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NOMAD VILLAGE HOMEOWNERS' POST-HEARING OPENING BRIEF

FOR ARBITRATION BEFORE
THE HON. JUDGE DAVID W. LONG (RET.)
FEBRUARY 10, 2017 HEARING

INTRODUCTION

Management claims "there is no dispute" that it is entitled to the rent increase effective July 1, 2016. Homeowners do dispute the rent increase as unreasonable and unlawful. Management (1) materially altered Chapter 11A provisions to include a permanent MNOI increase; (2) did not itemize amounts for increased operating costs, pursuant to 11A-5(a)(3)(A); (3) did not comply with state law, pursuant to 11A-5(a)(1); (4) included expenses that violate Nomad rental agreements, legislative public policy, California Public Utilities Commission decisions and the California Constitution; (5) increased rent within 12 months of the last increase; and (5) failed to provide evidence that its return is below the "constitutional minimum within a broad zone of reasonableness, balancing the interests of landlords and tenants." *(Galland v. City of Clovis, 24 Cal.4th at p.1026.)*

"MNOI INCREASE"

Homeowners request that the MNOI permanent increase be denied and an award based on fair return on investment and increased operating costs be made pursuant to 11A-5(i)(1) and (i)(2): one-half of the automatic increase (0.8625% each totaling 1.725% of 2015 base rents, excluding amortized amounts), prorated among homeowners.

1. Management materially altered the ordinance to fit an MNOI formula created by its expert witness (exhibits 4, 45, 46 and 47). Chapter 11A has its own provisions (11A-5(h) and (i)(1) through (i)(6)).

In 2011, Dr. St. John explained his belief that Chapter 11A includes base year and comparison year for an MNOI analysis (exhibit 16/T1, page 54, lines 4–53):

> The Santa Barbara ordinance system instructs the arbitrator to do what I'll call the CPI calculation, and then cut it in half, to award half of the CPI as a fair return and it says that the arbitrator has — doesn't have authority to grant any more than that as a fair return. And then it says that the arbitrator should grant the other half as an expense compensation and doesn't have authority to grant less than that as the expense compensation, and then encourages the arbitrator to consider the expenses as they may have increased over time, and if the expenses have increased over time by more than that portion the second half of the CPI increase would allow, then the arbitrator is to allow the remainder.
>
> Q. So the last portion that you spoke of was that the arbitrator consider specific expenses that had increased from the base year that you're using?
>
> A. Right, right, the last portion is the specific evaluation of base year to comparison year expense increases.

Chapter 11A does not encourage the arbitrator to consider operating expenses that have increased "over time," nor does it instruct the arbitrator to "allow the remainder" without any sort of justification. 11A-5(i)(3), in context with 11A-5(i)(1) and (i)(2), binds operating expense increases to the same period as the automatic increase, otherwise management could notice a rent increase for increased operating expenses over the last five years, then notice another rent increase in 12 months for increased operating expenses over the last six years. The purpose of 11A-5(i)(2) is to guarantee *at least* one-half of the automatic increase for increased operating expenses in the absence of any *justified* amounts, but (i)(3) does not give management carte blanche to choose any time period that results in the highest rent increase it can muster. Limiting operating expense increases to "since the last increase" conforms to and explains "Where one-half of the automatic increase is more than the actual increase in operating costs *for the year then ending*…" in 11A-5(i)(4) and (i)(5).

Management confirms that the automatic increase is the change in CPI since the last increase in its notice to homeowners (exhibit 2, #1, CPI Increase). Dr. St. John's testimony on February 10 also confirmed that the automatic increase is permanent.

Exhibit 1 (page 1, ¶2) states that "There have been no rent increases…for the past 2 years." Within the context of the entire 11A-5, "since the last increase" is merely an alternate time period for calculating the automatic increase and should be construed as such. In no way does it imply the vague period of "over time" The phrase "since the last increase" means exactly what it says; in other words, "it is what it is."

> *People v. Beaumont Inv., Ltd., California Court of Appeals, 2003*
> We interpret ordinances by the same rules applicable to statutes. …based on our analysis of the Ordinance's language, structure, and purpose. Defendants' evidence does not convince us otherwise. Additionally, we find further support for our determination in state statutory law.

The misinterpretation of 11A-5(i) alone irreparably taints exhibits 4, 45, 46 and 47 and renders them untenable and without merit.

> *Smith v. Superior Court, California Supreme Court, 2006*
> In construing a statute, our fundamental task is to ascertain the Legislature's intent so as to effectuate the purpose of the statute. *(Day v. City of Fontana (2001) 25 Cal.4th 268, 272, 105 Cal.Rptr.2d 457, 19 P.3d 1196.)* We begin with the language of the statute, giving the words their usual and ordinary meaning. *(Ibid.)* The language must be construed "in the context of the statute as a whole and the overall

> statutory scheme, and we give 'significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.'" *(People v. Canty (2004) 32 Cal.4th 1266, 1276, 14 Cal.Rptr.3d 1, 90 P.3d 1168.)* In other words, "we do not construe statutes in isolation, but rather read every statute 'with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness. *[Citation.]*'" *(In re Marriage of Harris (2004) 34 Cal.4th 210, 222, 17 Cal.Rptr.3d 842, 96 P.3d 141.)* If the statutory terms are ambiguous, we may examine extrinsic sources, including the ostensible objects to be achieved and the legislative history. *(Day, supra, 25 Cal.4th at p. 272, 105 Cal.Rptr.2d 457, 19 P.3d 1196.)* In such circumstances, we choose the construction that comports most closely with the Legislature's apparent intent, endeavoring to promote rather than defeat the statute's general purpose, and avoiding a construction that would lead to absurd consequences. *(Ibid.)*

Pursuant to 11A-5(i)(1) and 11A-5(i)(2) for fair return on investment and operating expense increases, management may separately notice an additional 75% of the CPI change each year, which the arbitrator *shall* award if disputed. Considering the absolute certainty of an award, what would be the purpose of dispute? Anyone who reads Chapter 11A, without years of analyzing and forcing square pegs into round holes at a cost of hundreds of thousands of dollars, would see this simple, elegant method for maintaining net operating income right there in the ordinance.

