges that Respondent became aware of the problem on December 1, 2020. Petitioner submitted emails from July 12, 2021 and July 23, 2021 documenting shopping carts being left on the Property. She subsequently sent numerous additional emails and photographs documenting a constant accumulation of trash such as mattresses, furniture, appliances, and other large personal items. Additionally, MFH inspection reports from September 8, 2021, August 3, 2022, November 1, 2022, December 21, 2022, March 14, 2023, and May 17, 2023 point out trash on the Property and note violations of California Fire Code Sections 1023.2 and 1030 and California Building Code Section 1003.6 due to the accumulation of trash. The May 17, 2023 inspection report states that “[i]t looks like someone has set up a sleeping area in the storage room in the rear of the building, remove all bedding and loose personnel [sic] items, secure this door.” Ms. Henson testified that trash is an ongoing issue on the Property. There is no regular pick-up of bulky trash, and, depending upon the size of the load, once she is notified about the problem, it will get picked up within a day to several days; if trash is put out on the weekend, it takes longer. She testified that bulky trash is picked up one to three times a month. However, Respondent submitted documentary evidence of only eight total additional bulky trash pick-ups in 2022 and 2023 combined. Petitioner testified that there are times when she cannot put her household trash into the dumpsters on the Property because they are over full.

As with the other major issues on the Property, Property Manager testified that they are doing all they can, but it is an uphill battle. Mr. Katz testified that non-residents drive into the Property and dump trash. Property Manager considered installing a gate to limit access to the parking lot where the dumpsters are stored, but rejected that idea. They also rejected the idea of adding more dumpsters to accommodate the additional trash or locking the dumpsters to keep people out. Mr. Katz testified that three to five years ago, the trash problem did not exist.

As discussed earlier, the question here is not whether Property Manager is doing all it can think of doing with respect to the trash. The question is whether there continues to be an excess of trash on the Property, which violates state and local laws. The weight of the evidence demonstrates that there is frequently excessive trash on the Property. By Property Manager’s own admission, the trash problem has not been resolved. Therefore, an ongoing violation of California Civil Code Section 1941.1(6) and International Property Maintenance Code Section 302.1 exists, warranting a rent reduction.

### Rent Reduction for overflowing bulky trash

From the evidence presented, it is reasonable to conclude that the trash became a problem at the beginning of 2021 and was continuing as of the date of the Second Hearing. If the common areas on the Property are worth 20 percent of monthly rent, not having unsightly and unsanitary trash around the dumpsters and outside individual rental units is worth 20% of that, a total of four percent of the monthly rent.

The period of January 1, 2021 through December 20, 2023 constitutes 35 months and 19 days. The rent reduction for that time period amounts to \$2,179.51.<sup>20</sup>

The total rent reduction for overflowing bulky trash is \$2,179.51.

### Three-prong wall outlet

The Petition B raised the issue of the three-prong outlet that was listed as a violation in the MFH inspection report of August 3, 2022. The inspection report cites the lack of the proper outlet as a violation of California Electric Code Sections 406.4(D) and 408. Petitioner testified that the outlet was replaced as of October 7, 2022, and there was no testimony to the contrary. Property Manager testified that they served Petitioner with a three-day notice with respect to the outlet on August 26, 2022 because Petitioner had had [REDACTED] in August, and it was difficult to schedule a date to do the repairs. Even though there was a violation, the repairs were performed within a reasonable time after August 26, 2022, and therefore damages are not warranted in this case.

### Water leakage

Petitioner informed Respondent on September 22, 2022 that water was leaking from an area near one of the laundry rooms. It was repaired on October 9, 2022. The repair occurred within a reasonable time and thus damages are not warranted.

### Holes in the ceiling of the Affected Unit

Petitioner testified that some of the knots in the wooden ceiling in the Affected Unit have been falling out. She submitted photos from 2022 to support her testimony. She also said that she has not seen anything emanating from the holes, such as rodents or other animals, insects, or water. It appears that this phenomenon is simply cosmetic and thus no damages are warranted.

### Leak from bathroom to parking lot

Petitioner testified that she was informed by Property Manager on December 16, 2022 that water was leaking from the bathroom in the Affected Unit into the parking lot. The leak was

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<sup>20</sup> Calculated as  $((\$1,530 \times 35) \times .2) \times .2 + (((\$1,530.00/31) \times 19) \times .2) \times .2$ .  $\$2,142.00 + \$37.51 = \$2,179.51$ .

repaired on January 13, 2023. The repair occurred within a reasonable time and thus damages are not warranted.

#### Broken toilet

On October 22, 2018, Petitioner notified the property manager at the time that her toilet was leaking. She did not receive a response, so she had the toilet repaired herself on the same day that she reported it at a cost of \$280.00. While Petitioner represented that the problem was an emergency, she did not present evidence that she gave Respondent a reasonable time to repair the toilet, so no damages are warranted.

Total damages for all habitability violations are \$8,039.90 + \$155.37 + \$1,052.25 + \$295.00 + \$2,179.51 = \$11,722.03.

#### Housing Services

Pursuant to CSFRA Section 1710(c), “[a] decrease in Housing Services or maintenance, or deterioration of the Rental Unit beyond ordinary wear and tear, without a corresponding reduction in Rent, is considered an increase in Rent. A Tenant may file a Petition to adjust the Rent downward based on a loss in rental value attributable to a decrease in Housing Services or maintenance or deterioration of the Rental Unit. The Petition must specify the circumstances alleged to constitute a decrease in Housing Services or maintenance, and demonstrate that the Landlord was provided with reasonable notice and an opportunity to correct in like manner to Petitions filed pursuant to Subsection 1710(b)(2) herein.”

CSFRA Section 1702(h) defines “Housing Services” as including “but... not limited to, repairs, maintenance, ...laundry facilities and privileges, janitor services, refuse removal, parking, the right to have a specified number of occupants, and any other benefit, privilege or facility connected with the use or occupancy of any Rental Unit. Housing Services to a Rental Unit shall include a proportionate part of services provided to common facilities of the building in which the Rental Unit is contained.”

#### Swimming Pool

Petitioner testified that her son used to swim in the pool frequently from May through September, but that the pool has been unusable since 2018 because it was dirty and there were ducks in it. Petitioner submitted photos of ducks in the pool in June and July 2021 and of ducks swimming in scummy water in June 2022. Property Manager posted a notice to tenants on June 13, 2022 regarding ducks in the pool. The notice refers to the City of Mountain View not allowing the pool to be open. ██████████ testified that that was because of a defective gate latch that was repaired; however, the wording of the notice to the tenants does not support that interpretation, and no documents were submitted to support the testimony. On October 3, 2022, Property Manager sent a notice to tenants that the pool was closed for the season and was going to be removed; however, that plan was never executed. That notice implies that the pool was open in July, August, and September 2022. ██████████ testified that the ducks arrive



somewhere between March and May and stay for several months. Property Manager's testimony was that there were ducks in the pool in 2022 and 2023. Petitioner submitted photos of ducks in the pool in March 2023 and April 2023 and of duck feces around the pool and dirty pool water from June 2023. She also submitted a photo from November 27, 2023 in which the pool looks clean, and she testified that her neighbors were swimming in the pool in July 2023. None of Respondent's witnesses had knowledge of anything on the Property earlier than October 2021.

