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April 25, 2017

NOMAD VILLAGE HOMEOWNERS' POST-HEARING CLOSING BRIEF

FOR ARBITRATION BEFORE
THE HON. JUDGE DAVID W. LONG (RET.)
NOVEMBER 18, 2016 AND FEBRUARY 10, 2017 HEARINGS

NOTE: Homeowners apologize to Your Honor for the clerical error that resulted in the unintentional switch of homeowners' exhibits C and D and inclusion of pages that we thought were removed. The exhibits were specifically requested by Margo Wagner, who did not receive copies at the November 18, 2016 hearing. Had the error been brought to homeowners' attention as soon as discovered, the error could have been corrected without management wasting billable hours making false claims and presumptions that it intends to pass on to homeowners in Mr. Ballantine's "Declaration." Exhibit C and D were not used in homeowners' brief, the error was neither intentional nor nefarious and management's allegations are totally without merit. Correct copies are attached hereto.

INTRODUCTION

Homeowners have learned the hard lesson that allowing management's false and misleading claims to stand without comment is used against them at a later date; thus, we must clarify the following, which are not addressed in subsequent pages (unless stated otherwise, all references in this brief are to management's post-hearing brief submitted April 5, 2017):

1. Page 1, lines 25–26: Management intentionally neglected to mention that all four parties involved in this arbitration requested postponements at one time or another. Management, homeowners, the county and the arbitrator all had scheduling conflicts for one or more available dates for both days of hearing.

2. Page 2, lines 8–10: To be clear, homeowners stipulated to submittal, but not to content. Homeowners also reassert that Dr. St. John's invoices lack all essential details to authenticate actual work performed for the number of hours and dollars invoiced.

3. Page 5, lines 9–11: Homeowners were ***not*** given exhibit 5 at the time of the rent notice (March 31, 2016). As Mr. Waterhouse testified so assertively and repeatedly, management "did what was required": documentation was available for reading in the on-site office ten days after the rent increase notice, but a copy was not given directly to the homeowners' representatives until April 19, 2016.

4. Page 5, lines 24–28: Homeowners did ***not*** misconstrue Rules for Hearing 2.a as an "evidence preclusion provision." Homeowners say the rules require that all documentation "upon which an increase is based" be available to homeowners' representatives within ten days of the rent increase notice, documentation that is not a basis for the ***rent increase as noticed*** is irrelevant and irrelevant documentation should

not be considered as evidence to support the noticed rent increase for the reasons stated on page 6 of our post-hearing opening brief. Management's "new evidence" (including exhibits 56 and 57) has no relationship ***to the basis of the noticed rent increase***. Chapter 11A prohibits a rent increase exceeding the amount noticed, so what is the real purpose of its submittal?

> 11A-5(j) The total increase shall not exceed the amount in management's notice of rent increase.

5. Page 6, lines 2–8: Homeowners absolutely objected to management's exhibits 46 and 47 being entered into evidence at the time of submittal. Your Honor undoubtedly remembers that our objection was overruled, as the exhibits were prepared by Dr. St. John. Homeowners did not object to 2010 as an "appropriate base year." Homeowners objected to the use of a base year period, instead of "since the last increase" (2014) as the only appropriate review period authorized by the ordinance.

HOMEOWNERS HAVE PROVEN THAT MANAGEMENT IS NOT ENTITLED TO RECEIVE THE RENT INCREASE AS NOTICED

Homeowners provided sufficient evidence, derived from management's own exhibits and testimony, the ordinance itself and relevant case law, that the rent increase is not only unjustified, but unlawful.

There is no law that requires homeowners to hire an expert witness for an arbitration hearing, nor do the Rules for Hearing. Rule 15.c gives both parties the right "to impeach any witness…" A Santa Barbara County Mobilehome Rent Control Ordinance arbitration hearing is not a court proceeding. It is an administrative hearing in which ordinary people participate, driven by the provisions of Chapter 11A and the Rules for Hearing. According to Rule 15.d, the hearing "need not be conducted according to technical rules relating to evidence and witnesses." Case law and the evidentiary record impeached management's expert witness. Management illustrates its don't-care attitude toward the ordinance and rules by adding to and deleting from both according to its own interpretations.

On page 3, lines 27–28, of its post-hearing brief, management cited *Whispering Pines Mobile Home Park, Ltd. v. City of Scotts Valley (1986)* to substantiate that an expert opinion is required to challenge Dr. St. John's opinion. *Whispering Pines* also includes, on the same page:

> The court in *Franz, supra, 31 Cal.3d 124*, goes on to explain that some questions of common knowledge require no expertise, and "[o]nly where the professional significance of underlying facts seems beyond lay comprehension must the basis for the technical findings be shown and an opportunity for rebuttal given." (Id., at p. 141.)

Management's expert witness and documentation provided all of the expert evidence and underlying facts needed to rebut Dr. St. John's opinion that a rent increase was necessary to provide management with a fair return. Dr. St. John stated that the fair rate of return to maintain management's net operating income is 6.3% of 2010 base rents, in addition to the 6.3% already noticed and perpetually collected as automatic increases from 2010 to 2015. Homeowners cited management's evidence to point out that its net operating income exceeds the maintenance level, just by applying basic arithmetic learned by adolescents in every U.S. elementary school. No specialized knowledge was necessary, just common knowledge.

Homeowners made no claim as to what management's "fair rate of return is or should be." Homeowners merely cited the evidentiary record to show the percentages of return that management enjoys, according to its myriad exhibits and Dr. St. John's published naming conventions of fair return standards (exhibit E, page E-9) and to verify that Dr. St. John's "justified" permanent base rent increase of 6.3%, preferably 8.3%, is not justified. Exhibit 45, line 117, unequivocally shows that management's MNOI-calculated net operating income increased 16% from 2010 to 2015; and line 114 unequivocally shows that management's MNOI-calculated base rent income increased 17% from 2010 to 2015. Management already receives an MNOI that exceeds 6.3% of 2010 base rents plus the combined CPI increases already taken from 2010 to 2015 (simple addition: 6.3% + 6.3% = 12.6%; 8.3% + 6.3% = 14.6%), as well as the ordinance standard of fair return on investment. Additional fair return increases render the stated purpose of Chapter 11A meaningless.

Homeowners also proved, using the evidentiary record, that "fair return on investment" and "increased operating expense" increases (exhibit 45, lines 141 and 143) are each limited to one-half of the corrected ***noticed automatic increase.*** To ignore the provisions of the ordinance in order to demand greater increases than allowed is another example of management's intentional disregard of the ordinance.

Homeowners did not ask the arbitrator to "derive a fair return calculation based upon calculations unsupported by expert testimony and evidence." Homeowners asked the arbitrator to deny the MNOI rent increase based upon management's expert testimony and evidence that Dr. St. John's MNOI analysis calculations for fair return, even at 100% indexing, clearly show that management's net operating income has been maintained at a level above the percentages in exhibit 45. Management's attempt to "double-dip" into homeowners pockets is flagrant antithesis to the ordinance's purpose.

Management also falsely claims that homeowners' brief is "virtually devoid of references to the evidentiary record in this case," including "the exhibits in evidence." To the contrary, homeowners cited the evidentiary record more than 100 times in our brief, mostly with management's 55 exhibits, which were explained at length. It is not the responsibility of homeowners to "establish that the rent increase should properly be another number." Management forgets: homeowners asserted in our post-hearing opening brief that the proper number is the automatic increase only, since the last automatic increase was in 2014 and since management noticed a rent increase within 12 months of the last increase in excess of the automatic increase by willfully refusing to comply with Chapter 11A. It is now up to the arbitrator to award "another number"; however, homeowners have the right to point out what is allowed by the ordinance and Rules for Hearing and ask that the arbitrator make an opinion and award accordingly.