> *Oceanside Mobilehome Park v. City of Oceanside, Court of Appeals, 1984*
> By permitting park owners to adjust their rents based upon…an increase to insure his NOI or profit is increased by a percentage equal to the lesser of the housing component of the CPI or 40 percent of the CPI, the ordinance permits the NOI to be adjusted upward to account for inflation. Because the CPI is a statistical snapshot of general market conditions, this ordinance essentially permits park owners to obtain a just and reasonable return under general marketing conditions in any given year.

Significant case law supports the right of local agencies to specify fair return standards in their ordinances, including:

> *Colony Cove Properties, LLC v. City of Carson, Court of Appeals, 2013*
> There is no single constitutionally required formula which must be used when government seeks to regulate the price charged for a good or service. A governmental entity may choose to regulate pursuant to any fairly constructed formula even though other proper formulas might allow for higher prices… [¶] It is the governmental entity that administers the rent control ordinance that gets to choose among proper formulas and use an approach that both protects the tenants from excessive rent increases and allows a fair return on investment to the landlord. [¶] The Supreme Court has held that rent control ordinances may incorporate "any of a variety of formulas" *(Kavanau, supra, 16 Cal.4th at p.768)* for calculating rent increases and satisfy the fair return standard.

For no apparent reason, management chooses not to avail itself of 11A-5(i)(1) and (i)(2). Dr. St. John states that it is unreasonable to expect management to petition for a rent increase each and every year. Management doesn't petition for rent increases. Management notices rent increases, and homeowners petition for a hearing if the rent increase is disputed.

2. Management did not submit evidence that it isn't making a fair return, contrary to myriad court decisions, nor did it itemize amounts for increased operating costs, pursuant to 11A-5(a)(3)(A), to justify an increase under 11A-5(i)(3). Awarding an unjustified MNOI increase defeats the purpose of Chapter 11A:

> *Besaro Mobile Home Park, LLC v. City of Fremont, Court of Appeals, 2012*
> But the City enacted the Ordinance precisely because the circumstances specific to mobilehome ownership created an imbalance between landlords and tenants in that sector of the housing market, making mobilehome owners captive to rent increases. These circumstances include (1) the significant investment made by mobilehome owners in their mobilehomes; (2) the relative immobility of mobile-homes; (3) the scarcity of mobilehome spaces; and (4) the necessity of selling a mobilehome before moving into a different type of housing. *(§ 3-13101; see also Galland v. City of Clovis (2001) 24 Cal.4th 1003, 1009 [103 Cal.Rptr.2d 711, 16 P.3d 130] (Galland); Stardust, supra, 147 Cal.App.4th at p.1180.)* Due process is not offended by a rent control statute designed to protect tenants from asymmetries in bargaining power so long as the property owner can earn a fair return; to conclude otherwise would be to render most rent control statutes virtually meaningless.

According to management's profit and loss statements (exhibit 5), its cumulative net operating income is $1,725,191 (with capital expenses and consulting fees included in operating costs) for 2010 through 2016. Management's FROI (fair return on investment) on historical investment of $500,000 (exhibit H, page 1, Rent) is ~245% (an average of ~35% per year). Adding the 9.9% CPI increase to management's historical investment, FROI is ~216% (an average of ~31% per year). Loan principal and interest are not included, pursuant to 11A-5(f)(1), nor are duplicated operating expenses.

Taking FROI one step further by deducting attorney fees ($335,000) purportedly paid in 2016 as a non-recurring expense (evidence of payment is not included in exhibits), management's cumulative net operating income is $1,390,191, which reduces FROI to ~178% on historical investment (an average of ~25% per year) and 153% on CPI-indexed investment (an average of ~22% per year). The benchmark is between 8% and 9%, although the courts have found that no specific percentage rate or dollar amount of return on investment is constitutionally required.

Management's exhibit 45 (page 3, line 111) shows that it already maintains net operating income (NOI): "books of record" NOI increased more than 156% from 2010 to 2015; "MNOI analysis" NOI increased more than 16% for the same period. A huge disparity between percentages, true, but both exceed Dr. St. John's 8.3% CPI increase.

Management's inappropriate and irrelevant exhibit 46 (page 3, line 111): "books of record" NOI increased more than 211% from 2010 to 2016; "MNOI analysis" NOI increased more than 20%. Again, a huge disparity between percentages, but both at least double the 9.9% CPI increase, evidence that management's NOI has not been "frozen," but is within the broad zone of reasonableness.

> *Galland v. City of Clovis, California Supreme Court, 2001*
> …rent regulators must generally permit profits to be adjusted over time for inflation so that the real value of that profit does not shrink toward the vanishing point.

Chapter 11A provides for adjustments in 11A-5(g), (i)(1) and (i)(2) totaling 150% of CPI, a simple, convenient guarantee that profits do not shrink to the vanishing point.

The arbitrator, according to 11A-5(h), *may allow an increase in excess of the automatic increase for increased costs where increases in expenses and expenditures of management justify such increase.* 11A-5(h) is not mandatory, unlike 11A-5(i)(1) and (i)(2) regarding fair return on investment and increased operating costs.

> *Maryann Dornemann v. Michael Dornemann, Superior Court of Conn., 2004*
> Affirmative terms, unaccompanied by negative words, are an indication of directory intent rather than mandatory intent on the part of the legislature.

11A-5(i)(3) allows the arbitrator to *add an amount to cover operating costs, if any, in excess of one-half of the automatic increase. The arbitrator shall have discretion to add such amounts as are justified by the evidence and otherwise permitted by this chapter.* Exhibit 5 shows operating expenses increased by $24,129, ~$22,703 of which is increased land lease payments directly attributable to the 2011 increase (exhibit 45, page 1, line 8 x 20%), from 2014 (the last increase) to 2015, minus the non-recurring capital expense in 2014 operating expenses. Calculated annually and totaled, operating expenses increased $33,823 (~$45,291 is directly attributable to the 2011 increase) from 2010 to 2015, while total income increased $226,453. In order to justify any increase that the arbitrator may allow under this section, management's return on investment must be considered, even though it made no attempt to present a prima

facie case that 2015 rents do not provide a fair return on investment. It chose not to discuss return on investment, the ordinance standard, at all, nor did it justify the need for an additional $195,498 per year ($108.61 x 150 spaces x 12 months, exhibit 2).