Property Manager testified that prior to July 2023, the pool was serviced once a week. Starting in July 2023, it was serviced twice a week. Respondent submitted invoices that were sent monthly without any indication on them of what the service dates were, and there were ledger entries showing payment for pool services once a month. One invoice, from March 2023, states that additional chemicals were added to the pool to deter ducks. There are additional ledger entries for pool service in January, September and November 2023. Petitioner testified that prior to 2014, the on-site property manager cleaned the pool; the current on-site manager does not do that.<sup>21</sup>

The evidence supports the conclusion that in 2022 and 2023, the pool was closed each year from in or about March to in or about July due to ducks. The evidence also supports the conclusion that Respondent started to service the pool more frequently in 2023, particularly in the later part of the year, so that by the time of the Second Hearing, the pool was in usable condition. With respect to the period of 2018 through 2021, there was no evidence rebutting Petitioner's allegations that the pool was completely unusable due to its unsanitary condition. Thus, it is reasonable to conclude that during 2018, 2019, 2020 and 2021, the pool was inaccessible to Petitioner's son in the months when he desired to use it: May through September. It can be assumed that the pool was legitimately closed during the time when public health orders shut down pools due to Covid, which was from March 19, 2020 until June 5, 2020.<sup>22</sup>

Mr. Katz testified that he talked to people in vector control, a department in the City of Mountain View (he did not recall which one) and animal control, who told him he could not remove the ducks; however, he did not keep any notes of those conversations. He also stated that his pool service told him that there was nothing that could be done. However, Mr. Katz said they put inflatable toys in the pool to scare the ducks away, which did not work, and the invoices indicate that they once put additional chemicals in the pool to deter the ducks, which also appear not to have worked.

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<sup>21</sup> Because the CSFRA was effective starting on December 23, 2016, any services rendered by Respondent prior to that time cannot be considered for the purposes of concluding whether there has been a decrease in Housing Services under the CSFRA.

<sup>22</sup> See, Governor's stay at home order: <https://www.gov.ca.gov/2020/03/19/governor-gavin-newsom-issues-stay-at-home-order/>; Santa Clara County Department of Public Health pool guidelines: [chrome-extension://efaidnbnmnibpcjpcglclefindmkaj/https://covid19.sccgov.org/sites/g/files/exjcpb766/files/swimming\\_pool\\_guidelines.pdf](chrome-extension://efaidnbnmnibpcjpcglclefindmkaj/https://covid19.sccgov.org/sites/g/files/exjcpb766/files/swimming_pool_guidelines.pdf)

The CSFRA requires that a Landlord be given notice and an opportunity to correct a problem on their Property. Respondent had constructive notice because the problem was obvious to anyone who looked at the pool and was given ample time—since 2018—to correct the problem. Once again, Property Manager testified that there was just nothing that they could do about the ducks. However, there was no evidence presented that Property Manager consulted with experts about deterrents to keep the ducks from coming back, i.e., interrupting their migratory pattern, such as a solar cover, an automatic pool cleaner, bird netting, or deterrents which use sound. They picked one suggested deterrent—inflatable pool toys—and when that did not work, they gave up.<sup>23</sup>

The swimming pool is a Housing Service because it is a benefit connected with the use or occupancy of the Affected Unit. Because the swimming pool was not maintained in a clean and sanitary condition during certain months each year,<sup>24</sup> Petitioner was unable to use it and thus suffered a decrease in Housing Services requiring a reduction in rent pursuant to CSFRA Section 1710(c).

#### Rent Reduction for swimming pool closure

It is reasonable to calculate damages based on what Petitioner would have to pay for an alternate place to swim. The El Camino YMCA in Mountain View charges \$90 to join, plus \$99 per month dues.<sup>25</sup>

Petitioner would have a contractual cause of action for each separate period of closure of the swimming pool each year, so going by the four-year statute of limitations for contractual actions, Respondent is liable for closure from February 3, 2019 through the closures in 2023.

For May through September, 2019, damages are  $(\$99.00 \times 5) + \$90 = \$585.00$ .

For June 5, 2020 through September 30, 2020, damages are  $\$99.00 \times 4 = \$396.00$ .

For May through September, 2021, damages are  $\$99.00 \times 5 = \$495.00$ .

For May and June, 2022, damages are  $\$99.00 \times 2 = \$198.00$ .

For May and June, 2023, damages are  $\$99.00 \times 2 = \$198.00$ .

The total damages for the unusable swimming pool are: \$1,872.00.

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<sup>23</sup> It is interesting that Property Manager did not even seem to be aware of the one-time addition of some kind of chemical deterrent. This speaks to the consequences of a lack of a real on-site property manager; i.e., no one really has any idea whether the pool is being serviced as represented on the invoices.

<sup>24</sup> The pool problem can also be viewed as a habitability issue. See, International Property Code Section 303.1: "Swimming pools shall be maintained in a clean and sanitary condition."

<sup>25</sup> See, <https://www.ymcasv.org/join>

### Parking Space

Petitioner testified that she no longer parks in her assigned parking space because her neighbor's vehicle was vandalized, so she moved her car to a space where her doorbell security camera can film it. Petitioner still has a parking space, but it is just not the original one that she had in the past. From her testimony, it appears that the new space is near the Affected Unit, so it does not result in any kind of inconvenience for Petitioner. Respondent is not charging Petitioner extra for moving to a different parking space, so there is no decrease in Housing Services involved.

### Trash

As discussed above, there is a substantial problem of bulk trash dumped on the Property. Pursuant to CSFRA Section 1702(h), Housing Services include refuse removal. By Property Manager's own admission, the trash problem did not exist prior to 2021. The Petition B alleges that Respondent became aware of the problem on December 1, 2020. The evidence indicates that Respondent is not keeping up with refuse removal sufficiently to maintain the Property in the condition that it had been in prior to 2021. Therefore, there has been a decrease in Housing Services, justifying an award of damages. It is not appropriate to award damages twice because the violation falls within both categories of habitability and decrease in Housing Services. Thus, the damages are as listed in the section on habitability.

### Laundry Rooms

On June 3, 2022, Property Manager posted a notice on the laundry rooms and sent a notice to tenants stating that all of the laundry rooms on the Property were closed and the machines disconnected until further notice. The notices said that the closing was due to vandalism. Seven out of the eight laundry machines (four washers and four dryers) were converted to a phone-app based payment system, and the tenants were informed about how to use the system as of September 28, 2022.