CPI INCREASE

Homeowners did not dispute the corrected automatic increase because it is a provision of the ordinance that allows management to maintain a fair return and it would be unfair to do so in a separate argument.

Management states on page 4 of its post-hearing brief that it agreed to change the Consumer Price Index used in calculating the automatic increase because homeowners objected, even though "the difference was a few cents." The facts are that management used the wrong index (exhibit 4, page 7), homeowners brought it to management's attention and Mr. Waterhouse called his office to verify that homeowners were correct. Management did not accommodate homeowners in any way by agreeing to the change. Management merely corrected an error pointed out by homeowners.

The fact that management places such import on the difference of a few cents is another example of its basic disregard of the ordinance's provisions. Whether the difference is cents or dollars is irrelevant. The only relevant issue is whether or not the automatic increase exceeds 75% of the ordinance's authorized index.

HOMEOWNERS HAVE PROVEN THAT MANAGEMENT IS NOT ENTITLED TO THE MNOI RENT INCREASE AS NOTICED

Management's expert witness reinterpreted and materially altered the provisions of Chapter 11A, as written, to justify a permanent base rent increase.

In spite of his extensive experience, expertise, participation in court proceedings and reliance upon management's attorney, Dr. St. John crossed the line of the one unwavering limitation to expert testimony: interpretation of statutes, including local statutes such as rent control ordinances, is the exclusive jurisdiction of the courts, subject to:

> *Code of Civil Procedure, Part 4, Title 1*
> **1858**. In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.
>
> **1859.** In the construction of a statute the intention of the Legislature, and in the construction of the instrument the intention of the parties, is to be pursued, if possible; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.

Dr. St. John has no judicial standing or quasi-judicial authority to interpret the provisions of Chapter 11A, which he clearly did to arrive at his "modified or analogous version of an MNOI analysis" and to determine that the ordinance "says that park owners should be able to pass through to park residents <u>all</u> expense increases" (management's post-hearing brief, page 5, lines 1–8), as well as:

1. Interpreted 11A-1 *(…declares it necessary to protect the owners and occupiers of mobilehomes from unreasonable rents while at the same time recognizing the need for mobilehome park owners to receive a fair return on their investment and rent increases sufficient to cover their increased costs.):* "park owners must be reimbursed for 100% of all expense increases." What about transitory expenses or those that fluctuate

greatly from year to year, such as repair and maintenance or office and administration? The difference between all expense increases and increased costs is that the former includes every penny management spends for any reason that exceed any other year's expenses and the latter are recurring annual ordinary and necessary operating costs that continuously increase, *supported by documentation required for that purpose by the Rules for Hearing and Chapter 11A.*

2. Interpreted 11A-5(a)(2) *(…immediately preceding twelve months for which said index has been published at the time notice of said increase was given or since the last rent increase…)*: "applies only to the annual CPI automatic increase."

3. Interpreted 11A-5(a)(3) *(Where the noticed increase is in excess of seventy-five percent of CPI, management shall: (A) Itemize amounts for increased operating costs;)*: "include all operating costs, actual and imputed." Itemize amounts traditionally means to itemize, side by side, amounts for increased operating costs ***permitted by Chapter 11A*** so anyone can see them on a few pages, without making an exhaustive search of all documentation to look for authentic increases.

4. Interpreted 11A-5(i)(1) *(First, grant one-half of the automatic increase to management as a just and reasonable return on investment. The arbitrator shall have no discretion to award additional amounts as a just and reasonable return on investment;)*: "grant management two fair return increases (exhibit 45, lines 140 and 141); "grant management one-half of exhibit 45, line 140 instead of the authorized amount as a just and reasonable return on investment."

5. Interpreted 11A-5(i)(2) *(Next, grant one-half of the automatic increase to management to cover increased operating costs. The arbitrator shall have no discretion to award less than this amount for operating costs.):* "grant management one-half of exhibit 45, line 140 instead of the authorized amount."

6. Interpreted 11A-6(b)(1) *(The cost of capital expenses incurred or proposed, including reasonable financing costs, may be passed on to homeowners at the time of an annual increase.):* "management didn't incur any reasonable financing costs, but amortization at 9% interest is reasonable in my experience." Homeowners' CPA discovered that Dr. St. John's 9% calculations over the specified number of years actually equal an interest rate of ~10.5%; to be accurate and fair, we request that the

amortization of any amounts awarded by the arbitrator be calculated by a CPA chosen and paid for by homeowners.

This list is not all-inclusive, as homeowners mentioned others in our post-hearing opening brief. ***The point is that management's expert witness has no power or authority to interpret and materially alter the provisions of Chapter 11A to justify a perceived similarity between the ordinance and his MNOI formulas.*** Dr. St. John would never consider interpreting or analogizing state law to suit his own purposes or those of his clients. Management and its counsel also do not have the standing or authority to interpret the ordinance by reinventing its provisions in order to justify a rent increase. The ordinance is a statute; interpretation is the jurisdiction of the courts, which allow rent control agencies similar restricted power:

> *Metzenbaum v. City of Carmel-By-The-Sea, 234 Cal. App. 2d 62, Cal: Court of Appeal, 1965*
> Although the board is given the power to interpret the ordinance, it is fundamental that this grants only the power to ascertain what is in the ordinance itself, not to insert what has been omitted or to omit what has been inserted.

Management's team has consistently ignored provisions of the ordinance (omitted what has been inserted) by completely discounting phrases such as "since the last increase," "otherwise permitted by this chapter," "must comply with state law," "ordinary and necessary maintenance and operating expenses" and "the year then ending."

Management's team has consistently inserted "what has been omitted" by claiming that any denial of expenditures not specifically allowed by the ordinance results in unconstitutionally "taking" management's property and denying a fair return, even though case law disposed of that notion decades ago.

Management's team has consistently inserted "what has been omitted" by claiming Chapter 11A provides, by analogy, for the pass-through plus interest of extraordinary expenses in 11A-6 that are not defined or classified as capital expenses or capital improvements, the only expenses for which the ordinance allows reasonable financing costs. Analogizing and interpreting the ordinance, as management and its expert have done, is unlawful, and management has yet to cite any state law or case law to the contrary.

HOMEOWNERS HAVE PROVEN THAT MANAGEMENT IS NOT ENTITLED TO THE TEMPORARY RENT INCREASE FOR COMMON AREA ELECTRICAL WORK

Whether or not management incurred expenses for "common area electrical work" is not the relevant issue. The issue is that management violated state law by passing these costs on to homeowners.

Management's attorney claims homeowners used hyperbole to prove our point. The fact is that nothing in homeowners brief is exaggerated and everything is to be taken literally. Since management's attorney is such an experienced, skilled lawyer with emphasis on mobilehome law, including "the California Mobilehome Residency Law, …Mobilehome Parks Act under the Health & Safety Code [and] Title 25 of the California Code Regulations" (Declaration of James P. Ballantine, page 3), his lack of clarity is astonishing. To refresh management's memory:

> *Health and Safety Code Part 2.1 (Mobilehome Parks Act)*
> **18300.(a)** This part applies to all parts of the state and supersedes any ordinance enacted by any city, county, or city and county, whether general law or chartered, applicable to this part. Except as provided in Section 18930, the department may adopt regulations to interpret and make specific this part and, when adopted, the regulations shall apply to all parts of the state.
>
> **18420.(a)(1)** If, upon inspection, the enforcement agency determines that a mobilehome park is in violation of any provision of this part, or any rule or regulation adopted pursuant thereto, the enforcement agency shall promptly, but not later than 10 days, excluding Saturday, Sunday, and holidays, after the enforcement agency completes the inspection and determines that the alleged violation exists, issue a notice to correct the violation to the owner or operator of the mobilehome park and to the responsible person, as defined in Section 18603.
>
> **18420.(c)(1)** Service of the notice of violation shall be effected either personally or by first-class mail. Each notice of violation shall be in writing and shall describe with particularity the nature of the violation in as clear language as the technicality of the violation will allow the average layperson to understand what is being cited, including a reference to the statutory provisions or regulation alleged to have been violated, as well as any penalty provided by law for failure to make timely correction.