Management's exhibits 46 and 47 are irrelevant. They exceed the March 31, 2016 notice of rent increase amount and contain information not available to representatives as required by the Rules for Hearing. Asking the arbitrator to consider these exhibits is a willful attempt to circumvent 11A-4(b): *The arbitrator shall set and adjust rents in accordance with the standards set out in this chapter*; 11A-5(f)(1): *Such relevant factors may include, but are not limited to, increases in management's ordinary and necessary maintenance and operating expenses…*; 11A-5(j): *The total increase shall not exceed the amount in management's notice of rent increase*; Rules for Hearing 2.a: *No later than ten (10) days following the date in the notice of increase, management shall make available to representatives selected by homeowners a detailed list of expenses and income, including utility costs and charges…together with any other information upon which an increase is based*; Rules for Hearing 12: *An arbitrator…shall make findings and decisions on such increases in accordance with the provisions of the Ordinance and these Rules*; and MRL 798.30: *The management shall give a homeowner written notice of any increase in his or her rent at least 90 days before the date of the increase*.

> *Patarak v. Williams, California Court of Appeals, 2001*
> Although the term "willful" has no "single, uniformly applicable" definition, it refers generally to intentional conduct undertaken with knowledge or consciousness of its probable results. *(See, e.g., Kwan v. Mercedes-Benz of North America, Inc. (1994) 23 Cal.App.4th 174, 182-183, 28 Cal.Rptr.2d 371.)* Willful conduct does not require a purpose or specific intent to bring about a result. However, it does require more than negligence or accidental conduct. *(See. e.g., Calvillo-Silva v. Home Grocery (1998) 19 Cal.4th 714, 729-730, 80 Cal. Rptr.2d 506, 968 P.2d 65; see also, Rick's Electric, Inc. v. Occupational Safety & Health Appeals Bd. (2000) 80 Cal.App.4th 1023, 1035, 95 Cal.Rptr.2d 847.)*

Dr. St. John's "corrected" exhibit 4 spawned three brand-new exhibits with bigger and better benefits. Each of the four analyses come to vastly different conclusions and lack the qualitative characteristics of useful financial information (fundamental characteristics: relevance and faithful representation; enhancing characteristics: comparability, timeliness, verifiability and understandability). As mentioned, the three exhibits also exceed management's notice of rent increase.

The information must be free of material error, misleading representations and bias. It should faithfully represent transactions, reflect the underlying substance of events and prudently represent estimates and uncertainties through proper disclosure.

Common area electric and gas expenses (exhibit 45, page 1, lines 37–40) are both "imputed" at 10% of their respective gross amounts; the probability that both are exactly 10% of total costs is so astronomical as to be impossible. Ball-park estimates have no basis in fact. Common area expenses must be exact. Estimates that exceed actual common area use violates Public Utilities Code 739.5(a) by forcing homeowners to perpetually pay more for gas and electric service than directly-metered customers.

Management is disappointed that it voluntarily incurred avoidable expenses, which cannot be classified as ordinary, necessary maintenance or operating expenses, from which it derived little financial benefit. Management, however, cannot reasonably demand profits greater than a fair rate of return in light of the ordinance itself and an abundance of case law. The California Supreme Court overruled "disappointment" as a basis for "resetting" the constitutional minimum:

> *Galland v. City of Clovis, California Supreme Court, 2001*
> Although the term "fair rate of return" borrows from the terminology of economics and finance, it is as used in this context a legal, constitutional term. It refers to a constitutional minimum within a broad zone of reasonableness. As explained above, within this broad zone, the rate regulator is balancing the interests of investors, i.e., landlords, with the interests of consumers, i.e., mobilehome owners, in order to achieve a rent level that will on the one hand maintain the affordability of the mobilehome park and on the other hand allow the landlord to continue to operate successfully. *(Kavanau, supra, 16 Cal.4th at pp. 778-779, 66 Cal.Rptr.2d 672, 941 P.2d 851.)* For those price-regulated investments that fall above the constitutional minimum, but are nonetheless disappointing to investor expectations, the solution is not constitutional litigation but, as with nonregulated investments, the liquidation of the investments and the transfer of capital to more lucrative enterprises.

Dr. St. John's experience is impressive, yet it seems he doesn't understand that his contribution to a decision by a rent control board or commission can be appealed in California's courts, but not his contribution to an arbitration decision. His expert opinion, which carries more weight than any other testimony or argument, ***must comply with the ordinance that requires arbitration,*** not vice versa. An error of fact or law opined by Dr. St. John, accepted by the artibitrator because of his substantial experience and education, then included in a decision is considered unappealable substantial evidence of truth, whether or not it is actually true or lawful. Materially altering the provisions of Chapter 11A to apply a general MNOI formula is unconscionable.

“COMMON AREA STREET REPAVING”

Homeowners request that this increase be denied as not timely, pursuant to 11A-5(a)(3)(a) regarding the time limitation for incurred “new” capital expenses.

1. “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. Discounting the significance of “prior year” results in a totally different outcome, especially at 9% interest.

Chapter 11A uses one year, 12 months, the year then ending, once a year and prior year throughout its provisions. Within the context of the ordinance as a whole, “prior year” is consistent with its purpose. To construe otherwise is absurd. If management had exclusive control over the timing of a new capital expense rent increase, it can accumulate those costs over years, until profits become deeply disappointing, then notice all together in a rent increase that exceeds homeowners’ monthly or annual incomes, completely defeating the ordinance’s purpose and intent.

Time limitations abound in all proceedings, from local administrative to the Supreme Court of the United States, as well as in every aspect of our society. Would any one of us ignore those restrictions because it is isn’t convenient to comply when the consequences are so great? Time limitations exist throughout the ordinance and the Rules for Hearing, as well. They should be given just as much importance and respect.

. 2. Dr. St. John testified on February 10 that street paving is, indeed, a capital expense, not a capital improvement. In case law, however, the distinction is rarely made, and courts refer to both as capital improvements. In fact, in *Morgan v. City of Chino* (page 9), the referenced capital improvement is mobilehome park street repaving, although it is a capital expense according to our ordinance.

Capital expenses, as defined in 11A-2(b), have “an expected life of more than one year.” Again, the use of “one year” here and “prior year” in 11A-5(a)(3)(A) is consistent within both subsections. The intent, presumably, is to require notice before the capital expense outlives its useful life and must be rebuilt, replaced, upgraded or demolished. Each provision in the ordinance is an integral part of the whole and must be construed as such (see page 2, *People v. Beaumont* and *Smith v. Superior Court*).