██████████ testified that the laundry rooms also were closed for approximately eight months to a year at one point, but she could not remember when that was. This was because tenants were giving the code to the laundry room doors to their friends, who would then sleep in the laundry rooms. ██████████ additionally testified that as of the date of the Second Hearing, there were three functioning washers and dryers, and that one laundry room, in 2485 Whitney, had been permanently closed because of people sleeping in it. Prior to that closure, there had been four functioning washers and dryers. The functioning machines are at 2489 Whitney and 2491 Whitney. The machines in 2489 Whitney have been functional since September 28, 2022.

The Petition alleges that two of the three laundry rooms were closed from June 3, 2022 until April 17, 2023. Respondent submitted invoices indicating that repairs were done on machines in

2489, 2491 and 2487 Whitney on April 12, 2023, proving that the machines were in use at that time.

Petitioner also said that she has only used the laundry room in her building and that she no longer uses that laundry room because it smells bad. Respondent submitted an invoice from August 10, 2023 that said that repairs had been done on a washing machine that had standing water with a bad odor in it.

The most reliable evidence indicates that all of the laundry rooms were closed from June 3, 2022 through September 28, 2022.

### Rent Reduction for Laundry Room Closure

When a laundry room is closed, a Tenant must find an alternate location to do laundry. This involves obtaining transportation to the alternate location and having the inconvenience of not being at home while doing laundry. When one is at home, one can accomplish tasks around the house while one does the laundry, which cannot be done if one has to travel to a laundromat. A reasonable calculation for damages for closure of the laundry room is the cost of travel to the laundromat, i.e., gas mileage, and the value of the Tenant's lost time.

There are three laundromats within .8 mile, 1.2 miles and 3.1 miles of the Affected Unit.<sup>26</sup>

The average mileage to a laundromat would be 1.7 miles. The payment rate for mileage established by the Internal Revenue Service for 2022 was \$.58 per mile,<sup>27</sup> which would amount to \$1.97 per round trip.

Assuming Petitioner went to the laundromat once a week, from June 3, 2022 through September 28, 2022, which is approximately 16 weeks, the total mileage expenditure would be \$31.52.

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<sup>26</sup> One can be found at

[https://www.google.com/maps/dir/2489+Whitney+Drive,+Mountain+View,+CA/laundreland+mountain+view/@37.407814,-122.1128941,16z/data=!3m1!4b1!4m14!4m13!1m5!1m1!1s0x808fb0a08b0e7a35:0x6ca3833ecea4f260!2m2!1d-](https://www.google.com/maps/dir/2489+Whitney+Drive,+Mountain+View,+CA/laundreland+mountain+view/@37.407814,-122.1128941,16z/data=!3m1!4b1!4m14!4m13!1m5!1m1!1s0x808fb0a08b0e7a35:0x6ca3833ecea4f260!2m2!1d-122.103538!2d37.4084334!1m5!1m1!1s0x808fb09e04a5cfab:0x53d57d12f7653d5c!2m2!1d-122.1116539!2d37.4066264!3e0?entry=ttu)

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<sup>27</sup> See, <https://www.irs.gov/newsroom/irs-issues-standard-mileage-rates-for-2022>.

The calculation for Petitioner's lost time while waiting around for her laundry would reasonably use the minimum wage as a standard, which in Mountain View in 2022 was \$17.10 per hour. If Tenant went to the laundromat once a week and spent approximately one-and-one-half hours there each time, the calculation for lost time would be  $16 \times \$25.65 = \$410.40$ .

The total damages for the closure of the laundry rooms is  $\$31.52 + \$410.40 = \$441.92$ .

#### Nuisance Behaviors and Threatening Behaviors by Other Tenants

The evidence contained numerous instances of what can be characterized as behaviors that constitute a nuisance, such as disorderly, peace-disturbing conduct, or behaviors that are threatening to the safety of others. Petitioner testified that these kinds of behaviors in her fellow tenants did not exist until sometime in 2020 when tenants began moving out due to Covid, and Respondent began moving in new tenants. Property Manager testified that starting in early 2021, Respondent began renting to a "segment of the population" that "sometimes brings problems with it." The police log submitted by Petitioner indicates that there was a significant increase in calls to the police beginning in late 2020: from February 29, 2020 through October 6, 2020, a period of over seven months, there are 10 entries in the police log, but for the period between December 20, 2020 and February 27, 2021, a period of just over two months, there are 16 entries. During the summer months, issues escalate: in June 2021, there are 34 calls, in July 2021, there are 29 calls, in August 2021, there are 32 calls. Between December 20, 2020 and July 28, 2023, among other calls, there are 106 entries for disturbing the peace, 15 entries for trespassing, 15 entries for assault or battery, seven entries for burglary, five entries for mental health holds, and seven entries for vandalism. From August 1, 2023 through November 27, 2023, there are eight entries for disturbing the peace, three for trespassing, one for assault or battery, one for a mental health hold, and one for a sex crime.

Evidence was presented of tenants dumpster-diving in the middle of the night, disturbing the neighbors with their noise, of tenants having altercations with each other, of vandalism, of break-ins. Evidence was also presented of a tenant with apparently significant mental health issues aggressively chasing Petitioner and her son. At one point, on July 13, 2022, Petitioner sent an email to Mr. Katz describing an altercation on the Property and telling him that it felt unsafe to be there and that she was worried someone would be injured or killed on the Property.

No one refuted that these behaviors were happening on the Property. Property Manager testified that at one point, they had considered hiring security to patrol the Property but had decided against it. They also testified that the Mountain View police drive by frequently to reduce criminal behavior on the Property.

The evidence leads to the conclusion that during Covid, when there were vacancies at the Property, Respondent made the decision to fill those vacancies with formerly unhoused persons whose rent would be paid by outside sources and who needed on-site support, therapeutic or otherwise, to help them regulate their behavior, but there was no support provided at the

Property, not even a full-time resident property manager. This created a losing situation for the new tenants, who did not receive the help that they needed, for the long-standing tenants, who had their peaceful enjoyment of their living situation disrupted, and for Respondent's property managers, who had neither the expertise nor the resources to deal with the situation that Respondent had created.