Exhibit G, attachment 2, proves that Nomad Village Mobilehome Park management received notices of violations of California Regulation Title 25 and the Health and Safety Code sections referenced therein (mentioned on almost every page of attachment 2) for years, for the same violations. Management's attorney was involved in the dispute

between the county and both park owners as counsel for each of them. He knows, but perhaps Your Honor did not know, that Title 25—referenced as "regulation" and "regulations" in the sections quoted—is incorporated into the Mobilehome Parks Act, and the Mobilehome Parks Act supersedes any perceived, implied or expressed provision of any ordinance that conflicts with it. Since homeowners proved that the specific Health and Safety Code violation is California Regulation Title 25 and that code violations were issued by the county, Health and Safety Code Part 2.1 (Mobilehome Parks Act), section 18410, applies:

> **18410.1(a)(3)** The owner or operator of the mobilehome park shall be responsible for the correction of any violations for which a notice of violation has been given pursuant to this subdivision.

Management claims (post-hearing brief, page 7, lines 12–14) homeowners failed to prove that management was assessed any penalty for code violations. Management apparently believes that a penalty is a fine. A fine is always a penalty, but a penalty is not always a fine. Management also apparently skipped over the part in homeowner's post-hearing opening brief that says: "Obviously, the penalty for code violations is remedial—abatement…"

Blacks Law Dictionary, referenced in exhibit J, defines penalty as "2. A punishment; a punishment imposed by statute as a consequence of the commission of a certain specified offense." The California Health and Safety Code is obviously a statute, and section 18410(a)(3) imposes responsibility of abatement, including all costs to abate (otherwise "correction of any violations" is not achieved), on management alone for the specified offense of violating Title 25. Abatement was imposed on management by its agreement with the county (exhibits 50 and 51), as well.

Further, the same definition of penalty applies to the Mobilehome Residency Law, section 798.39.5 (misquoted in management's brief as 798.35.5). Management cannot, by law, pass through to homeowners any penalty *assessed or awarded by a court of law or any enforcement agency against the management for a violation of this chapter or Part 2.1 (commencing with Section 18200 of Division 13 of the Health and Safety Code, including any attorney's fees and costs incurred by the management in connection therewith.* Since the county enforcement agency assessed the penalty of abatement on management as a condition of withdrawing the violations (exhibits 50, 51 and 52), this

section definitely prohibits management from passing through any attorney's fees and costs incurred in connection with a violation of the Mobilehome Parks Act.

Management's apparent claim that a fine is the exclusive definition of penalty in regard to a rent increase is an intentional misrepresentation. Penalties are as diverse as the crimes and offenses from which they result, from censure to imprisonment, and most are not monetary.

Management's claim that homeowners have ignored the fact that the code violations were without basis and withdrawn by the county is absurd. Management provided no evidence whatsoever that the county agreed the code violations were baseless. To the contrary, the county required abatement as a condition of withdrawing, not expunging, the violations. Mr. Waterhouse's testimony that a conversation with county representatives resulted in "no violations" is hearsay, which is allowed by the Rules for Hearing ***only*** "for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding…" (rule 15.d).

In fact, refuting Mr. Waterhouse's testimony is management's exhibit 52, which clearly states that notices of code violation were withdrawn after "the scope of work set forth in the April 2012 'Amendment to Settlement Agreement and Mutual Release' for Nomad Village Mobile Home Park has been completed and signed off with a final inspection." Exhibit 51, page 4, section G, also refutes Mr. Waterhouse's testimony by stating that violations would be withdrawn and fines vacated after the scope of work is completed and that ***fines would be reinstated if the work was not completed***. Clearly, the notices of code violation were active and enforceable until after abatement was completed and inspected, and exhibits 50, 51 and 52 do not contain any evidence that the county retracted or denied the validity of the notices of code violation and determination of fine, only that management disputed their validity. Thus, all costs in connection with the scope of work to abate and correct code violations are prohibited by law.

Homeowners do not need any legal authority to ask that "common area electrical work" be removed from the noticed rent increase, pending the CPUC decision. Perhaps management missed the obvious (we thought) reasons for making the request. To be crystal clear: homeowners requested removal so that management may reserve the

right to include it in a later rent increase if the California Public Utilities Commission determines that its jurisdiction over public utilities pre-empts *all* other state law, as well as to avoid any ramifications for the arbitrator should the CPUC determine otherwise. To attack homeowners so viciously when we request an opportunity to be fair is heinous in the extreme.

Which brings us to management's inflammatory and completely false claims that homeowners have filed "yet another proceeding" against management and are "forum shopping." If management had read the complaint, management would know:

1. The entire scope of homeowners complaint (exhibit G, page A1-6) consists of a request for answers to four questions, which the CPUC Consumer Affairs Branch could not, or would not, provide without the determination of an administrative law judge (ALJ). (The Consumer Affairs Branch, four months after the initial request, informed homeowners that a compliant must be filed to get the information and provided instructions and rules.) Those four questions, exclusively regarding CPUC Decision 0404043 and its Attachment A, are:

    a. Does CPUC jurisdiction over public utilities pre-empt state law?

    b. Are attorney and professional fees related to submetered utilities included in "administrative and general" expenses?

    c. Is a replacement service extension to upgrade a space serviced for 50+ years considered "expansion of the network for areas yet to be serviced by the utility"?

    d. Are costs—including, but not limited to, engineering and professional fees, permits, and plot plans—relating to the electric and gas submetered system included in "administrative and general expenses"?

2. Homeowners filed an ***expedited*** complaint before arbitration commenced, so that the requested information regarding Decision 0404043 would be available within 30 days to present at arbitration. An expedited complaint is reviewed by the assigned ALJ without a formal hearing, without attorneys, without costs being incurred by either party and without excessive delay (up to 18 months are required for a regular complaint). Management involved its attorney *before the complaint was even officially filed by the CPUC,* requiring that the expedited complaint be changed to a regular complaint. Thus, a simple request for information that could be presented at arbitration

became a costly, extensive and avoidable “proceeding” under the jurisdiction of the CPUC. Management alone made an expedited decision impossible, knowing full well that an expedited decision IS ***not*** a formal proceeding, a recorded decision or case law and that “[s]eparately stated findings of fact and conclusions of law will not be made, but the decision may set forth a brief summary of the facts” (CPUC rule 4.5(e)).

3. Homeowners asked that the CPUC not usurp arbitral authority, but provide the information requested prior to the hearing date (page A1-7), so arbitration would not be delayed or postponed. Management alone made that request impossible.

4. The CPUC has exclusive jurisdiction over submetered utilities and the authority, without physical hearings and attorneys, to clarify its decisions. By demanding a regular hearing and its attorney’s participation, management alone wrested jurisdiction away from Your Honor, while homeowners attempted to keep it in arbitration. Management could have answered homeowners’ complaint without instigating litigation, but chose to challenge the CPUC’s jurisdiction ***over its own decisions*** instead. It isn’t against the rules for management’s attorney to prepare the answer to an expedited complaint, so that members and shareholders of management’s business entities are protected.