3, The arbitrator is not required to award an amount for capital expenses if management already makes a fair return.

Section 11A-5(i)(4) allows the arbitrator to add an amount to cover new capital expenses. Treatment of capital expenses, however, is covered in 11A-6(b). 11A-6(b)(1) states: *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.*

> *Maryann Dornemann v. Michael Dornemann, Superior Court of Conn., 2004*
> Affirmative terms, unaccompanied by negative words, are an indication of directory intent rather than mandatory intent on the part of the legislature.
>
> *Morgan v. City of Chino, California Court of Appeals, 2004*
> The California Supreme Court has actually rejected *Guaranty* insofar as it may require a profit, noting: "In *Guaranty*, there is language that may be read to erroneously state that the producer is constitutionally `guarantee[d]' a 'fair and reasonable return[,]' and that such a return must necessarily be above the `break even' level. We will not indulge in such a reading." *(Garamendi, supra, 8 Cal.4th at p. 294, fn. 18.)* The Supreme Court explained that "[a] regulated [firm] has no constitutional right to a profit…." Instead, the interest in profits is only one consideration to be weighed against, among other things, the interest in protecting consumers from exploitation. *(Id. at pp. 293-296.)*
>
> In summary, there is no support for the proposition that regulatory agencies are constitutionally required to grant a rent increase for every capital improvement. Instead, due process merely requires that the agency take capital improvements into account when evaluating whether the owner is receiving a fair return on the property as a whole. If the existing rents are sufficient to provide the owner with a fair return on the overall project even after the capital improvement, then due process is satisfied.
>
> In conclusion, neither the state or federal Constitutions, nor the ordinance, require the city to give Morgan a rent increase just because Morgan made a capital improvement. Instead, the capital improvement is only one relevant factor to be considered when determining whether Morgan is earning a fair return on the park as a whole.

Management's 2013 and 2014 financial statements (exhibit 5) include electrical work and street repaving expenses, yet it still made a return on investment of ~66% and ~10%, respectively. Thus, management already paid for and profited from those repairs made to comply with Title 25 requirements and to bring the park up to the lowest level of insurability.

"COMMON AREA ELECTRICAL WORK"

Homeowners request that this "capital expense" be removed from the noticed rent increase pending the CPUC's decision on the current complaint case. If not removed, then homeowners request that this increase be denied entirely pursuant to state law.

1. These capital expenses/improvements are the sole responsibilty of management pursuant to Health and safety Code 18200 et. seq. (Mobilehome Parks Act) and were required by management's agreement with the county to abate the code violations (exhibits G1, 50 and 51), as well as management's 2008 land lease to secure a loan (exhibit H, page 2, Subordination) "to reimburse Ground Lessee for sums expended to bring the Property into compliance with and maintain the Property at the standards of California Housing and Community Development Department (HCD) Title 25 regulations or its successor regulations." The clause is also clear that loan funds need not be Nomad related: "At such time any remaining balance of the loan funds may used [*sic*] and distributed at the discretion of the Ground Lessee."

In fact, management had funding to abate code violations since October 2008 (exhibit G, October 21, 2008 Waterhouse Management letter), but chose to quibble with, and file a lawsuit against, the county until a settlement was reached. Abatement wasn't accomplished until Decemer 2013 (exhibit 6, page V-17), ten years after the initial correction notice.

> *Health and Safety Code, Part 2.1, Mobilehome Parks Act:*
> 18400.1(c) This part does not allow the enforcement agency to issue a notice for a violation of existing laws or regulations that were not violations of the laws or regulations at the time the mobilehome park received its original permit to operate, or the standards governing any subsequent permit to construct, or at the time the manufactured home or mobilehome received its original installation permit, unless the enforcement agency determines that a condition of the park, manufactured home, or mobilehome *endangers the life, limb, health, or safety of the public or occupants thereof.* [Italic emphasis added.]
>
> 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.

2. A complaint case was opened by the CPUC (exhibits G and G1), and a hearing will be scheduled upon management's submission of answer, in accordance with CPUC's exclusive jurisdiction over submetered utilities. Management already saddled homeowners with more than $120,000 in abatement costs, plus 9% interest over 7 years; we are merely protecting ourselves against more unlawful abatement rent increases.

Pages A1-4 to A1-7 of exhibit G state the documented facts of the violations for your perusal, which won't be repeated here in the interest of brevity. Resolution of our complaint is still about 10 months away.

- April 24, 2016: homeowners contacted CPUC Consumer Affairs Branch to request written clarification of Decision 04-04-043, Attachment A.
- June 23, 2016: second request to Consumer Affairs Branch.
- October 7, 2016: Consumer Affairs Branch requested a formal complaint.
- October 14, 2016: homeowners filed the formal complaint via CPUC website.
- December 16, 2016: CPUC opened complaint case C.16-12-018.
- February 6, 2017: CPUC noticed all parties via email and certified mail.
- Hearing and decision: within 12 months of case assignment (December 2017).

3. Management's intention is to pass through abatement costs in spite of state law, including related engineering, consulting and legal fees prohibited by CPUC Decision 04-04-043, Attachment A (exhibits I, 54 and 55) and Mobilehome Residency Law section 798.39.5(a)(1): *The management shall not charge or impose upon a homeowner any fee or increase in rent which reflects the cost to the management of any fine, forfeiture penalty, money damages, or fee 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.* Obviously, the penalty for code violations is remedial—abatement—and all expenses associated with abatement are prohibited.

Mr. Ballantine's pre-hearing brief, page 14, suggests that these expenses directly result from "a change in governmental law or regulation" and are permitted under Chapter 11A. Management has no evidence to support its suggestion. Exhibit G (December 9, 2003 county inter-departmental memo, page 1; May 15, 2008 Planning and Development letter, pages 2 and 3), however, is evidence that they are not.

Management also contends that abatement was achieved with common area electrical work allowed by CPUC Attachment A. While it's true that common area electrical work for ordinary and necessary maintenance, repair, replacement or upgrade is an allowable pass-through, common area Health and Safety Code violation abatement is not. The email between county departments (exhibit G, page A1-8) evidences that code violations were for common areas, abatement of which is the sole and exclusive responsibility of management.