Under California law, the behaviors by her fellow tenants that disturbed Petitioner constitute a breach of the covenant of quiet enjoyment that is inherent in all residential leases. *See*, California Civil Code Section 1927. In *Andrews v. Mobile Aire Estates*, 125 Cal. App. 4<sup>th</sup> 578, 583 (2005), the appellate court held that plaintiffs could have a claim against their landlord when the landlord failed to take action against a troublesome neighbor. The court held that there was a covenant of quiet enjoyment inherent in the lease agreement, and the landlord owed the tenants a contractual duty to preserve their quiet enjoyment. When tenants had complained to management about the behaviors of their neighbor, they were told to call the police. Ultimately, the differences between the neighbors escalated into battery. The plaintiffs argued that the landlord breached its duty under the covenant of quiet enjoyment for failing to take action against the troublesome neighbor. The court stated that "The covenant of quiet enjoyment 'insulates the tenant against any act or omission on the part of the landlord, or anyone claiming under him, which interferes with a tenant's right to use and enjoy the premises for the purposes contemplated by the tenancy.'" *Id.* at 588 (*citations omitted*). The court added that "The perpetrator of the interference with the tenants' quiet enjoyment need not be the landlord personally. There may be an actionable breach where the interference is caused by a neighbor or tenant claiming under the landlord." *Id.* at 590.

By renting to tenants who engaged in disruptive behaviors and failing to provide the services that those tenants needed to keep them from disturbing the other tenants and/or by failing to evict those disruptive tenants within a reasonable time or otherwise taking action to protect the tenants who were being disturbed and whose safety was put at risk, Respondent breached the duty owed to Petitioner to maintain the peaceful and safe environment that had existed on the Property prior to Respondent's renting to the new tenants.

Under Section 1702(h) of the CSFRA, "Housing Services include, but are not limited to, [a list of specific services]...and any other benefit, privilege, or facility connected with the use or occupancy of any Rental Unit." The covenant of quiet enjoyment inherent in the leases that Petitioner signed governing the Affected Unit is a Housing Service because it is a benefit connected to Petitioner's use and occupancy of the Affected Unit. Prior to December 2020, Petitioner did not encounter disturbances of the peace, burglaries, vandalism and the other troublesome and illegal behaviors which she had to put up with starting in December 2020. Nor did she fear for her safety because of aggressive neighbors or tenants who unfortunately suffered from mental health issues. This breach of the covenant of quiet enjoyment which Petitioner formerly enjoyed constitutes a decrease in Housing Services.

### Rent Reduction for Nuisance Behaviors and Threatening Behaviors

The evidence supports Petitioner's testimony that the breach of the covenant of quiet enjoyment commenced in December 2020. Starting on December 20, 2020, there is an escalation in calls for disturbance of the peace listed in the police call log. Petitioner testified that recently, since she works at night, she no longer encounters disturbances from her neighbors, so it will be assumed that as to Petitioner, the situation has been ameliorated as of the time of the Second Hearing.

The right of a tenant to feel safe and comfortable in their home is a significant Housing Service, equivalent to the value of an additional room in a rental unit. The loss of that right, the feeling that one's environment is unpredictable and unsafe, is traumatic. Treating the right to quiet enjoyment as the equivalent of an additional room in the Affected Unit, it is worth 20 percent of the value of the monthly rent.

The period from December 20, 2020 through December 20, 2023 constitutes 36 months. As with habitability issues, the applicable rent is the Base Rent of \$1,530.00 per month. Twenty percent of rent for 36 months amounts to \$11,016.00.<sup>28</sup>

The total rent reduction for a decrease in Housing Services due to breach of the covenant of quiet enjoyment is \$11,016.00.

### Lack of On-Site Property Manager

Despite the fact that Mr. Katz testified that there has always been an on-site property manager on the Property, the documentary evidence submitted by Respondents demonstrates that there was no on-site property manager from February 1, 2020 through February 28, 2022, and there was also testimony to that effect at both Hearings. While the on-site property manager has very limited duties, Ms. Henson did testify that she is "her eyes and ears" on the Property. In other words, she is supposed to be reporting anything untoward that is happening there. To not have anyone charged with keeping track of what was going on at the Property on a daily basis during the crucial time when Respondent began renting to a different population of tenants was irresponsible at best.<sup>29</sup>

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<sup>28</sup> Calculated as  $((\$1,530.00 \times 36) \times .2) = \$11,016.00$ .

<sup>29</sup> Respondent's argument that California Code of Regulations, Title 25, Section 42 does not require an on-site property manager is acknowledged. The Regulation requires a resident property manager for apartment houses of 16 or more apartments, and Respondent argues that because the buildings on the Property are on four different parcels and no parcel contains more than 15 apartments, the Regulation does not apply. However, the Regulation also says that "[o]nly one caretaker would be required for all structures under one ownership and on one contiguous parcel of land," thus implying that the four contiguous parcels which contain one apartment complex would be construed as requiring one resident property manager because they total more than 15 apartments. However, this area of law is outside the jurisdiction of the Hearing Officer. Regardless of whether Respondent is required by law to provide an on-site property manager, the provision of an on-site property manager at the time that the CSFRA went into effect constitutes a "Housing Service" under Petitioner's rental housing agreement, and therefore, the failure to have an on-site property manager for any period of time constitutes a reduction in Housing Services for which there must be a corresponding decrease in rent.

Having an on-site property manager present to deal with emergencies, to help regulate tenant behavior, and to help keep the Property well-maintained is a Housing Service because it is a “benefit...connected with the use or occupancy” of a rental unit, as described in CSFRA Section 1702(h). In this particular case, the on-site property manager, had one been present between February 1, 2020 and February 28, 2022, might have been able to prevent some of the nuisance and unsafe behaviors that occurred on the Property and could have ensured that maintenance occurred more promptly than it did. The loss of an on-site manager during this crucial time mainly affected Petitioner’s right to quiet enjoyment of her rental unit and the common areas, which it has been established are worth a 20 percent reduction in rent. The lack of an on-site property manager is worth 20 percent of that, which constitutes four percent of the monthly rent.

The period from February 1, 2020 through February 28, 2022 constitutes 24 months and 27 days. The rent reduction for this period is \$1,522.10.<sup>30</sup>

The total rent reduction because of the loss of an on-site property manager is \$1,522.10.<sup>31</sup>

The total rent reduction for decreases in Housing Services is: \$1,872.00 + \$441.92 + \$11,016.00 + \$1,522.10 = \$14,852.02.

#### Additional Family Members in Affected Unit

Mr. Katz brought up at both Hearings that Petitioner’s son and mother, who have always occupied the Affected Unit with her, are not on the Lease. It should be noted that under CSFRA Section 1705(a)(2)(B), which is entitled “Protections for Families,” “a Landlord shall not take any action to terminate a tenancy as a result of the addition to the Rental Unit of a Tenant’s child, parent, grandchild...so long as the number of occupants does not exceed the maximum number of occupants as determined under Section 503b of the Uniform Housing Code...”.

