RESPONDENTS' RESPONSE TO TENTATIVE DECISION
GARCIA v. SIEGAL
251 Higdon Avenue
Petition Nos. C23240057 and C23240058

THE HEARING OFFICER MADE A SERIES OF FACTUAL ERRORS, WHICH DEMONSTRATES THAT THE DECISION IS IN ERROR AND IS BIASED

The Appeal Board acknowledges that the Hearing Officer erred in stating petitioner failed to pay rent in September and October, but concluded that this error is inconsequential. The Appeal Board also acknowledges that petitioner filed the petition 133 days after she vacated the unit, but again concluded that this error is inconsequential. However, these factual errors and others as discussed below show a pattern by the Hearing Officer of disregarding/misunderstanding the facts and cherry picking those facts that support her conclusion, all of which reflect a bias in favor of the Petitioner.

THE HEARING OFFICER HAD THE AUTHORITY NOT TO ENFORCE THE ORDINANCE IN VIOLATION OF THE EXPRESS TERMS OF THE CALIFORNIA CONSTITUTION

The California Constitution, Article I, Section 9, states:

> "…law impairing the obligation of contracts may not be passed."

The California Constitution, Article XI, Section 7, states:

> "A…city may make within its limits all local, sanitary, and other ordinances and regulations not in conflict with general law." [Emphasis Added].

If there is a conflict between state and local laws, state law overrides municipal ordinances. Stated another way, if local legislation is in conflict with state law, it is preempted by state law and is void to the extent of the conflict. California Attorney General Opinion 14-603 (2015).

California's preemption doctrine is based on Article XI, Section 7 of the California Constitution. The California Supreme Court has held that state law in conflict with local law preempts local law. Fireman's Fund Ins. V. City of Lodi 302 F.3d 928 (2002). See also Mussalli v. City of Glendale 205 Cal.App.3d 524 (1988).

Petitioner signed twelve (12) lease renewal agreements (contracts) from 2010 through 2022 setting forth the amount of rent Petitioner was obligated to pay. The CSFRA roll-back provision impairs those contracts in violation of Article I, Section 9 of

the California Constitution and is therefore in conflict with the constitutional provision and are void to the extent of the conflict.

The Appeal Board's Tentative Decision acknowledges that the CFRA confers upon the Hearing Officer the power to rule on procedural requests. This power authorizes the Hearing Officer to rule on Respondents' procedural challenge to the rent roll back provision as it applies to this petition. The Appeal Board's Tentative Decision states that the Hearing Officer does not have the authority to declare the ordinance unconstitutional. However, the Appeal Board does not cite any authority to suggest that the Hearing Officer is prohibited from not enforcing a portion of the ordinance that is in clear violation of the California Constitution and the authorities provided herein.

The Appeal Board's Tentative Decision acknowledges that "Pursuant to the Regulations, the RHC has the authority only to "affirm, reverse, or modify" the decision of the Hearing Officer." As acknowledged by the Appeal Board, the RHC can order the Hearing Officer's Decision be "reversed or modified" in order to bring it within the law.

THE HEARING OFFICER'S DECISION THAT SOME OF RESPONDENTS' RENT INCREASES OCCURRED MORE FREQUENTLY THAN EVERY 12 MONTHS WAS IN ERROR

The Hearing Officer's Decision that some of Respondents' rent increases occurred more frequently than every 12 months was in error and is not supported by the evidence. The undisputed evidence demonstrated the following:

Lease Renewal Term	Lease Term
December 1, 2016-November 30, 2017	12 months
December 1, 2017-November 30, 2018	12 months
December 1, 2018-November 30, 2019	12 months
December 1, 2019-November 30, 2020	12 months
December 1, 2020-November 30, 2021	12 months
December 1, 2021-November 30, 2022	12 months
December 1, 2022- November 30, 2023	12 months

As demonstrated above, Respondents gave no rent increases more frequently than once every 12 months. There were no documents or testimony demonstrating that Respondents gave additional rent increases.

The Hearing Officer's Decision also states that "Respondent raised the rent in modest amounts, although not exactly according to the CSFRA's allowed AGA…as required…" However, the Hearing Officer failed to identify which rent increases were not in compliance. In fact, the undisputed evidence showed that all rent increases were in accordance with the CSFRA's allowed AGA. Further, the Hearing Officer failed to identify any document that indicated that Respondents raised the rent more often than

once every 12 months or in excess of the allowed rent increases, as none exists. The Hearing Officer's conclusion was based solely on when and what Petitioner claimed she paid, not what the Respondents said Petitioner had to pay as stated in the Lease Renewal Agreements.