Management claims that a "new service extension" was installed for space 92. A new service extension is "an expansion of the network for areas yet to be serviced by

the utility," according to the CPUC's Consumer Affairs Branch. Since space 92 has had electrical service provided by Southern California Electric and its predecessors for more than 50 years, management's purported "new service extension" is nothing more than a voluntary replacement and upgrade of an inadequate service extension; pass-through is prohibited by SCE's Schedule DMS-2 (exhibit I, pages 7 through 9), as well.

"PROFESSIONAL FEES FOR CHALLANGE TO RENT INCREASE"

Homeowners request that these professional fees be denied entirely pursuant to state law, Nomad rental agreements, legislative public policy and the California Constitution, and one-half of management's filing fee ($750) be awarded, pursuant to rule 8.d(4), unless management has already charged homeowners half or all of the fee.

1. Allowing management to pass on its attorney and expert witness fees violates Nomad Village rental agreements and the Mobilehome Residency Law.

Nomad rental agreements incorporate the Mobilehome Residency Law "as though fully set forth" (exhibit L, page 3, #9), thus management is bound to comply fully with state law just as it demands homeowners be bound.

California Constitution, Article XI, Section 7, Local Government: *A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.*

MRL 798.32 (Article 4) limits fees to "rent, utilities, and incidental reasonable charges for services actually rendered to homeowners."

> *Greening v. Johnson, California Court of Appeals, 1997*
> The requirement that services be "actually rendered" or "performed" implies a request for the services, or at least willing acceptance of them.

11A-2(o) defines "services." Although it includes, but is not limited to, those listed, the definition does indicate the types of services for which fees can be charged to homeowners. In several sections, the MRL also identifies categories of allowable fees for services actually rendered, such as maintenance of homeowners' spaces when requested, or when the homeowner is unable to maintain the space, and a credit check fee that must be returned to an approved home buyer as a rent credit on the first month's rent statement. Other permissible fees are included in 798.49 (government fees that are exempt). Attorney fees are permissible only as mentioned in Article 6.

Kraus v. Trinity Management Services, Inc., California Supreme Court, 2000
Ejusdem generis applies whether specific words follow general words in a statute or vice versa. In either event, the general term or category is "restricted to those things that are similar to those which are enumerated specifically." *(Harris v. Capital Growth Investors XIV (1991) 52 Cal.3d 1142, 1160, fn. 7, 278 Cal.Rptr. 614, 805 P.2d 873.)* The canon presumes that if the Legislature intends a general word to be used in its unrestricted sense, it does not also offer as examples peculiar things or classes of things since those descriptions then would be surplusage. *(See Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters (1979) 25 Cal.3d 317, 331, fn. 10, 158 Cal. Rptr. 370, 599 P.2d 676.)*

Unlike eligible capital expenses and improvements, which materially benefit the park, management's professional fees are services solicited by and rendered exclusively to management, not incidental or reasonable charges for services actually rendered to or for homeowners. Not only do homeowners derive no benefit whatsoever from those fees, but the fees bear no relationship to homeowners' right of possession, use and enjoyment of the premises. In Dr. St. John's case, the fees bear no relationship to anything at all, since details, even names and descriptions of services, are completely lacking in his invoices (exhibit 9).

2. The California Arbitration Act applies to rent control arbitration.

To encourage arbitration in lieu of overcrowding our courts, the legislative intent is to make it more expedient and affordable for all parties. Requiring each party to pay its own costs is one way the Legislature achieves that intent. Legislative intent never was, and never will be, to limit the act to those with the most bargaining power and exclude those who have virtually none. Arbitrators must ensure that public policy isn't violated by management's misinterpretation of the ordinance.

Moncharsh v. Heily & Blase, California Supreme Court, 1992
Title 9 of the Code of Civil Procedure, as enacted and periodically amended by the Legislature, represents a comprehensive statutory scheme regulating private arbitration in this state. *(§ 1280 et seq.)* Through this detailed statutory scheme, the Legislature has expressed a "strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution." *(Ericksen, supra, 35 Cal.3d at p. 322)*

Management will claim, as in the past, that state law does not apply, since management and homeowners do not have a written arbitration agreement, but we do: Chapter 11A and the Rules for Hearing. This is evidenced by management including "in accordance with the Santa Barbara County Mobilehome Rent Control Ordinance" in all

notices of rent increase, and both parties agreeing to the terms and conditions of the Rules for Hearing to petition, respond, object and submit briefs, as well as the ordinance to participate in arbitration.

There can be no dispute that the Rules for Hearing are derived from sections of Code of Civil Procedure, Part 3, Title 9. One pertinent rule in the Rules for Hearing is 12.c (exhibit 12, page 12), *Selection of an Arbitrator for a Hearing.* One corresponding section in the California Arbitration Act is:

> 1281.6. If the arbitration agreement provides a method of appointing an arbitrator, that method shall be followed.

Another example is rule 10, *Subpoenas*, paragraph 3 (page 11). The corresponding section is:

> 1283.2. Except for the parties to the arbitration and their agents, officers and employees, all witnesses appearing pursuant to subpoena are entitled to receive fees and mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in the superior court. The fee and mileage of a witness subpoenaed upon the application of a party to the arbitration shall be paid by such party.…

Chapter 11A and the Rules for Hearing are interlocking parts of the written arbitration agreement between Santa Barbara County, park owners and homeowners to submit to arbitration of a rent increase dispute. Both park owners and homeowners voluntarily consent to arbitration with every signed petition and signed brief. Code of Civil Procedure section 1284.2 does, without a doubt, apply to arbitration required by Chapter 11A:

> 1284.2. Unless the arbitration agreement otherwise provides or the parties to the arbitration otherwise agree, each party to the arbitration shall pay his pro rata share of the expenses and fees of the neutral arbitrator, together with other expenses of the arbitration incurred or approved by the neutral arbitrator, not including counsel fees or witness fees or other expenses incurred by a party for his own benefit.
>
> *Gomes v. County of Mendocino, California Court of Appeals, 1995*
> It is elementary that a specific statute relating to a particular subject will govern as to that subject as against a more general statute, even though the latter, standing alone, is comprehensive enough to include the subject to which the more specific provision relates. The specific provision is treated as an exception to the general.