#### Allegations of Retaliation

CSFRA Section 1705(d) prohibits “action to terminate any tenancy or otherwise recover possession of a Rental Unit in retaliation for the Tenant...exercising rights granted” under the CSFRA. Petitioner testified that she believed the three-day notice served to her in August 2022 after she called the Fire Department to complain about the smoking tenant in rental unit [REDACTED] was in retaliation for that phone call. The Hearing Officer does not have jurisdiction to address allegations of retaliation in the instant case; however, Tenant may pursue these claims in another forum, pursuant to CSFRA Section 1714(b). Given the factual record, a court might find it understandable that Petitioner felt targeted by Respondent. She was served a three-day notice at a time when she was recovering from [REDACTED] and when she had informed Property

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<sup>30</sup> Calculated as  $((\$1,530.00 \times 24) \times .2) \times .2 + (((\$1,530.00/31) \times 27) \times .2) \times .2$ .  $1468.80 + 53.30 = \$1,522.10$ .

<sup>31</sup> While the Property had a full-time resident manager prior to October 2014, and reduction to a part-time property manager would normally be a loss of Housing Services under the CSFRA, because the CSFRA was not in effect until December 23, 2016, it does not apply to that situation in this case.



Manager about the [REDACTED] and had delivered papers for them to fill out in order to get paid for August rent, which they did not do. She was served a second three-day notice just a few days after the first three-day notice, this time for having extension cords in the Affected Unit because Respondent had not installed a proper three-pronged outlet, also while she was still recovering from [REDACTED]. Her complaints about her neighbors' smoking were met with willful denial despite the Fire Department report and email sent to Mr. Katz. Ultimately, when confronted with the smoking issue, Ms. Henson suggested that Petitioner move out. Additionally, Petitioner's emails and complaints about, among other things, the nuisance and unsafe behaviors of other tenants, the dark parking lot, and the trash appear to have been viewed as the nagging of a troublesome tenant rather than as legitimate complaints worth Property Manager's attention. It could possibly be deduced from these facts that Property Manager was hoping that Petitioner would give up asserting her rights and move out. Finally, the fact that Mr. Katz brought up at both Hearings that Petitioner's mother and son live with her and are not on the Lease could be taken as an effort at intimidation. While it is understandable that Property Manager was frustrated at having to deal with a difficult situation at the Property, trying to silence or remove a tenant—whether through actual or constructive eviction—for exercising legal rights would not be justified.

### **VIII. CONCLUSIONS OF LAW**

1. Respondent did not properly roll back the rent for the Affected Unit to its level on October 19, 2015, as required by CSFRA Sections 1702(b)(1) and 1706(a), and did not properly refund Petitioner the amount of the unlawful rent collected due to the improper rent rollback.
2. The rent increase imposed by Respondent effective September 1, 2018 was unlawful pursuant to CSFRA Sections 1706(a) and (b) and 1707(a) because it did not use the correct Base Rent. Consequently, that rent increase and all subsequent rent increases are unlawful.
3. As a result of Respondent's collection of unlawful rents, Petitioner is entitled to a refund of amounts paid in excess of lawful rent, pursuant to CSFRA Section 1714(a), and, pursuant to CSFRA Sections 1707(f)(1) and Regulations Ch. 12, Section (B), Respondent may not increase the rent until said refunds are paid in full.
4. Respondent acted in contravention of CSFRA Section 1710(b)(1), California Health and Safety Code Section 17920.3(c), and Mountain View Municipal Code, Ch. 21, Art. II, Section 21.56 by allowing tenants of the Property to smoke in their rental units with resultant secondhand smoke drifting into the Affected Unit and affecting Petitioner's health, welfare and safety.
5. Respondent acted in contravention of CSFRA Section 1710(b)(1), California Civil Code Section 1941.1(a)(6) and International Property Maintenance Code Section 302.5 for allowing a rodent infestation to continue for over two years.

6. Respondent violated CSFRA Section 1710(b)(1), California Health and Safety Code Section 17920.3(a)(10), and International Property Maintenance Code Section 402.3 by failing to remediate inadequate lighting in the parking lot for over 17 months.
7. Respondent violated CSFRA Section 1710(b)(1) and California Civil Code Section 1941.3 by not promptly installing a new door lock and a dead bolt after an attempted break-in at the Affected Unit.
8. Respondent violated CSFRA Section 1710(b)(1), California Civil Code Section 1941.1(6), and International Property Maintenance Code Section 302.1 by allowing an inordinate amount of bulky trash to remain on the Property over a period of almost four years.
9. Respondent's failure to keep the swimming pool clean and sanitary for several months each year over the course of four years constitutes a decrease in housing services under CSFRA Section 1710(c).
10. Respondent's failure to maintain the Property in the condition it was in prior to 2021 with respect to bulky trash constitutes a decrease in Housing Services under CSFRA Section 1710(c). Damages for this issue as a decrease in Housing Services and as a failure to maintain the premises in a habitable condition under CSFRA Section 1710(b)(1) shall be calculated as the same amount.
11. The closure of the laundry rooms for four months due to vandalism and vagrancy constitutes a decrease in Housing Services under CSFRA Section 1710(c).
12. The nuisance behaviors and threatening behaviors of other tenants on the Property constitute a breach of the covenant of quiet enjoyment in Petitioner's Lease, which, being a benefit connected with the use or occupancy of the Affected Unit, constitute a decrease in Housing Services pursuant to CSFRA Sections 1702(h) and 1710(c).
13. The lack of an on-site property manager for approximately two years when there had been one before constitutes a decrease in Housing Services under Section 1702(h) and 1710(c).

## **IX. DECISION**

1. The Base Rent for the Affected Unit is rolled back to \$1,530.00 as of December 23, 2016. Because the Base Rent calculation herein addresses the use of RUBS, Respondent need not submit a One-Time Utility Adjustment Petition for the Affected Unit.
2. Respondent shall refund to Petitioner \$8,357.18 in unlawfully collected rent for December 23, 2016 through December 31, 2023, as reflected in Table 1 in this Decision and in Attachment 1, Award Schedule, appended hereto.
3. Upon receipt of the \$8,357.18 refund for unlawfully collected rent, Petitioner must repay the amount of unlawfully collected rent paid by any entities on behalf of Petitioner, as follows: (a) the State of California's Covid-19 Rent Relief Fund, \$360.00; (b) CSA Rent Relief, \$520.00; and (c)

CLESPA, \$640.00. Petitioner shall be responsible for reimbursing any additional entities not listed herein. Reimbursements to be paid by Petitioner are set forth in Attachment 1, Award Schedule, appended hereto.

4. Respondent shall refund to Petitioner the amount of \$11,722.03 for failure to maintain the Affected Unit and common areas in a habitable condition.