There can be no dispute that these were the only rent increases given to Petitioner and to which she agreed to pay. Why Petitioner may have paid more than she was required to pay before the start date of the Lease Renewal Agreements can only be answered by Petitioner. However, Petitioner has never offered any explanation. The fact that Petitioner may have paid more than she was required to pay does not change the fact that Respondents did not give rent increases more frequently than once every 12 months nor more than allowed by the ordinance.

The CSFRA does not provide for, nor does it authorizes, the Hearing Officer to order the repayment of a tenant's mistaken overpayments.

As far as Respondents' accepting the excess rent payments, Respondents assumed that Petitioner was paying the correct amount of her rent as per the Lease Renewal Agreements and did not check the accuracy of the amounts.

Further, since the Petitioner did not raise any issue of mistaken overpayments in the Petition, due process requires that there can be no order for repayment any mistaken overpayments.

The Appeal Board states that "the hearing record only contains copies of 4 lease renewal agreements". That statement is not correct. Respondents provided copies of the following twelve (12) lease renewal agreements in Respondents' Response to Petition, each of which was signed by Petitioner:

Dated:

August 1, 2010
August 5, 2011
August 5, 2012
August 12, 2012
September 2, 2014
October 2, 2015
September 14, 2016
October 8, 2018
September 18, 2019
September 14, 2020
December 2, 2021 (date Petitioner signed the renewal)
November 1, 2022 (date Petitioner signed the renewal)

There is no evidence that Respondents' increased Petitioner's rent more often than once every 12 months nor more than allowed by the ordinance and the Hearing

Officer's and the Appeal Board's conclusions otherwise are in error as they are not supported by the evidence.

THE HEARING OFFICER EXCEEDED HER AUTHORITY BY CONSIDERING EVIDENCE NOT IN THE HEARING RECORD

The Appeal Board states that the Hearing Officer is authorized to "produce books, records, papers, and other material related to the issues raised in a Petition" and cites to Regulations Chapter 5 Section B(4)(b). However, the full text of Section B(4)(b) does not support the independent investigation by the Hearing Officer and her consideration of documents not in the hearing record. Chapter 5 Section B(4)(b) states:

> "Hearing Officer Authority. A Hearing Officer shall have the authority to: a. Administer oaths and affirmations; b. Cause the Rental Housing Committee to issue subpoenas for the attendance of persons to testify and to produce books, records, papers, and other material related to the issues raised in a Petition." [Emphasis Added].

There was no subpoena issued for the records reviewed and considered by the Hearing Officer. Rather, the Hearing Officer conducted an investigation on her own, without notice to the parties, and without a subpoena.

The Appeal Board argues that the Hearing Officer "could" order an inspection of the unit if an inspection is warranted. However, no inspection was called for nor was an inspection ordered. Therefore, this argument is irrelevant and is meritless.

The Hearing Officer's actions were in excess of the authority granted by the ordinance and in doing so demonstrated a bias in favor of the Petitioner.

THE HEARING OFFICER'S DECISION IS DEVOID OF ANY EVIDENCE OF A REDUCTION IN HOUSING SERVICES, ANY EVIDENCE OF MAINTENANCE AND REPAIR ISSUES, OR A FAILURE TO MAINTAIN A HABITABLE UNIT

Respondents provided a habitable unit in compliance with Civil Code Section 1941.1. There was no evidence that the housing unit failed to comply with the requirements of Section 1941.1 and the Hearing Officer did not find that there was a failure to comply with the requirements of Section 1941.1.

In order to support its conclusion that there was a "habitability" violation the Appeal Board relies on CSFRA Section 1710(b)(1), which states that the failure to maintain a rental unit in compliance with governing health and safety and building codes, including Civil Code Section 1941.1 and Health & Safety Code Sections 17920.3 and 17920.10 constitutes an increase in rent. A careful review of these Sections reveals that

there were no violations of any of the conditions enumerated in any of these Sections. The Hearing Officer did not find that there was a failure to comply with the requirements of building codes, Sections 1941.1, 17920.3 or 17920.10. Hence, reliance on Section 1710(b)(1) is in error.

Therefore, any finding that Respondents failed to provide a habitable unit is not supported by the evidence and any argument to the contrary is clearly in error.