Management also will claim the arbitrator *must* award its exorbitant attorney and witness fees as they significantly increase operating expenses. According to the courts, to do so at the local level, contrary to state law and legislative public policy, is invalid:

City of Claremont v. Kruse, California Court of Appeals, 2009

[I]t is well settled that local regulation is invalid if it attempts to impose additional requirements in a field which is fully occupied by statute. *[Citation.]* [L]ocal legislation enters an area that is "fully occupied" by general law when the Legislature has expressly manifested its intent to "fully occupy" the area *[citation]*, or when it has impliedly done so in light of one of the following indicia of intent: "(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality [citations]." *[Citation.] (American Financial Services Assn. v. City of Oakland (2005) 34 Cal.4th 1239, 1252 [23 Cal.Rptr.3d 453, 104 P.3d 813].)*

3. In truth, management's notice of attorney and professional fee rent increases are nothing more than retaliation against the homeowners for exercising our rights under the ordinance and Rules for Hearing. Homeowners' challenge of a rent increase is never frivolous; the cost is too great in many ways. The only way management can deprive us of our rights is to make it so astronomically expensive that we eventually lose our homes.

Sec. 11A-11. Retaliation.

Management shall not retaliate against any homeowner because of his assertion or exercise of any rights provided by this chapter.

"PROFESSIONAL FEES IN DEFENSE OF HOMEOWNER APPEAL AND LAWSUIT"

Homeowners request that these professional fees be denied entirely pursuant to state law, Nomad rental agreements, "the American Rule" and the California Constitution.

1. Allowing management to pass on its attorney fees violates Nomad Village rental agreements and the Mobilehome Residency Law.

To avoid repetition, homeowners direct the arbitrator to "professional fees for challenge to rent increase" (pages 12 and 13).

2. Under the "American Rule," parties to litigation must pay their own attorney fees, despite prevailing in litigation. It is now codified in Code of Civil Procedure §1021.

1021. Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to actions or proceedings are entitled to their costs, as hereinafter provided.

Although §1021 is under Part 2, OF CIVIL ACTIONS, courts have decided that "actions or proceedings" include Part 3, OF SPECIAL PROCEEDINGS, as well.

Management filed suit against Santa Barbara County and the Board of Supervisors voluntarily. Management's attorney was well aware of §1021 at the time, as his writ of mandate asked for costs and "reasonable attorney fees" pursuant to §1021.5 (exhibit 27, page 10). Since management cannot recoup attorney fees from any party, it conscripted homeowners to pay its litigation fees under false pretenses by alleging that Ms. Hamrick was not a duly chosen and empowered representative of the homeowners.

Debra Hamrick, "as representative of homeowners of Nomad Village Mobilehome Park" (exhibit 27, page 1), was named as real party in interest. As a declared party in both actions, Ms. Hamrick (as homeowners' chosen representative, not purported as Mr. Ballantine constantly alleges) did not agree, either by implication or expression, on behalf of the homeowners to pay management's attorney fees for either action, nor did the courts award attorney fees to management. By law, management cannot now charge homeowners for attorney fees incurred in those proceedings; however, also by law, management can charge homeowners for any unpaid costs the court determined are the sole responsibility of Ms. Hamrick and the homeowners.

Management claims massive attorney fees incurred for both suits were caused by the homeowners' representative. Ms. Hamrick was named as real party for a reason:

> *Fladeboe v. American Isuzu Motors Inc., California Court of Appeals, 2007*
> Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute. *(Code Civ. Proc., § 367.)* The real party in interest has "an actual and substantial interest in the subject matter of the action," and stands to be "benefited or injured" by a judgment in the action. *(City of Santa Monica v. Stewart (2005) 126 Cal.App.4th 43, 59-60, 24 Cal.Rptr.3d 72.)* Plaintiffs have standing to sue if they or someone they represent have either suffered or are threatened with an injury of sufficient magnitude to reasonably assure the relevant facts and issues will be adequately presented. *(City of Irvine v. Irvine Citizens Against Overdevelopment (1994) 25 Cal.App.4th 868, 874, 30 Cal.Rptr.2d 797.)*

Management agrees, as shown by its actions, that any party to an action who "stands to be benefited or injured" by a judgment will vigorously defend himself or herself, as well as everyone he or she represents, from a perceived or terrible threat and opt for the benefit. Management and the county have equal shares in the blame being heaped on the homeowners, the former for not demanding its valid Lazy Landing

permit years ago, even though code violations most likely must be abated first (exhibit 13, section 5), and the latter for waiting seven years to issue Lazy Landing's permit to operate. A massive misunderstanding would have been averted with a minimum of conscientiousness and homeowners' anxiety reduced a thousand-fold by learning management wasn't taking millions of dollars in rent money under false pretenses.

Blame, however, shouldn't be the center of attention. Management shamelessly shifted responsibility for its own action(s) to homeowners by stating the entire amount was incurred for rent proceedings and a losing lawsuit brought by our representative that it "was forced to defend" (exhibit 1, page 2, ¶1).

> *Oceanside Mobilehome Park v. City of Oceanside, Court of Appeals, 1984*
> For the reasons which follow, we conclude…the provision excluding all attorney fees and costs incurred in challenging the ordinance or related proceedings from operating expenses is constitutionally valid;…Section 16B.14.B.4 of the ordinance excludes from operating expenses "[a]ttorneys fees and costs incurred in proceedings before the Commission, or in connection with legal proceedings against the Commission or challenging this [ordinance]." The trial court incorrectly determined this provision unconstitutionally impedes park owners from seeking legal redress and representation to protect their property interests. The provision only prevents park owners from passing the burden of those fees to their tenants in the form of higher rents regardless of the outcome of the proceedings. The exclusion has no more of a "chilling effect" on park owners' rights to pursue their legal remedies than does the traditional American rule denying litigant attorney fees in the absence of express authority. Further, the burden on park owners is likely to be less than on the tenants, because the park owners are able to treat these attorney fees as business deductions for income tax purposes.

Inclusion in ordinary and necessary maintenance and operating expenses is management's only avenue to burden the homeowners with its non-recurring legal fees (exhibit 5, page 8, 2012; exhibit 48, page 2, 2016). The ordinance does not specifically mention attorney fees as an allowable expense. Management calls this vagueness, but the truth is that the ordinance, taken as a whole, is not vague at all. To reiterate:

> *Kraus v. Trinity Management Services, Inc., California Supreme Court, 2000*
> *Ejusdem generis* applies whether specific words follow general words in a statute or vice versa. In either event, the general term or category is "restricted to those things that are similar to those which are enumerated specifically." *(Harris v. Capital Growth Investors XIV (1991) 52 Cal.3d 1142, 1160, fn. 7, 278 Cal.Rptr. 614, 805 P.2d 873.)* The canon presumes that if the Legislature intends a general word to be used in its unrestricted sense, it does not also offer as examples peculiar things or classes of things since those descriptions then would be surplusage. *(See Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters (1979) 25 Cal.3d*

Non-recurring attorney and professional fees aren't capital improvements or capital expenses, ordinary and necessary operating or maintenance expenses, rent, increased services, insurance or remotely similar to anything else mentioned in 11A-5(f)(1) and 11A-6(i). The absence of a specific cost category in Chapter 11A, when compared to enumerated cost categories in its provisions, indicates intentional omission, rather than neglect or implied allowability.