5. Respondent shall refund to Petitioner the amount of \$14,852.02 for a decrease in Housing Services.

6. Respondent shall refund to Petitioner the total amount of (a) \$34,931.23, (b) plus any additional amounts exceeding the current lawful rent of \$1,530.00 for the Affected Unit that may have been paid or be paid by Petitioner after December 20, 2023, (c) plus any past, unpaid utilities invoices that Petitioner has paid or may pay which increase the total payment to Respondent above \$1,530.00 for each month of utilities payments. If there is a factual dispute between Petitioner and Respondent about the amount to be refunded under this paragraph 6, either party may request a Compliance Hearing pursuant to CSFRA Regulations, Ch. 5, Section J(1). All payments ordered in this Decision are set forth in Attachment 1, Award Schedule, appended hereto.

7. In the event that Petitioner does not receive full payment of \$34,931.23 from Respondent as ordered in this Decision on or before May 1, 2024, Petitioner shall be entitled to withhold rent payments until such time as she has withheld a total of \$34,931.23, less any sums Respondent has paid directly to her pursuant to this Decision. Petitioner may refer to Attachment 1, Award Schedule, appended hereto, for a Credit Schedule setting forth the amounts she may withhold. As set forth in Paragraphs 11 and 12, below, Respondent may not issue a rent increase to Petitioner until Petitioner has received from Respondent all amounts ordered by this Decision to be paid.

8. In the event that this Decision is appealed, the final appeal decision shall include an updated refund schedule as applicable. Additionally, if this Decision is appealed, pending the outcome of the appeal, this Decision will not be considered final, and Petitioner shall continue to pay the monthly rent of \$1,650.00 until the appeal decision is final.

9. In the event that either Petitioner or Respondent terminates Petitioner's tenancy for any reason prior to delivery of the payments ordered by this Decision, the total amount then owed shall become due and payable to Petitioner immediately and if said amount is not paid, Petitioner shall be entitled to a money judgment in the amount of the unpaid payments in an action in court or any other administrative or judicial or quasi-judicial proceeding.

10. The payments and credits to Petitioner as set forth herein shall be enforceable as to any successor in interest or assignees of Respondent.

11. Subject to Paragraph 12, below, and pursuant to CSFRA Sections 1706(a), (b) and 1707(c), (f), Respondent may not issue a Rent increase for the Affected Unit until (1) all refunds due to

Petitioner are fully paid, and (2) Respondent has provided written notice to Petitioner of the rent increase at least 30 days in advance of such increase in the manner prescribed by the CSFRA and California law. It should be noted that CSFRA Regulations Ch. 7, Section (B)(1) requires that a notice in substantially the same form as that promulgated by the Rental Housing Committee must be served on Tenants for all rent increases.

12. In addition to abiding by the requirements of Paragraph 11, above, Respondent may not issue a rent increase for the Affected Unit if Respondent is in violation of any of the provisions set forth in CSFRA Section 1707(f)(1)-(3) and CSFRA Regs. Ch. 12, Section (B), which require substantial compliance with the CSFRA and include, among other things, charging only lawful amounts of rent, registering the Property annually with the Rent Stabilization Program (see CSFRA Regs. Ch. 11), refunding all unlawfully charged rents for all Tenants, and maintaining the Property in habitable condition according to state law and the CSFRA, including making all repairs ordered hereunder or required by the City Building Department or other department of the City of Mountain View as a result of Multi-Family Housing Program Inspections. Only when Respondent has complied with all of the provisions of this paragraph and paragraph 11, above, may Respondent issue a rent increase, provided that they do so in a manner consistent with the CSFRA and California law.

13. If a dispute arises as to whether any party has failed to comply with this Decision, any party may request a Compliance Hearing pursuant to CSFRA Regulations, Ch. 5, Section J(1).

IT IS SO ORDERED.

  
\_\_\_\_\_  
Barbara M. Anscher, Hearing Officer

Date: March 20, 2024

Hearing Officer Decision re Base Rent

Month/Year of Rent Payment	Actual Premises Rent Paid	Actual Utilities Paid	Lawful Rent
10/2015	\$ 1,465.00	\$ 65.00	\$ 1,530.00
<b>BASE RENT</b>		\$ 1,530.00	