5. Homeowners did not ask the CPUC to adjudicate anything, just to answer questions according to the background provided. Had the CPUC been given the opportunity to answer those questions, then the complaint would be resolved without litigation. Management alone made that impossible. Management alone forum shopped. Management alone forced the CPUC to defend its jurisdiction, forced a year-long (or more) protraction upon itself and forced both of us into “yet another proceeding.” To use management’s own words, “it is troublesome in the extreme” that management instigated its fourth litigation since 2008, voluntarily and unnecessarily.

6. Management quotes the categories relating to submetered electrical systems on page 10 of its post-hearing brief that “may be separately charged to tenants if not otherwise prohibited.” It’s that last part (if not otherwise prohibited) that homeowners asked the CPUC to clarify. In addition, the categories that may NOT be separately charged to tenants are the same as those on page 10 of its brief (conduits, trenching, substructures, capital investment-related costs, etc.), with minor and confusing subcategory distinctions.

HOMEOWNERS HAVE PROVEN THAT MANAGEMENT VIOLATED THE ORDINANCE BY IGNORING PROVISIONS RELATED TO CAPITAL EXPENSES

Whether or not management incurred expenses for "common area street repairs" is not the relevant issue. The issue is that management violated Chapter 11A provisions to assess the rent increase, including capital expenses.

Management claims that homeowners misconstrue the ordinance, but homeowners do not. Homeowners stated that "prior year" used in the context of 11A-5(a)(3)(A), "…any capital expenses *incurred in the prior year*…," is a distinction WITH a difference and that the time spans of one year and 12 months are used throughout the ordinance.

Management's team again omits what is inserted in the ordinance. Dr. St. John interpreted that provision of Chapter 11A as having no meaning within its context as a whole, no doubt partly because "prior year" or a similar phrase is not reiterated in section 11A-6(b)(1). What would be the purpose of inserting "prior year" in 11A-5(a)(3)(A) if it had no meaning, if it were surplusage? Can management explain that? Can Dr. St. John? No. Management's team can only say it doesn't matter. Perhaps Your Honor will agree. Perhaps not. All homeowners can ask is that Your Honor consider *Metzenbaum v. City of Carmel-By-The-Sea* (page 7) before making that decision.

On page 11, lines 9–20: Management states that street repair costs were not awarded in the arbitrator's March 5, 2016 remand award because "the repairs had not been made in 2011." That is not true. In 2011, Mr. Waterhouse testified that street repair costs would be paid from the $320,000 escrow account award, which was vacated by the board of supervisors in 2012 and by the court in 2014 for abuse of discretion. The arbitrator couldn't award the costs.

Management also claims that it incurred costs for the street repairs within the time frame of the March 5, 2016 remand opinion and award. Obviously, a remand decision for the 2011 arbitration does not apply to the noticed rent increase of March 31, 2016. And since an award for street-repair capital improvements was not included in that remand opinion, management's claim is completely meaningless.

Furthermore, the arbitrator's original decision dated December 20, 2011 specified that monies be spent on eligible capital improvements within six months (June 19, 2012) of the award, well before management filed its writ of mandate in Superior Court dated

November 14, 2012 (exhibit 27). Management noticed $320,000 as proposed capital improvements, did not spend monies from the escrow account on eligible capital improvements within six months, as required by the award and 11A-6(a)(5), and was bound by the ordinance to discontinue the capital improvements rent increase on homeowners' rent statements immediately following June 19, 2012. Management did not; thus 11A-6(a) applies: *Management shall deduct increases allowed for capital improvements at the time which was specified by the arbitrator,… (A) If management fails to automatically deduct such increase, then such increase shall be considered an increase in the maximum rent schedule and shall be subject to all the provisions of this chapter, including, but not limited to, amount and frequency of increase.* Which brings us back to 11A-5(e): *The arbitrator shall deny an increase in the maximum rent schedule where homeowners prove by a preponderance of evidence that: (1) Management has previously increased the maximum rent schedule such that the effective date of the proposed increase will be less than twelve months after the effective date of the previous increase.*

Also, management continues to ignore 11A-13(b)(1), which says when judicial review results in remand to the arbitrator, the *"new decision shall become effective as if it were the original decision subject to section 11A-5."* And 11A-13(b)(2): *Any rent paid by homeowners in excess of that approved by the subsequent decision shall be credited to homeowners in accordance with section 11A-8(b)(2) insofar as possible.* And 11A-8(b)(2): *Where the arbitrator approves an increase in an amount less than the amount noticed, management shall be entitled to the full amount in the interest-bearing account subject to a homeowner credit against future rent. The amount of the credit shall be the difference between the amount deposited in the interest-bearing account and the amount approved, plus a proportional amount of the interest, if any, prorated among the tenancies. Management shall notify each homeowner in writing of the amount of credit.*

HOMEOWNERS HAVE PROVEN THAT MANAGEMENT IS NOT ENTITLED TO RENT INCREASES FOR EXPERT WITNESS AND ATTORNEY FEES

Whether or not management incurred attorney and expert witness fees is not the relevant issue. The issue is that charging homeowners for these fees violates state law.

Homeowners absolutely dispute that management "was forced to incur these fees" (post-hearing brief, page 13, lines 27–28) as a result of homeowners "multiple" transgressions. Homeowners filed ONE petition in 2011 and ONE petition in 2016, both of which are the lawful right of homeowners to file, especially when management violates the ordinance and state law in order to increase rents.

If management noticed rent increases in accordance with the ordinance's provisions, it would not incur attorney and expert witness fees to the extent that it has. Instead, management doesn't comply with the ordinance, and homeowners are forced to dispute. Claiming that its attorney fees are a "direct result" of homeowners' challenges is management's refusal to take responsibility for its own actions. Management's attorney once said (exhibit 12, T1, page 14, lines 8–17):

> One of the things that's, perhaps, somewhat unique about the ordinance that we're operating under is that, unlike many jurisdictions, it doesn't have a component where if a park operator wants to increase the rents that they bring a petition to a board and asks for permission to do it.
>
> The way that our ordinance is set up is simply that a rent increase is noticed, if the homeowners have an issue with it they can bring a petition, as they have done here, and then an arbitrator deals with it.

Clearly, management knows how Chapter 11A and the Rules for Hearing work. Homeowners' two petitions for arbitration are a direct result of statute that allows petition to arbitrate. Management's costs for arbitration are a direct result of the same statute. Homeowners' petitions to the board of supervisors are a direct result of abuse of discretion by the arbitrator (see page 21). Management's lawsuit is a direct result of abuse of discretion by the board of supervisors. Homeowners' lawsuit is a direct result of management's and the county's neglect to comply with a state law in the manner required by that law. Management cannot, with any honesty or believability, claim that incurring its entire body of legal fees is a direct result of meritless acts by homeowners. The 2011 arbitration and management's 2012 suit against the county (reducing the noticed $161 rent increase by $95.97 to $65.03) prove that homeowners' rent increase challenge was not frivolous or meritless. This vicious attack on homeowners is baseless and mendacious.

Management continually insists that it is the "winner" in the 2011 arbitration and its 2012 lawsuit, most recently in exhibit 1, page 2, paragraph 3 (italic emphasis added):

> The Arbitrator has recently ruled and upheld ***most of the Park's Rent increase as noticed*** with the primary exception of capital items which were planned but had not all been directly paid by Park Management at the time of the Rent increase.

Management claim is rebutted by the fact that $95.97 of the noticed $161 rent increase was denied by both the arbitrator and the court, most of which did not comply with the ordinance. Had homeowners not filed a petition for arbitration, management's unlawful increases in rent would still be in effect. And, yet, management continues to make a career out of blaming homeowners for every penny it spends on legal fees, when those fees are the direct result of management's failure to comply with the ordinance. Had management noticed a rent increase in accordance with Chapter 11A, its professional fees would have been eliminated.