Management has filed two suits against the county since 2008, one of which was bifurcated into a third, and has threatened a fourth. Must homeowners continue to pay Waterhouse Management's litigation expenses for eternity?

> *Carson Harbor Village Ltd. v. City of Carson Mobilehome Park Rental Review Board, California Court of Appeals, 1999*
> While the [Carson] ordinance does not address the Board's authority to distinguish between extraordinary non-recurring expenses and normal operating expenses, it is within the Board's authority to make such a distinction if it relates to the impact of a rent increase on mobilehome park residents.…Attorneys' fees incurred in connection with challenging the Ordinance or actions of the board in court are not allowable operating expenses.
>
> *Galland v. City of Clovis, 16 P. 3d 130 - Cal: Supreme Court 2001*
> More than 12 years ago, the Gallands sought a modest rent increase amounting to only pennies per day. Clovis and its rent commission responded by forcing the Gallands into a bloated regulatory process that was "so time consuming, burdensome, and expensive that the potential benefits of participating in [it] were nonexistent and illusory."…Moreover, the remedy of adjusting future rents is unfair in its operation, except perhaps in a case like *Kavanau* where the due process violation is negligible or nonexistent. Here, it is Clovis that violated due process, not the tenants, and Clovis should pay the damages. This is particularly true, because the source of the violation was in large part the imposition of excessive procedural costs that did not benefit the tenants.
>
> *Colony Cove Properties, LLC v. The City Of Carson Mobilehome Park Rental Review Board, California Court of Appeals, 2009*
> Disallowing attorney fees as part of a rent increase calculation is permissible. Addressing a more restrictive ordinance that required a city to exclude from a mobilehome park owner's "operating expenses `[a]ttorneys fees and costs incurred in proceedings before the Commission, or in connection with legal proceedings against the Commission or challenging this [ordinance],'" the court, in *Oceanside Mobilehome Park Owners' Assn. v. City of Oceanside (1984) 157 Cal.App.3d 887, 909*, observed that the provision reasonably prevented park owners from passing the burden of those fees to their tenants in the form of higher rents and mirrored the traditional American Rule denying litigants attorney fees in the absence of express authority.

3. Exhibit 7 includes legal expenses related to submetered utilities and code violations, which will be decided by the CPUC in complaint C.16-12-018.

Every mention of engineer John Mahoney, County Counsel Czulager, county departments, the Bell family and members, Mr. Von Dollen, Norman Bremer, settlement agreement, Berkadia and park infrastructure, among others, relates to submetered utilities and code violations.

"NINE PERCENT AMORTIZATION"

Homeowners request that the percentage rate be reduced to management's incurred "reasonable financing costs" as allowed by 11A-6(a)(1) and (b)(1) for capital expenses and capital improvements only. Interest on all other expenses should be denied as it does not comply with the provisions of the ordinance.

1. Dr. St. John testified that 9% is a rate used regularly in his experience, but that does not negate Chapter 11A's use of reasonable financing costs. Case law (homeowners won't burden Your Honor with it here) shows that ordinance-established rates, specifically called interest rates in the ordinances, vary from 4.5% to 12%; none shows reasonable financing costs as an ordinance-established rate like ours does. Dr. St. John explained in 2011 (exhibit 16/T1, page 70, lines 3 through 9) why he advocates 9% interest over a chosen number of years:

> The ordinance, by the way, doesn't specify either one. They don't specify what rate of interest and they don't specify how many years, so we really don't have much guidance. Some ordinances do. Or in some jurisdictions, there are rules or regulations that spell out the amortization periods, but that is not true for Santa Barbara County.

Again, within the context of Chapter 11A, 11A-6(a)(1) and (b)(1) are very clear in specifying reasonable financing costs. The use of the word "costs" throughout the ordinance is for costs actually incurred, or proposed costs that definitely will be incurred, including 11A-1, 11A-4(d), 11A-5(a), 11A-5(h), 11A-5(i), 11A-5(k), 11A-6(a), 11A-6(b) and 11A-6(c).

Reasonable financing costs are not interest. While homeowners are aware that some professions prefer using three words instead of one, the ordinance was written so ordinary folks, usually low income and almost always without law school educations,

would comprehend it. If the ordinance meant to include interest, it would say “including interest” or “including interest at a rate of…,” instead of reasonable financing costs.

Management will claim that there is no distinction between operating expenses and capital expenses. Homeowners do not claim the distinction; the ordinance provides the distinction by separating expenses for capital assets and operating costs into two distinct sections: 11A-6 and 11A-5. Nothing in 11A-5 grants, or implies to grant, the arbitrator discretion to award interest for any operating or non-recurring expense, because it is not “otherwise permitted by this chapter.”

2. Dr. St. John’s experience also does not negate the applicability of Article XV of the California Constitution.

Dr. St. John testified that he consults Mr. Ballantine for any necessary legal input, which is certainly acceptable as long as management’s attorney does not misinterpret a statute or the Constitution or mislead Dr. St. John into believing that every aspect of his vast experience applies to each and every past, present and future administrative and arbitration hearing. As mentioned earlier, Dr. St. John’s expert opinion carries more weight than any other testimony or argument and must be factually true and lawful.

The court’s ruling in *Boerner v. Colwell Co.* (see exhibit J, page 1, for full quote) confirms that rent increases are loans, not transfers of property or credit sales.