Hearing Officer Decision re Unlawful Rent

Month/Year of Rent Payment	Actual Premises Rent Paid	Actual Utilities Paid	Actual Additional Services Paid	Lawful Rent	Payments in Excess by Petitioner
12/23/2016	\$ 477.42	\$ 23.23	\$ -	\$ 394.84	\$ 105.81
1/2017	\$ 1,850.00	\$ 84.00	\$ -	\$ 1,530.00	\$ 404.00
2/2017	\$ 1,850.00	\$ 89.00	\$ -	\$ 1,530.00	\$ 409.00
3/2017	\$ 1,850.00	\$ 67.00	\$ -	\$ 1,530.00	\$ 387.00
4/2017	\$ 1,800.50	\$ 69.00	\$ -	\$ 1,530.00	\$ 339.50
5/2017	\$ 1,465.00	\$ 67.00	\$ -	\$ 1,530.00	\$ 2.00
6/2017	\$ 1,465.00	\$ 68.00	\$ -	\$ 1,530.00	\$ 3.00
7/2017	\$ 1,465.00	\$ 72.00	\$ -	\$ 1,530.00	\$ 7.00
8/2017	\$ 1,465.00	\$ 72.00	\$ -	\$ 1,530.00	\$ 7.00
9/2017	\$ 1,465.00	\$ 75.00	\$ -	\$ 1,530.00	\$ 10.00
10/2017	\$ 1,465.00	\$ 80.00	\$ -	\$ 1,530.00	\$ 15.00
11/2017	\$ 1,465.00	\$ 80.00	\$ -	\$ 1,530.00	\$ 15.00
12/2017	\$ 1,465.00	\$ 92.25	\$ -	\$ 1,530.00	\$ 27.25
1/2018	\$ 1,465.00	\$ 74.73	\$ -	\$ 1,530.00	\$ 9.73
2/2018	\$ 1,465.00	\$ 89.05	\$ -	\$ 1,530.00	\$ 24.05
3/2018	\$ 1,465.00	\$ 89.51	\$ -	\$ 1,530.00	\$ 24.51
4/2018	\$ 465.00	\$ 90.11	\$ -	\$ 1,530.00	\$ (974.89)
5/2018	\$ 1,465.00	\$ 76.00	\$ -	\$ 1,530.00	\$ 11.00
6/2018	\$ 1,465.00	\$ 75.38	\$ -	\$ 1,530.00	\$ 10.38
7/2018	\$ 1,465.00	\$ 102.06	\$ -	\$ 1,530.00	\$ 37.06
8/2018	\$ 1,465.00	\$ 97.53	\$ -	\$ 1,530.00	\$ 32.53
9/2018	\$ 1,567.00	\$ 87.00	\$ -	\$ 1,530.00	\$ 124.00
10/2018	\$ 1,567.00	\$ 88.37	\$ -	\$ 1,530.00	\$ 125.37
11/2018	\$ 1,567.00	\$ 85.80	\$ -	\$ 1,530.00	\$ 122.80
12/2018	\$ 1,567.00	\$ 86.38	\$ -	\$ 1,530.00	\$ 123.38
1/2019	\$ 1,567.00	\$ 101.17	\$ -	\$ 1,530.00	\$ 138.17
2/2019	\$ 1,567.00	\$ 87.67	\$ -	\$ 1,530.00	\$ 124.67
3/2019	\$ 1,567.00	\$ 87.67	\$ -	\$ 1,530.00	\$ 124.67
4/2019	\$ 1,567.00	\$ 78.74	\$ -	\$ 1,530.00	\$ 115.74
5/2019	\$ 1,567.00	\$ 77.86	\$ -	\$ 1,530.00	\$ 114.86
6/2019	\$ 1,567.00	\$ 75.67	\$ -	\$ 1,530.00	\$ 112.67
7/2019	\$ 1,567.00	\$ 96.43	\$ -	\$ 1,530.00	\$ 133.43
8/2019	\$ 1,567.00	\$ 79.18	\$ -	\$ 1,530.00	\$ 116.18
9/2019	\$ 1,567.00	\$ 93.30	\$ -	\$ 1,530.00	\$ 130.30
10/2019	\$ 1,621.00	\$ 83.72	\$ -	\$ 1,530.00	\$ 174.72
11/2019	\$ 1,625.00	\$ 94.00	\$ -	\$ 1,530.00	\$ 189.00
12/2019	\$ 1,625.00	\$ 82.00	\$ -	\$ 1,530.00	\$ 177.00
1/2020	\$ 1,625.00	\$ 80.00	\$ -	\$ 1,530.00	\$ 175.00
2/2020	\$ 1,625.00	\$ 81.84	\$ -	\$ 1,530.00	\$ 176.84
3/2020	\$ 1,625.00	\$ 79.26	\$ -	\$ 1,530.00	\$ 174.26
4/2020	\$ 1,625.00	\$ 79.35	\$ -	\$ 1,530.00	\$ 174.35
5/2020	\$ 1,625.00	\$ 82.30	\$ -	\$ 1,530.00	\$ 177.30
6/2020	\$ 1,625.00	\$ 82.30	\$ -	\$ 1,530.00	\$ 177.30
7/2020	\$ 1,625.00	\$ 97.56	\$ -	\$ 1,530.00	\$ 192.56
8/2020	\$ 1,625.00	\$ 82.81	\$ -	\$ 1,530.00	\$ 177.81
9/2020	\$ 1,625.00	\$ -	\$ -	\$ 1,530.00	\$ 95.00
10/2020	\$ 1,625.00	\$ 200.00	\$ -	\$ 1,530.00	\$ 295.00
11/2020	\$ 1,625.00	\$ 83.29	\$ -	\$ 1,530.00	\$ 178.29
12/2020	\$ 1,625.00	\$ 83.00	\$ -	\$ 1,530.00	\$ 178.00
1/2021	\$ 1,625.00	\$ 82.00	\$ -	\$ 1,530.00	\$ 177.00
2/2021	\$ 1,625.00	\$ 82.00	\$ -	\$ 1,530.00	\$ 177.00
3/2021	\$ 1,625.00	\$ -	\$ -	\$ 1,530.00	\$ 95.00
4/2021	\$ 1,625.00	\$ 178.00	\$ -	\$ 1,530.00	\$ 273.00
5/2021	\$ 1,660.00	\$ 159.70	\$ -	\$ 1,530.00	\$ 289.70
6/2021	\$ 1,660.00	\$ 84.56	\$ -	\$ 1,530.00	\$ 214.56
7/2021	\$ 1,660.00	\$ 86.00	\$ -	\$ 1,530.00	\$ 216.00
8/2021	\$ 1,660.00	\$ 93.32	\$ -	\$ 1,530.00	\$ 223.32
9/2021	\$ 1,690.00	\$ 90.15	\$ -	\$ 1,530.00	\$ 250.15
10/2021	\$ 1,690.00	\$ 86.85	\$ -	\$ 1,530.00	\$ 246.85
11/2021	\$ 1,690.00	\$ -	\$ -	\$ 1,530.00	\$ 160.00

Hearing Officer Decision re Unlawful Rent (continued)

Month/Year of Rent Payment	Actual Premises Rent Paid	Actual Utilities Paid	Actual Additional Services Paid		Lawful Rent	Payments in Excess by Petitioner
12/2021	\$ 1,690.00	\$ -	\$ -	\$ -	\$ 1,530.00	\$ 160.00
1/2022	\$ -	\$ -	\$ -	\$ -	\$ 1,530.00	\$ (1,530.00)
2/2022	\$ -	\$ -	\$ -	\$ -	\$ 1,530.00	\$ (1,530.00)
3/2022	\$ -	\$ 97.00	\$ -	\$ -	\$ 1,530.00	\$ (1,433.00)
4/2022	\$ 1,670.00	\$ 98.00	\$ -	\$ -	\$ 1,530.00	\$ 238.00
5/2022	\$ 1,670.00	\$ -	\$ -	\$ -	\$ 1,530.00	\$ 140.00
6/2022	\$ 1,650.00	\$ -	\$ -	\$ -	\$ 1,530.00	\$ 120.00
6/2022*	\$ 4,950.00				\$ 4,590.00	\$ 360.00
7/2022	\$ 1,650.00	\$ 105.00	\$ -	\$ -	\$ 1,530.00	\$ 225.00
8/2022*	\$ 1,650.00	\$ 400.00	\$ -	\$ -	\$ 1,530.00	\$ 520.00
9/2022	\$ 1,650.00	\$ -	\$ -	\$ -	\$ 1,530.00	\$ 120.00
10/2022	\$ 1,530.00	\$ 150.00	\$ -	\$ -	\$ 1,530.00	\$ 150.00
11/2022	\$ 1,650.00	\$ 150.00	\$ -	\$ -	\$ 1,530.00	\$ 270.00
12/2022*	\$ 1,650.00	\$ 200.00	\$ -	\$ -	\$ 1,530.00	\$ 320.00
1/2023*	\$ 1,650.00	\$ 200.00	\$ -	\$ -	\$ 1,530.00	\$ 320.00
2/2023	\$ 1,650.00	\$ 160.00	\$ -	\$ -	\$ 1,530.00	\$ 280.00
3/2023	\$ 1,650.00	\$ -	\$ -	\$ -	\$ 1,530.00	\$ 120.00
4/2023	\$ 1,650.00	\$ -	\$ -	\$ -	\$ 1,530.00	\$ 120.00
5/2023	\$ 1,650.00	\$ 160.00	\$ -	\$ -	\$ 1,530.00	\$ 280.00
6/2023	\$ 1,650.00	\$ 365.00	\$ -	\$ -	\$ 1,530.00	\$ 485.00
7/2023	\$ 1,650.00	\$ -	\$ -	\$ -	\$ 1,530.00	\$ 120.00
8/2023	\$ 1,650.00	\$ 155.00	\$ -	\$ -	\$ 1,530.00	\$ 275.00
9/2023	\$ 1,650.00	\$ -	\$ -	\$ -	\$ 1,530.00	\$ 120.00
10/2023	\$ 1,650.00	\$ 200.00	\$ -	\$ -	\$ 1,530.00	\$ 320.00
11/2023	\$ 1,650.00	TBD	\$ -	\$ -	\$ 1,530.00	\$ 120.00
12/2023	\$ 1,650.00	TBD	\$ -	\$ -	\$ 1,530.00	\$ 120.00
1/2024	TBD	TBD	\$ -	\$ -	\$ 1,530.00	TBD
2/2024	TBD	TBD	\$ -	\$ -	\$ 1,530.00	TBD
3/2024	TBD	TBD	\$ -	\$ -	\$ 1,530.00	TBD
<b>TOTAL**</b>						<b>\$ 8,357.18</b>