Speaking of professional fees, homeowners absolutely dispute that professional fees incurred by management were reasonable. Since supporting our opinion with case law would be futile, homeowners won't even try, especially since management's attorney has already submitted an extraordinary self-assessment of his legal prowess. The fact that counsel's hourly rate is about ***half*** the net monthly income of many Nomad residents is, he will say, irrelevant, immaterial and not proper evidence; it is the "rate at which Park Management agreed to pay" (Ballantine Declaration, page 4, line 2).

More importantly, homeowners did not agree to pay Mr. Ballantine $450/hour or even request his services. Mobilehome Residency Law 798.31 prohibits management from charging counsel's fees to homeowners, which IS supported by case law (see *Cequel III Communications I, LLC*, page 18). Apparently, management will commit to pay whatever is invoiced, since it fully intends to charge homeowners for every penny incurred for professional consultants. And since management fully intends to charge homeowners for every penny, it has filed suit after suit after suit.

On page 4, lines 1–7, he states that $450/hour "is [sic] been awarded by courts, and is commensurate with the billing rates of attorneys…engaged in real estate litigation in Southern California, including in the Santa Barbara area, particularly with specialized knowledge and experience in practice in mobilehome law." In Santa Barbara County's Superior Court, however, counsel's fees were not awarded (just costs) for either of the suits in which Nomad Village management and homeowners participated.

Rent control arbitration is not real estate litigation in a court of law. It is, by intention of the authors, less complex and less time-consuming. Parties, according to the Rules for Hearing, are not required to hire attorneys, but may be represented by any person(s) chosen by the parties. And extensive specialized knowledge—other than intimate knowledge, or a thorough reading at the very least, of Chapter 11A—is rarely necessary. Considering the outcome of Nomad Village's 2011 arbitration (a 60% reduction in the noticed rent increase), counsel's specialized knowledge of mobilehome law, continuous analysis of the ordinance and hourly rate are questionable, especially in light of his $125/hour raise (homeowners' exhibit Q-2011).

On page 4, lines 25–28, counsel states that the arbitrator awarded $110,000 in professional fees, which was "the entire amount requested in the fee application made to the hearing officer." That is not true. The amount actually requested was $125,000 (exhibit 16, T1, page 41, lines 1–2 and T2, page 172, lines 13–15, among others). This false statement negates counsel's assertion on page 5, lines 7–8: "I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct." Homeowners wonder: what is the penalty for perjury? Is it a fine?

Homeowners take great offense at being called litigious. Homeowners filed one suit against management for a legitimate reason. Management did not have a permit to operate in Lazy Landing's name until months after the lawsuit was filed (exhibit 14). Waterhouse Management paid the fees, but Lazy Landing was not the park owner or operator of record on the permits to operate and did not have a visible or declared business relationship with Nomad Village MHP, Inc.

Management, on the other hand, has filed two lawsuits against the county, with the bifurcated third still pending, concerning Nomad Village. Management also forced a fourth proceeding by demanding a full-blown hearing from and challenging the jurisdiction of the California Public Utilities Commission. Calling homeowners litigation-happy in the face of its own frequent litigiousness is offensive.

On page 14, lines 8–13, management makes more false claims. First and foremost is that management will ***never*** recover the costs of litigation if those costs are not paid by the homeowners. Profits may be less in the year incurred, but management recovers those costs with the three annual permanent increases authorized by the ordinance.

Dr. St. John's statement about non-recoverability is outside his expertise and is contradicted by the *Kavanau* case (see below), among others. His general opinion about attorney and witness fees stems from years of experience before rent control boards and commissions, as well as participation in court proceedings, although homeowners dispute that opinion when it comes to arbitration and the Santa Barbara County ordinance. But his opinion that fees can ***never*** be recovered except through a rent increase is not supported by any quantitative experience, expertise, case law or documentary evidence. If Dr. St. John had said that these expenses *could not be recovered fast enough to suit management except through a rent increase,* homeowners could not dispute that opinion.

As homeowners proved in our post-hearing opening brief with *Morgan, Oceanside, Carson Harbor Village* and *Colony Cove*, among others, as well as exhibit J, a rent control process that does not award a rent increase for every penny management spends is not unconstitutional or confiscatory. Case law also dispels any notion that these expenses can never be recovered by management and, thus, deny it a fair return:

> *Kavanau v. Santa Monica Rent Control Board, Cal. Supreme Court, 2001*
> …a fair return over the course of several years will offset a confiscatory return during a particular year. Recognizing that Kavanau has a continuing right under the due process clause to future rent adjustments that will enable him to earn a fair return, we believe he has not suffered a taking. Put another way, the ongoing process of setting rent ceilings dispels the due process violation, which in this case is the sole basis for a potential takings clause violation.

Secondly, homeowners have made no "judicial admissions" regarding management's attorney fees. Homeowners consistently reiterate that management's pass-through of these fees is illegal—not just in one way, but in four ways:

1. Charging homeowners attorney and expert witness fees for both arbitration and litigation violates Mobilehome Residency Law section 798.31 (cited in homeowners post-hearing opening brief as 798.32 due to typographical error), which is supported by case law (just imagine the words "attorney fees" where cable television is used):

> *Cequel III Communications I, LLC v. Local Agency Formation Commission Of Nevada County, California Court Of Appeals, 2007*
> *Greening v. Johnson (1997) 53 Cal.App.4th 1223 (Greening)*, was an action brought by mobilehome park owners against residents of the mobilehome park to recover unpaid monthly charges for cable television. The appellate court held the Mobilehome Residency Law (Civ. Code, § 798 et seq.) does

not authorize a park owner to charge for cable television services not requested or used. *(Greening, supra, at p. 1230.)* The court stated it was at best uncertain from the language of Civil Code section 798.31 whether cable television could be considered a permissible utility fee under that section, but as the legislative history reflected an intent not to allow charges for services not requested or used, it concluded the owners could not unilaterally arrange for cable television service and require the tenants to pay the charges.

2. The California Arbitration Act prohibits management from charging homeowners its attorney and expert witness fees.

3. Management violates 11A-11 by forcing homeowners to pay its fees in order to exercise our rights under the ordinance and Rules for Hearing. Merriam-Webster Law Dictionary definition of retaliate: “to act in revenge” and “usually implies a paying back of injury in exact kind, often vengefully.”

> *Sec. 11A-11. Retaliation.*
> Management shall not retaliate against any homeowner because of his assertion or exercise of any rights provided by this chapter.

> *Exhibit 1, Page 2, Paragraph 3*
> If the Homeowners appeal the current Arbitration Award, then Park Management will defend that appeal and seek to recover through increased rent all additional defense costs, including professional fees.

> *Exhibit 3, 4B*
> Legal and consultant fees relating to the current Rent increase proceeding, estimated to be incurred if there is a challenge to the Rent Increase.…

4. Code of Civil Procedure §1021 prohibits management from charging its legal fees, without homeowners’ expressed consent or an award by the courts, for litigation in which homeowners were collectively a represented party, as allowed by the courts:

> *Salton City Area Property Owners Assn. v. M. Penn Phillips Co., California Court of Appeals, 1977*
> Code of Civil Procedure section 382 provides, in relevant part, that “[W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.” …The doctrine of virtual representation rests on considerations of necessity and paramount convenience and was adopted to prevent a failure of justice. *(Chance v. Superior Court, 58 Cal.2d 275, 291 [23 Cal. Rptr. 761, 373 P.2d 849].)* On whichever alternative of the statutory conditions the action is brought two requirements must be satisfied; there must be an ascertainable class and a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. *(Daar v. Yellow Cab Co., 67 Cal.2d 695, 704 [63 Cal. Rptr. 724, 433 P.2d 732].)*

Provided a real party in interest actively participates in litigation, all parties are protected by section 1021 from paying an opposing party's attorney fees attributable to that litigation without expressed agreement between the parties or an expressed judgment of the court.