A DISPUTE BY AND BETWEEN TENANTS DOES NOT FALL WITHIN THE MOUNTAIN VIEW RENT CONTROL ORDINANCE

The Mountain View Rent Control Ordinance regulates how much a landlord can increase rent and when a landlord can evict tenants (CSFRA, Section 1700 "...controlling excessive rent increases and arbitrary evictions...") and maintaining a rental unit in compliance with health and safety and building codes, Civil Code Section 1941.1 (CSFRA, Section 1710 (b)(1)). There is nothing mentioned in the CSFRA concerning disputes between tenants nor is there any mention of such disputes in the health, safety and building codes or in Section 1941.1.

The primary subject matter of the Petition involves a dispute between tenants. As such, this portion of the Petition does not fall within the scope of the ordinance. Therefore, the Hearing Officer had no power or authority to award monetary compensation, whether in the form of damages or in the form of a reduction in a decrease in housing services (which there were none, as demonstrated below) and failure to maintain a habitable unit (which there were none, as demonstrated below).

THE HEARING OFFICER'S DECISION THAT THERE HAS BEEN A REDUCTION IN HOUSING SERVICES IS NOT SUPPORTED BY THE EVIDENCE AND IS IN ERROR

The Hearing Officer concluded that the neighbor's harassment and threats constituted a decrease in housing services and therefore is a basis for a reduction of rent pursuant to the CSFRA. However, the definition of Housing Services in the CSFRA makes no mention of the covenant of quiet enjoyment nor does Civil Code Section 1941.1, which the Appeal Board's Tentative Decision acknowledges.

The Appeal Board's Tentative Decision relies on the following vague language from Section 1700(h) of the CSFRA "...any other benefit, privilege or facility connected with the use or occupancy of any Rental Unit". From this vague language the Appeal Board assumed that it included acts of harassment, lack of quiet enjoyment and lack of habitability (habitability is specifically defined in Civil Code Section 1941.1 and does not include any of these acts) although there is no specific mention of any of these terms.

In California, vague statutes can be deemed "void for vagueness," meaning they are considered invalid and unenforceable because they fail to provide clear definitions of prohibited conduct, potentially leading to arbitrary enforcement and infringing on individuals' due process rights by not giving them fair notice of what actions are considered illegal.

The vagueness doctrine protects due process because a law that is too vague does not provide adequate direction to law-abiding citizens or the justice system resulting in unfair proceedings. By requiring fair notice of what is punishable and what is not, the vagueness doctrine also helps prevent arbitrary enforcement of the laws. A law is considered unconstitutionally vague if a person of normal intelligence must guess at its meaning and differ as to its application. (Connally v. General Const. Co. (1926) 269 U.S. 385, 391; United States v. Lanier (1997) 520 U.S. 259; Roberts v. United States Jaycees (1984) 468 U.S. 609, 629.)

Section 1700(h) defines the services associated with the rental unit, hence the title of Section 1700(h) – "Housing Services". None of these alleged acts are "services" within the meaning of Section 1700(h). Respondents submit that another interpretation of this language could include landscaping services, internet connection, cable connection, etc. Those are, in fact, "Services". If Section 1700(h) was intended to include the acts suggested by the Hearing Officer and the Appeal Board, they would have been specifically mentioned. The Hearing Officer and the Appeal Board cannot unilaterally re-write the ordinance to include their interpretation of the ordinance.

The Hearing Officer's and the Appeal Board's conclusions are in error.

CSFRA, CHAPTER 5, SECTION F(2)(a) SPECIFICALLY IDENTIFIES WHAT MUST BE SHOWN TO SUPPORT A RENT DECREASE PETITION

CSFRA, Chapter 5, Section F(2)(a) specifically identifies what must be shown to support a rent decrease petition:

> "a. For Rent Decrease Petitions: …failure to maintain habitable premises, decrease in housing services or maintenance, or demand for or retention of unlawful rent claimed in the Petition." [Emphasis Added].

The evidence is undisputed. There was no finding by the Hearing Officer that there was a failure to maintain habitable premises within the meaning of, and definitions included in, Civil Code section 1941.1. There was also no finding by the Hearing Officer that there was a decrease in housing services or maintenance within the meaning of, and definitions included in, CSFRA Section 1700(h). Finally, there was no finding by the Hearing Officer that Respondents demanded rent increases more frequently than once every 12 months or that such rent increases exceeded the allowable AGA – as opposed to Petitioner possibly overpaying the agreed upon rent. Therefore, any rent reductions were improper and not supported by law.