\* Rent relief received by Petitioner

\*\* The total does not include the potential amounts overpaid after 12/2023.

Reimbursements Owed by Petitioner to Rent Relief Organizations

Month/Year(s) Rent Relief Applied	Source of Rent Relief	Amount Owed by Petitioner
1/2022-3/2022	State of California COVID-19 Rent Relief Fund (California Department of Housing & Community Development)	\$ 360.00
8/2022	Community Services Agency (CSA)	\$ 520.00
12/2022	Community Legal Services in East Palo Alto (CLSEPA)	\$ 640.00
<b>TOTAL</b>		<b>\$ 1,520.00</b>

Hearing Officer Decision re Habitability Issues

Habitability/Housing Service Reduction Issue	Month/Year Issue Began	Month/Year Issue Resolved	Number of Months Issue		Monthly Rent	Percentage of Rent Reduction	Total Rent Reduction Awarded
			Issue Persisted	Issue			
Smoking	3/15/2019	8/1/2023	52.53	\$	1,530.00	10%	\$ 8,039.90
Rat infestation	11/10/2020	12/22/2022	25.40	\$	1,530.00	0.4%	\$ 155.37
Parking lot lights	7/14/2022	12/20/2023	17.20	\$	1,530.00	4%	\$ 1,052.25
Door lock	9/25/2022	10/7/2022	0.40	n/a		n/a	\$ 295.00
Overflowing bulky trash	1/1/2021	12/20/2023	35.63	\$	1,530.00	4%	\$ 2,179.51
3-prong outlets	8/3/2022	10/7/2022	2.13	n/a		n/a	\$ -
Water leak near laundry room	9/22/2022	10/9/2022	0.57	n/a		n/a	\$ -
Holes in ceiling of unit	2022	n/a	n/a	n/a		n/a	\$ -
Leak from bathroom in	12/16/2022	1/13/2023	0.90	n/a		n/a	\$ -
Broken toilet in	10/22/2018	10/22/2018	0.00	n/a		n/a	\$ -
<b>TOTAL</b>							<b>\$ 11,722.03</b>

Hearing Officer Decision re Housing Service Reduction Issues

Habitability/Housing Service Reduction Issue	Month/Year Issue Began	Month/Year Issue Resolved	Number of Months Issue Persisted	Monthly Rent	Percentage of Rent Reduction	Total Rent Reduction Awarded
Pool closure	5/1/2019	9/30/2019	4.97	n/a	n/a	\$ 585.00
Pool closure	6/5/2020	9/30/2020	3.83	n/a	n/a	\$ 396.00
Pool closure	5/1/2021	9/30/2021	4.97	n/a	n/a	\$ 495.00
Pool closure	5/1/2022	6/30/2022	1.97	n/a	n/a	\$ 198.00
Pool closure	5/1/2022	6/30/2022	1.97	n/a	n/a	\$ 198.00
Parking space	n/a	n/a	n/a	n/a	n/a	\$ -
Trash removal	n/a	n/a	n/a	n/a	n/a	\$ -
Laundry room closures	6/3/2022	9/28/2022	3.83	n/a	n/a	\$ 441.92
Failure to evict tenants for nuisance, threats, crimes	12/1/2020	12/20/2023	36.63	\$ 1,530.00	20%	\$ 11,016.00
Lack of on-site property	2/1/2020	2/28/2022	24.90	\$ 1,530.00	4%	\$ 1,522.10
<b>TOTAL</b>						<b>\$ 14,852.02</b>

**TOTAL REFUND OWED TO PETITIONER:**  
(not including the reimbursements Petitioner owes to the Rent Relief Organizations) \$ 34,931.23

Credit Schedule

(if Landlord does not provide refund on or before 5/1/2024)

Month/Year of Rent Payment	Monthly Rent Owed including Utilities (Base Rent)	Rent Credited to Petitioner	Total Payment to be Paid by Petitioner
5/2024	\$ 1,530.00	\$ 1,530.00	\$ -
6/2024	\$ 1,530.00	\$ 1,530.00	\$ -
7/2024	\$ 1,530.00	\$ 1,530.00	\$ -
8/2024	\$ 1,530.00	\$ 1,530.00	\$ -
9/2024	\$ 1,530.00	\$ 1,530.00	\$ -
10/2024	\$ 1,530.00	\$ 1,530.00	\$ -
11/2024	\$ 1,530.00	\$ 1,530.00	\$ -
12/2024	\$ 1,530.00	\$ 1,530.00	\$ -
1/2025	\$ 1,530.00	\$ 1,530.00	\$ -
2/2025	\$ 1,530.00	\$ 1,530.00	\$ -
3/2025	\$ 1,530.00	\$ 1,530.00	\$ -
4/2025	\$ 1,530.00	\$ 1,530.00	\$ -
5/2025	\$ 1,530.00	\$ 1,530.00	\$ -
6/2025	\$ 1,530.00	\$ 1,530.00	\$ -
7/2025	\$ 1,530.00	\$ 1,530.00	\$ -
8/2025	\$ 1,530.00	\$ 1,530.00	\$ -
9/2025	\$ 1,530.00	\$ 1,530.00	\$ -
10/2025	\$ 1,530.00	\$ 1,530.00	\$ -
11/2025	\$ 1,530.00	\$ 1,530.00	\$ -
12/2025	\$ 1,530.00	\$ 1,530.00	\$ -
1/2026	\$ 1,530.00	\$ 1,530.00	\$ -
2/2026	\$ 1,530.00	\$ 1,530.00	\$ -
3/2026	\$ 1,530.00	\$ 1,271.23	\$ 258.77
<b>TOTAL**</b>	<b>\$ 34,931.23</b>		

\*\* The total does not include the potential amounts overpaid after 12/2023.