Page 15, lines 19–28, of management's post-hearing brief cites *Galland v. City of Clovis* as proof that "legal and administrative costs attributable to the rent review process" should be considered when making a rent adjustment. Management neglected to mention, however, that the court continues with:

> Clovis argues that *Oceanside Mobilehome Park Owners' Assn. v. City of Oceanside (1984) 157 Cal.App.3d 887, 204 Cal.Rptr. 239* stands for the proposition that a city may not be constitutionally required to include the landlords' costs of obtaining rent increases as operating expenses when calculating the proper rent levels. Clovis is correct, but only up to a point. In *City of Oceanside*, the court considered a facial challenge to an ordinance, including a challenge to a provision excluding attorney fees from operating expenses. The court correctly rejected this facial challenge. As explained above, it is the overall result of the rent-setting process, not the method employed or any particular exemption legislated, that determines whether a rent control regime is confiscatory. *(Kavanau, supra, 16 Cal.4th at pp. 771-772, 66 Cal.Rptr.2d 672, 941 P.2d 851.)* Thus, the exclusion of costs associated with obtaining rent increases is not per se confiscatory. On the other hand, if a rent control ordinance as applied operates to impose large and unnecessary costs on landlords, and if as a result of that imposition a landlord is only able to garner a rate of return that is deemed confiscatory, we may not ignore the confiscation simply because these costs have been classified as exempt expenses. Accordingly, these expenses must also be considered on remand when determining whether and to what extent Clovis's rent regulation has been confiscatory and whether remand for a determination of *Kavanau* adjustment is appropriate.…
>
> The issue is not whether Clovis's failure to adjust rents in a timely fashion has led to a confiscatory result—a question we addressed in the previous part of this opinion. Rather, we are concerned in this part with whether the trial court was correct in awarding the Gallands $247,885 in damages resulting from administrative and legal expenditures during the rent-setting process itself. In determining whether a constitutional injury has taken place, we follow the path of the United States Supreme Court and other courts in asking whether government agents have deliberately committed obstructive and unlawful acts designed to interfere with the Gallands' property rights.

As Your Honor can see, and has probably read in the decision itself by now, *Galland* addresses deliberately obstructive and unlawful acts by the Clovis that had already

spanned more than 13 years, although the duration isn't reflected above, and were decided by the court to be "deliberate flouting of the law." Management has not been subjected to any deliberate flouting of the law or deliberately obstructive and unlawful acts by a government agency (or by the homeowners). Although the arbitrator did not understand the board's reasoning for abuse of discretion in multiple remands until management's attorney spelled it out for him in great detail, deliberate flouting of the law and obstructive acts in the rent control process were completely absent. Apparently, management interprets the *Galland* court's decision to encompass any and all "legal and administrative costs attributable to the rent review process," regardless of the impetus.

Page 16, lines 7–10 cites *Carson Harbor Village v. City of Carson MPRRB* as proof that attorney fees are properly recoverable through a rent increase, but completely ignores the reason the court made that determination: they are specifically allowed by Carson's ordinance and implementation guidelines *for a presentation before the board, not for arbitration or judicial review.*

> Section II (A)(2)(i) of the Carson Implementation Guidelines states: "Reasonable attorneys' fees incurred in connection with park operation and presenting rent increase applications to the Board are allowable operating expenses. Attorneys' fees incurred in connection with challenging the Ordinance or actions of the board in court are not allowable operating expenses."

Lines 11–14 cite the same case to prove the court found that attorney fees can be allocated over time as a temporary increase with interest, but that's not true either:

> In 1995, CHV incurred expenses of $190,333 to remediate wetlands contamination on mobilehome park property. It used proceeds from a $300,000 third trust deed loan to pay the cost of the project, and submitted the entire $190,333 cost as a 1995 operating expense.
>
> Instead of applying the amount as a 1995 operating expense, the Board allocated the $190,333 cost over a three year period on the basis that the loan, which was the source of project funds, was payable over a 28 month period. Although the Board allowed interest payable on the loan in 1995 as an operating expense in that year, it allocated $101,401 of the $190,333 cost as a 1995 operating expense, $66,708 as an operating expense for 1996, and $22,224 as a 1997 operating expense.
>
> The Board allowed, as a 1995 operating expense, the interest on the portion of the $300,000 loan used to finance the new space construction.
>
> While the project cost was incurred in 1995, the cost was paid from proceeds of a loan repayable over a 28 month period. Allocating the cost, paid out

> of loan proceeds, to a single year, would understate the 1995 gross profit figure and artificially inflate CHV's need for a monthly rental increase. A permanent, artificially high monthly rent increase would permit CHV to realize unwarranted profits from increased revenues long after repayment of the loan obligation incurred to remediate the wetlands contamination. Such a result would be inconsistent with the overarching goal of protecting residents through rent control laws.

The court did not rule that interest, other than interest payable as financing costs on the loan, could be added to the operating expense allocated over the three-year period.

Management continues to argue that the California Arbitration Act is irrelevant and that a "different body of law" governs mobilehome rent control. Once again, management has demonstrated complete disregard for the provisions of the ordinance by omitting what is inserted. The ordinance specifies the body of the law that governs it: *11A-5(a) Management's notice of an increase in the maximum rent schedule shall: (1) Comply with state law.*

Management also consistently refrains from citing any body of law, whether state law or case law, that specifically addresses mobilehome rent control arbitration instead of rent control board and commission hearings. The California Arbitration Act does not exempt compulsory or mobilehome rent control arbitration, and management does not dispute that a written arbitration agreement exists in the form of the ordinance and Rules for Hearing. The Legislature expressly manifested its intent to "fully occupy" the area of arbitration by including it in various state codes, which maintain the same equity as Civil Code of Procedure 1284.2. Here's one (with a filing fee provision almost exactly like our Rules for Hearing), of which management's attorney may have knowledge:

> *Business and Professions Code, Division 3, Chapter 4, Article 13*
> **6203(c).** Neither party to the arbitration may recover costs or attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding with the exception of the filing fee paid pursuant to subdivision (a) of this section.

Management has provided no evidence whatsoever, including case law, that eliminates or disregards the ordinance's requirement to comply with state law. In fact, the California Court of Appeals found a dearth of information on the subject:

> *Bayscene Resident v. Bayscene Mobilehome, Cal: Court of Appeals, 1993*
> Compulsory, binding arbitration still remains limited in large measure to situations in which the parties have agreed to arbitration as an alternative form of dispute resolution; however a growing number of statutory schemes

> whereby either one or both parties are compelled to submit to binding arbitration do exist.… ¶ While states have broad power to regulate housing conditions and landlord-tenant relations *(see Loretto v. Teleprompter Manhattan CATV Corp. (1982) 458 U.S. 419, 440 [73 L.Ed.2d 868, 885, 102 S.Ct. 3164]; Birkenfeld v. City of Berkeley (1976) 17 Cal.3d 129 [130 Cal. Rptr. 465, 550 P.2d 1001])*, our research has not found rent disputes typically to be an area subject to compulsory binding arbitration.