THE APPEAL BOARD'S CONCLUSION THAT QUIET ENJOYMENT, HARASSMENT AND SAFETY FALLS WITHIN THE CSFRA'S ORDINANCE IS IN ERROR

The issues of quiet enjoyment, safety and harassment are not governed by, nor are they a part of, the Mountain View Rent Control Ordinance, Health and Safety Code Sections 17920.3 or 17920.10, building codes, or Civil Code Section 1941.1. The Appeals Board has not cited or referred to any provision of the ordinance or its regulations to support the Tentative Decision (the Appeal Board's reference to Andrews v. Mobile Aire Estates, 125 C.A. 4th 578 is misplaced as it does not bring these issues within the governance of the CSFRA).

The Hearing Officer and the Appeal Board concluded that Respondents should have taken more action to mitigate or stop the harassment. Although Respondents upon being notified of the harassment told the neighbor to stay away from Petitioner, the Hearing Officer and the Appeal Board concluded that more should have been done and argues that a written notice should have been sent to the neighbor (as if a written notice versus a verbal notice would have changed the neighbor's conduct). In support of this argument the Appeal Board refers to a letter sent to all of the tenants concerning the issue of poison ivy being put in the yard waste containers. In that instance the person putting the poison ivy in the containers was unknown, hence the notice to all tenants. If the neighbor was harassing the Petitioner, it is speculative to assume that he would have stopped the harassment if he received a written notice as opposed to a face-to-face verbal notice.

The Hearing Officer and the Appeal Board concluded that Respondents did nothing even as the harassment continued. That conclusion is not supported by the evidence. The evidence shows that Petitioner was told to contact the police. Petitioner waited until 2023 before she first contacted the police and to file for a restraining order. Why Petitioner waited years before she belatedly contacted the police and filed for a restraining order cannot logically be explained or justified. As the evidence further demonstrated Respondents cooperated with the police given the limited information they had.

The Appeal Board commented that in 2022 "…Petitioner began the year-long process of obtaining a restraining order…" It does not take a year or even months to obtain a restraining order. Rather, it only takes days. Once an application is submitted to the court it is acted upon within days.

The Appeal Board states that Petitioner notified Respondents of the harassment in 2010. That testimony was disputed (and this is where her false testimony regarding buying the hose should be considered) and not support by the evidence (Petitioner renewed her lease without objection or comment in 2011, 2012, 2013, 2014, 2015, 2016,

2017, 2018, 2019, 2020, 2021, and again in 2022). If someone was being harassed since 2010 then a logical person would not have renewed their lease twelve (12) times.

There was no evidence that prior to September 2023 Petitioner ever asked to terminate her lease early. In fact, Petitioner never made any such request.

The Appeal Board argues that Respondents did not offer Petitioner the option to vacate her lease early in order to stop the harassment. However, Respondents were unaware that Petitioner wanted to move out before the end of her lease term until they received her notice in September 2023 that she was leaving at the end of the month.

The Appeal Board argues that Respondents did not ask to look at any security footage captured by the cameras. First, there was no evidence that Petitioner informed Respondents what, if anything, was captured by the security cameras. Second, there was no evidence that Respondents were aware of what, if anything, was captured by the security cameras. Third, Petitioner only gave Respondents the pictures captured by the security cameras almost 2 months after she had obtained the Temporary Restraining Order in July 2023. Upon looking at the pictures, the person captured in the photos could not be identified.

The Appeal Board acknowledges that the Respondents were not obligated to immediately evict the neighbor ("True, Respondent were not obligated to immediately evict the neighbor upon receiving Petitioner's notice…") but concludes that Respondents were obligated to do something. What that "something" was, the Appeal Board does not say. The neighbor denied that he was harassing Petitioner. Nevertheless, Respondents told the neighbor "to stay away from Ms. Garcia" and until they had something more than just the Petitioner's unverified claims, they could do nothing more. Respondents had no evidence to prove or support any of Petitioner's claims. Once Respondents had proof (the Court Order), Respondents gave the neighbor the written notice authorized by the CSFRA Regulations.

The Appeal Board references a letter from a medical professional dated July 25, 2023. That letter (1) was not provided to Respondents until after she filed her Petition, (2) was heavily redacted, and (3) gave no indicated as to the cause or nature of her condition.

The Hearing Officer decided to award Petitioner $250 per month commencing February 2021, in the total sum of $8,000. Without conceding that the award was correct, the Hearing Officer's calculations were again in error:

February 2021-December 2021	11 months
January 2022-December 2022	12 months
January 2023-July 2023	7 months *
	30 months

30 months @ $250 p/m = $7,500

* There was no evidence that the harassment occurred after the July issuance of the Restraining Order. Any such violation would have been the subject of a further court proceeding, of which there were none.

Thus, any award must be reduced by $500. Again, Respondents do not agree that the facts warrant or justify any award.