Finally, management claims that homeowners already conceded that management "is entitled to recover its professional fees in all administrative and legal proceedings," by citing the testimony of Dr. Kenneth Baar in the 2011 arbitration hearing. Dr. Baar gave uninformed, non-specific testimony in that proceeding. When asked if he read the ordinance, he admitted at hearing that he did not actually read Chapter 11A in entirety (exhibit 16, T1, page 142, lines 19–20):

> Yes. Well, I've reviewed the parts that deal with the rent, you know, rent increase standards.

Dr. Baar also admitted that his testimony would be the same as any other rent control board or commission hearing in which he participated, not testimony specific to Chapter 11A at all (exhibit 16, T1, page 143, lines 14–21):

> Q. Well, in this matter in which you're presently testifying would you say that your review has been done, in essence, the same as it would be done as if you were working for a jurisdiction?
>
> A. Yes. Not in terms of the amount of time and not having a written report, but in terms — let me say, the comments I'll make, if I were employed by a city, I would have the same analysis or conclusions.

Furthermore, management did not cite any case law or statute that allows expert testimony from prior administrative proceedings to be used in a hearing in which the expert does not appear. Dr. St. John testified on the second day of hearing that he reassessed and changed his opinions, when necessitated by acquiring further knowledge and experience, and management denied homeowners the opportunity to prove that Dr. Baar does the same. Homeowners' citing of 2011 arbitration transcript testimony was exclusively from participants in this proceeding, who testified essentially the same in both. Dr. Baar ceased to be homeowners' expert witness long before this proceeding, and the 2011 hearing is not case law, which can be properly quoted until California courts decide otherwise.

HOMEOWNERS DID NOT CONCEDE THAT IT IS APPROPRIATE TO AMORTIZE PROFESSIONAL FEES AS A TEMPORARY INCREASE

Homeowners consistently say that charging professional fees is illegal. Homeowners merely asked that the arbitrator deny interest for a temporary increase, if he chooses to award one, that is not defined or categorized as a capital improvement or capital expense according to 11A-2 and 11A-6.

Once again, management's team omits what is inserted and inserts what is omitted in the ordinance. Management's team has no authority to interpret the ordinance, as discussed on page 5 *et seq*., to insert interest in the stead of "reasonable financing costs" or to demand interest when it isn't expressly provided for in the ordinance. Management's one citation of case law to support both interpretations actually refutes management's claim (see *Carson Harbor Village* on page 21–22): the interest allowed in that case was the actual financing cost, payable in the first year of the loan, relating to the allowed expense of wetlands remediation.

The only concession homeowners make about treating an extraordinary expense as a temporary increase is that it is beneficial to homeowners to pay an award over time rather than as a permanent artificially inflated increase for an expense that is not an ordinary, necessary or recurring operating cost, which is also prohibited by the ordinance and case law. Nothing more. Mr. Stanton did not represent homeowners in this proceeding. His opening remarks in a past hearing are irrelevant. And, again, homeowners object to management quoting Dr. Baar, who was not an expert witness called to testify in this proceeding.

Management forgets that adjudication in Samta Barbara County Superior Court ***did not*** determine that amortization of attorney fees is "proper." In addition, the court ruled that consideration of the fees were *subject to the other requirements of the ordinance.* Management's only true claim is that the court found 9% to be proper. The court's rulings on legal fees (exhibit 36, page 29, 1st paragraph) and amortization (page 30, paragraphs 1, 5 and 6):

> …the absence of any textual basis for categorically excluding attorney's fees leads to the conclusion that inclusion of attorney's fees as operating expenses is a matter to be considered by the arbitrator as a relevant factor subject to the other requirements of the Ordinance.

> The Ordinance provides for amortization over the useful life of a capital expense. ¶ The record shows that there was substantial evidence to support the arbitrator's decision of seven years and nine percent. ¶ However, the evidence supporting the seven years and nine percent amortization schedule also indicates that this schedule for a uniform amortization is predicated upon temporary increases including the $320,000 escrow funds and other capital expenses which are subject to further proceedings as discussed above. Because amortization is based upon useful life of the items and the items subject to amortization may change as a result of the further proceedings, Award No.4 must also be subject to reconsideration.

The amortization ruling above does not mention attorney fees, just capital expenses, the amortization of which "is based upon useful life."

CONCLUSION

Management's falsehoods, misleading statements and misrepresentatiions are too numerous for homeowners to continue addressing every instance. However, management's claim that homeowners "failed to meet their burden of proof challenging the validity of any aspect of the rent increase" must be addressed.

The burden of proof is on management's shoulders. Justifying a rent increase involves more than an expert witness on fair return standards and ten pounds of exhibits. It requires that each aspect of the rent increase complies with state law, as well as all other provisions of the ordinance, as written. By citing the ordinance, state law, case law, and the evidentiary record, homeowners have met the burden of proof that management's noticed rent increase does not. Homeowners proved, as well, that management's current fair return exceeds the requested MNOI and the constitutional "broad zone of reasonableness" for fair return on investment.

Dated April 25, 2017

Lindse Davis

Lindse Davis, Homeowners' Representative

DECLARATION OF ELECTRONIC EMAIL SERVICE

I, ABEL PIZANO, declare that I am, and was at the time of service, over the age of 18 years and am a party to the action mentioned within. My home address is 4326 Calle Real, Space 44, Santa Barbara CA 93110 in Santa Barbara County.

On April 25, 2017, I served the foregoing document entitled NOMAD VILLAGE HOMEOWNERS' POST-HEARING CLOSING BRIEF to the interested parties in this action by emailing a true and correct copy as follows:

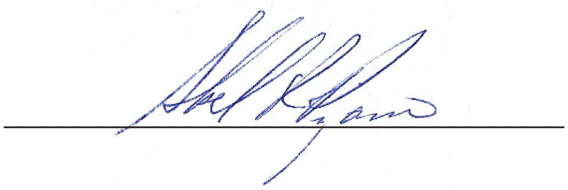
Judge David W. Long
Arbitrator
email: judgelong@cdrmediation.com
sl@cdrmediation.com

James P. Ballantine
Attorney for park management
email: jpb@ballantinelaw.com

Don Grady
County of Santa Barbara
Real Property Division
email: dgrady@countyofsb.org
mwagner@co.santa-barbara.ca.us

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed on April 25, 2017, at Santa Barbara, California



HOMEOWNERS' EXHIBIT C

Exhibit
Comparison of Return on investment
for 2012 2016 listed Mobile Home Parks held for sale

Listing of MobileHome Parks in California Per:
http://www.loopnet.com/California_Mobile-Home-RV-Parks-For-Sale/

Park Name	Address	Price	Listed Cap. Rate	Net Operating Income	Calculated ROI	
Oasis Mobile Home Park	1943 W Ramsey, Banning, CA 92220	$795,000	9.00%	$71,550	9.00%	
RV PARK OF SAN RAFAEL	742 W. FRANCISCO BLVD, San Rafael, CA 94901	$2,200,000	6.04%	$132,880	6.04%	
colton mobile home park	574 H St, Colton, CA 92324	$475,000	10.00%	$48,000	10.11%	
Fairgrounds Village MHP	1025 Martin Street, Lakeport, CA 95453	$1,360,000	8.40%	$114,240	8.40%	
Lovey's Landing	3474 N. Meridian Rd., Meridian, CA 95957	$1,110,000	16.00%	$180,540	16.26%	with a full restaurant and bar
Country Hills	14711 Manzanita Road, Beaumont, CA 92223	$2,100,000	7.40%	$155,400	7.40%	
Black and White Mobile Lodge	721 Oswell St., Bakersfield, CA 93306	$799,900	6.48%	$51,834	6.48%	
Mirage Estates Manufactured Housing Community	220 S. Elk Street, Hemet, CA 92543	$4,800,000	7%	$336,000	7.00%	
Rancho Corona	1225 W. 8th Street, Corona, CA 92882	$3,500,000	2.45%	245,000	7.00%	
Point Cabrillo Highlands	13500 Point Cabrillo Drive, Mendocino, CA 95460	$1,700,000	5.60%	95,727	5.63%	
Willow Glen	6155 Hwy 162 W, Willows, CA 95988	$1,499,000	9.60%	$144,000	9.61%	
Valley Springs MHP	224 Rose St., Valley Springs, CA 95252	$399,000	6.40%	25,677	6.44%	
I & ECountry Club MHP	3900 N State St., Ukiah, CA 95482	$3,750,000	8.08%	$302,100	8.06%	
Grand View Park	4025 Grand View Blvd, Los Angeles, CA 90066	$2,000,000	4.83%	$96,600	4.83%	
Modesto Mobile Home Park	4024 McHenry Ave, Modesto, CA 95356	$8,100,000	6.85%	$554,850	6.85%	
Royal Crest Mobile Home Park	7484 Kickapoo Trail, Yucca Valley, CA 92284	$1,625,000	7.74%	$125,775	7.74%	
Brookside Mobile Home Park	10129 Harley Leighton Road, Redding, CA 96003	$1,395,000	11%	$152,763	10.95%	
Little Pine Mobile Home Park	141 E. Park Street, Independence, CA 93526	$297,000	6%	$18,000	6.06%	
Joshua Mobile Estates	62475 29 Palms Hwy, Joshua Tree, CA 92252	$1,100,000	10.00%	$110,000	10.00%	
Stillman Mobile Home Park	3880 Stillman Park Circle, Sacramento, CA 95824	$2,999,999	8.40%	$251,844	8.39%	
Shiloh River Resort	2724 Shiloh Road, Modesto, CA 95358	$579,000	8.70%	$50,615	8.74%	
CLAREMONT MOBILE VILLAGE	1968 E. Claremont Way, Quincy, CA 95971	$899,000	10.65%	95,721	10.65%	
L.ake Morena Park	2332 Lake Morena Dr, Campo, CA 91906	$1,450,000	7.40%	$70,890	4.89%	
Corkill Park	17989 Corkill Road, Desert Hot Springs, CA 92241	$3,800,000	8%	304,000	8.00%	
West Lake MHP	233 West Lake Street, Cartago, CA 93549	$299,500	7.40%	$22,173	7.40%	
Chalet MHP	856 H STREET, Oakdale, CA 95361	$675,000	10.60%	$81,972	12.14%	12 SPACE MHP PLUS 4 HOMES-- PLUS 3 DUPLEXS
Salton Sea Mobile Home Park	336 Salton Bay Drive, Salton City, CA 92275	$3,000,000	11.64%	$365,329	12.18%	
Riverfront Resort	453 Parker Road, Parker Dam, CA 92267	$14,000,000	10.10%	$1,414,000	10.10%	Lease payments are 4% max of the total gross income (3.2% average) based upon tiered benchmarks
Hayward Park	2888 medford, Hayward, CA 94541	$1,500,000	8.90%	$133,500	8.90%	
Hidden Valley Trailer Park	21581 Phoenix Lake Rd, Sonora, CA 95370	$400,000	7.10%	$31,950	7.99%	
Homeward Trailer Court	9122-9204 Artesia Blvd., Bellflower, CA 90706	$2,600,000	7.14%	$181,000	6.96%	
Rancho Las Palmas MHP	61320 Pierce Street, Thermal, CA 92274	$790,000	7.40%	$81,400	10.30%	
Meadows Mobile Home Park	16 Ohio Dr, Bakersfield, CA 93307	$510,000	9.90%	$50,500	9.90%	
Westlake Mobile Home Park	2791 Lakeshore Blvd., Lakeport, CA 95453	$530,000	8%	$50,750	9.58%	
A & A Mobile Home Park	1453 S. Plano St., Porterville, CA 93257	$1,950,000	8.45%	$164,763	8.45%	
Sierra View Mobile Home Park	109 North E. Street, Porterville, CA 93257	$975,000	8.70%	$86,500	8.87%	
Foothill Mobile Home Manor	16330 Foothill Blvd., Fontana, CA 92335	$1,798,000	8.90%	$178,311	9.92%	
Woodlawn	1096 e mision blvd, Pomona, CA 91766	$2,195,000	7%	$153,650	7.00%	
Village Mobile Home Park	140 Klamath Blvd., Klamath, CA 95548	$830,000	9%	$74,700	9.00%	
Arbor Glen Mobile Home Park	16400 Highway 101, Klamath, CA 95548	$1,450,000	9%	$130,500	9.00%	
Alpine MHP	1824 21st Street, San Pablo, CA 94806	$1,875,000	9.60%	$180,000	9.60%	
Sierra Mobile Home Park	9461 Highway 193, Placerville, CA 95643	$1,630,000	7.30%	$118,990	7.30%	
Northwood Park	10090 East Highway 20, Clearlake Oaks, CA 95423	$299,000	6%	$27,900	9.33%	
Sycamore Mobile Home Park	24064 N Hwy 99, Acampo, CA 95220	$1,699,000	5%	$88,227	5.19%	
glenview mobile home park	3850 pacific coast highway, Oxnard, CA 93036	$1,400,000	8.68%	$92,800	6.63%	
		Average:	**8.17%**		**8.45%**	

HOMEOWNERS' EXHIBIT D

Nomad Village Return on Capital and Net operating Income

		Initial investment	Aug. - Dec. 2008 Income	2009 Income	2010 Income	2011 Income	2012 Income	2013 Income	2014 Income	2015 Income	Through Feb. 2016 Income	Total Income:
	From Management's lease agreement	$500,000.00										
A	**From the income statement provided**		37,763.93	148,387.91	122,821.74	245,655.41	277,947.42	331,041.17	50,616.97	315,451.88	72,408.36	1,602,094.79
	Return on Capital		7.55%	29.68%	24.56%	49.13%	55.59%	66.21%	10.12%	63.09%	14.48%	
	add back repairs to streets								276,238.76			
	Return on Capital								65.37%			
	BLS CPI		623.591	639.036	649.040	663.301	676.587	684.430	686.605	699.778		
	CPI % year over year			2.48%	1.57%	2.20%	2.00%	1.16%	0.32%	1.92%		
	Annualized Income		90,633.43									
	CPI Increase Based on prior year			2,244.79	1,453.99	2,072.71	1,931.00	1,139.91	316.12	1,914.58		
	St. John 'fair return'			92,878.23	94,332.22	96,404.93	98,335.93	99,475.84	99,791.96	101,706.54		
	Actual NOI (over) / Under St. John 'fair return'			($55,509.68)	($28,489.52)	($149,250.48)	($179,611.49)	($231,565.33)	(227,063.77)	($213,745.34)		($1,085,235.62)
	Management's stated Rate of return	9.00%										
			$18,750.00	$45,000.00	$45,000.00	$45,000.00	$45,000.00	$45,000.00	$45,000.00	$45,000.00		
	Actual NOI (over) / Under stated NOI		($19,013.93)	($103,387.91)	($77,821.74)	($200,655.41)	($232,947.42)	($286,041.17)	($281,855.73)	($270,451.88)		($1,472,175.19)
	Note: stated return approximates NOI on MH Parks listed for sale											
										45,909.93		
	2016 Increase - Permanent									41,418.00		
	2016 Increase - 15 Years									101,322.00		
	2016 Increase - 7 Years											
B	**Total Annual increase to NOI**									**188,649.93**		
	Return on Capital - On increase only									37.73%		
A + B	**Requested total future annual income**									**504,101.81**		
	Requested Annual return on Capital									100.82%		