THE HEARING OFFICER FAILED TO CONSIDER PETITIONER'S FALSE TESTIMONY WHEN CONSIDERING PETITIONER'S TESTIMONY DISPUTED BY RESPONDENTS

It is undisputed that Petitioner gave false testimony (i.e., she lied) about buying the garden hose. Although the garden hose is not an issue on appeal, the fact that she gave false testimony is an issue. The Appeal Board misses the point of the reference to the Jury Instruction. The reference to the California Jury Instruction was to point out to the Hearing Officer that California law does recognize that in situations where a witness gives false testimony the trier of fact (i.e., the Hearing Officer) may choose not to believe anything the witness says, especially when the testimony is disputed as was much of Petitioner's testimony.

The Appeal Board incorrectly concludes that "people can reasonably place a monetary value on gifts they receive". However, that was not her testimony. She testified more than once that she bought the hose. That was not true as confirmed by Petitioner's own text message. The Appeal Board also incorrectly concludes that the false (inconsistent) testimony "is only relevant if the Hearing Officer had determined that the taking of the hose represented a decrease in housing services." That is not the law. The law is the trier of fact (the Hearing Officer) may choose not to believe her testimony on other matters.

The reference to the California Jury Instruction was merely to give the Hearing Officer and the Appeal Board some guidance on what the law is.

CALIFORNIA LAW APPLIES TO ALL PROCEEDINGS UNLESS EXPRESSLY STATED OTHERWISE

The Appeal Board argues that California Code of Civil Procedure, Sections 340 and 431.70, do not apply in this Petition hearing although no authority for this conclusion was cited. The Petition asserts monetary claims against Respondents which is the very type of claims these Sections are intended to address. For example, Code of Civil Procedure, Section 431.70, provides:

> "Where cross-demands for money existed between persons at any point in time...and an action is thereafter commenced by one such person, the

other person may assert in the answer the defense of payment in that the two demands are compensated so far as they equal each other..."

Section 431.70 does not limit its application to only civil actions. Absent such a limitation, Section 431.70 applies in all circumstances whenever there are mutual claims. When Petitioner filed her Petition (i.e., when she filed her "action") the Respondents were authorized to file their offset claim for $4,677.96 (the supporting documentation for which was provided in their response) in their answer to the Petition, which they did. Petitioner never disputed either the damage she caused to the property, the amount of the repairs, or Respondents right to an offset. Absent any dispute, Petitioner concedes that an offset in the amount requested was appropriate.

Code of Civil Procedure, Section 340, provides for a one (1) year statute of limitations where a penalty is involved. The statute is CSFRA Section 1714. Sylve v. Riley 15 Cal.App.4th 23 and Menefee v. Ostawari 228 Cal.App.3d 239 both involved rent control ordinances and both involved ordinances that provided for the awarding of treble damages. These cases concluded that claims brought under the rent control statutes are governed by the Section 340(1) one (1) year statute of limitations.

These Sections apply to Petitioner's claims and should have been considered in ruling upon the Petition and this appeal.

The Appeal Board also argues that the Hearing Officer did not have the authority to consider these requests. As previously pointed out, the Appeal Board acknowledges that the CFRA confers upon the Hearing Officer the power to rule on procedural requests. This power authorizes the Hearing Officer to rule on Respondents' procedural requests, i.e., Sections 340 and 431.70. It is interesting to note that whenever Respondents raise objections authorized and supported by the law, the response is always the same – the Hearing Officer does not the authority to consider the objections.

CONCLUSION

The undisputed evidence establishes that (1) there was no reduction in Housing Services as defined by the CSFRA. Accordingly, the award of $8,000 must be reversed; (2) a dispute between tenants is not covered by the CSFRA, (3) there were no rent increases more frequently than every 12 months. Accordingly, the awards of $955 and $8,530 must be reversed; (4) there were no violations of Civil Code Section 1941.1 and Health & Safety Code Sections 17920.3 and 17920.10 habitability requirements, and (5) there were no violations of maintenance and repair requirements.

Additionally, the Hearing Officer's Decision contains a number of factual inaccuracies, failures to follow the California Constitution, California law and the CSFRA and its Regulations, as well as a misunderstanding of what Respondents could do without any evidence supporting Petitioner's claim of harassment.

Finally, any award must take into consideration Respondents right to an offset in the sum of $4,677.96.

Based on the discussion above, the Hearing Officer's Decision should be reversed.

Leonard J. Siegal — Dated: December 9, 2024

Pamalee K. Siegal — Dated: December 9, 2024