> *Boerner v. Colwell Co., California Supreme Court, 1978*
> It has long been the law in this jurisdiction, as well as in the vast majority of other jurisdictions, that a bona fide credit sale is not subject to the usury law because it does not involve a “loan” or “forbearance” of money or other things of value. …A sale is the transfer of the property in a thing for a price in money. The transfer of the property in the thing sold for a price is the essence of the transaction. The transfer is that of the general or absolute interest in property as distinguished from a special property interest. A loan, on the other hand, is the delivery of a sum of money to another under a contract to return at some future time an equivalent amount with or without an additional sum agreed upon for its use; and if such be the intent of the parties the transaction will be deemed a loan regardless of its form.…” *(Milana v. Credit Discount Co., supra, 27 Cal.2d 335, 339.)* …In any event, it is our view that the instrument of the usury laws has no place in the field of bona fide credit sale financing, and that its use must be limited to those cases in which the record clearly reveals that the substantial intent of the parties was to effect the hire of money at an excessive rate of interest rather than to finance a bona fide sale of property.

Management has never, and will never, transfer any general or absolute property to homeowners upon expiration of an amortized rent increase, otherwise homeowners

would have a vested interest in Nomad Village effective May 2018, including a share of the profits, and hundreds of hours of its attorney's skills. An arbitration award, just like a loan contract, imposes an obligation on homeowners "to return at some future time the equivalent amount…" according to management's unilaterally determined interest rate, loan duration and monthly payment, unless homeowners provide evidence otherwise. Homeowners' evidence comes from the ordinance itself and case law.

LESS THAN 12 MONTHS SINCE THE LAST RENT INCREASE

Homeowners request that the rent increase be denied in entirety as the effective date is less than 12 months since the last increase. Homeowners do not ask, nor intend, that Your Honor usurp the discretion, power and jurisdiction of another arbitrator. The inclusion of another arbitrator's opinions and awards is for historical accuracy.

1. Management has: (1) charged a vacated award until July 1, 2016, violating 11A-6(a)(4) and (a)(4)(A), 11A-6(a)(5), 11A-8(a) through (c), and 11A-13(b)(1) and (b)(2); (2) not deposited homeowners' rent increase payments in a trust account as required by section 11A-8(b); and (3) violated 11A-8(b)(2) by retaining homeowners' overpayments since 2012.

The arbitrator's initial award #5 of a $320,000 escrow account on November 22, 2011 (exhibit 17, page 15) states: "If any of these monies are not spent on eligible items with[in} six months from the date of this award, the residulal amounts are to be returned to the Homeowners.'' The December 20, 2011 revised opinion and award (exhibit 18, page 15), merely changed #12 to #14, adding a new #12 (permanent and temporary increase payment schedule, calculated and submitted by management) and a new #13 (instructing both parties to meet and agree on repayments to homeowners by March 1, 2012). The meet and agree never occurred, of course, since management unilaterally decided on the amount and frequency of repaying homeowners' excess payments of the arbitrator's 2011 total awards. No capital improvements were completed within six months of either the 2011 opinions and awards.

On January 1, 2012—39 days after the November 22, 2011 award, management began to credit homeowners over an eight-month period, violating 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. The ordinance does not permit management to determine a frequency for a rent credit.

The amount supposedly deposited was $193,200; rent credit was $81,984, plus interest. Instead of "a homeowner credit against future rent" of $546.56, plus required interest, homeowners were forced to accept eight monthly payments of $68.32, proving that management retained homeowners' interest in further violation of 11A-8(b)(2). Even if management did not deposit disputed rent increases into a trust account to earn interest, management still violated 11A-8(b)(2) above and 11A-8(b).

2. Upon review (May 15, 2012), the Board of Supervisors vacated the arbitrator's award #5 of the escrow account on the basis that capital improvements were neither definite nor certain, as required by 11A-5(k): *Evidence as to costs to be incurred prior to the next rent increase may be considered only where such evidence shows that these costs are definite and certain.* The transcript shows that no capital improvements were definite or certain (exhibit 16/T2, page 166, lines 7 to 22) and none of the $320,000 had been spent prior to commencement of arbitration (exhibit 16/T1; page 13, lines 18 to 24).

After the six-month requirement for completing eligible capital improvements expired (June 20, 2012), the arbitrator's remand opinion and award on August 6, 2012 affirmed a temporary increase of $0 (exhibit F, page 3, item 1), which included all temporary increase amounts (exhibit F, page 3, ¶4), and triggered 11A-5(l): *Increases in the maximum rent schedule set by the arbitrator shall become effective as of the effective date in the notice o[f] rent increase.*

Management then brought suit against Santa Barbara County and the Board of Supervisors, filed on November 7, 2012, completely ignoring the arbitrator's remand opinion and award. In its writ for administrative mandamus (exhibit 27), management did not request a stay of the board's decision pending judicial review; did not dispute, appeal (page 9, line 15) or request a stay of the arbitrator's August 6, 2012 remand award; and continued to collect all rent increases vacated by the arbitrator.

3. Judge Anderle's ruling of June 2014 (exhibit 36, page 26, ¶4) affirmed that the arbitrator abused his discretion and vacated the $320,000 award. It also instructed the board to remand $62,145.55 to the arbitrator for consideration as an additional award. As of June 2014, management had no hope or reasonable expectation that its $320,000 escrow account would be remanded by the board or re-awarded by the arbitrator. However, management could be reasonably certain, given Judge Anderle's ruling, that $62,145.55 would be awarded, as well as the remaining awards remanded to the board for reconsideration while proceeding in the manner required by law.

4. The arbitration opinion and award signed March 5, 2016 affirmed vacation of the $320,000 (exhibit 20, page 2, #5), separate and distinct from the $62,145.55 remanded by Judge Anderle, again triggering section 11A-5(l): *Increases in the maximum rent schedule set by the arbitrator shall become effective as of the effective date in the notice o[f] rent increase,*" as well as 11A-8(c): *Where a new maximum rent increase schedule has been set by the board of supervisors upon review or by the arbitrator upon rehearing, adjustments in rent paid shall be made in accordance with subsection (b)(1) and (2) of this section.*

A remanded decision is, according to section 11A-13(b)(1), "effective as if it were the original decision subject to section 11A-5." Management was required to discontinue the $320,000 award as of November 22, 2011. Since management calculated and submitted the revised temporary rent increase payment schedule to the arbitrator for inclusion in his decision, management had all the information it needed, before the award was signed and distributed, to voluntarily discontinue the vacated rent increase.

5. Management's rent increase notice dated March 31, 2016 was delivered to homeowners on April 1, 2016, 26 days after the remand decision, increasing rent while still collecting the vacated $320,000 award.

The vacated award was finally discontinued July 1, 2016 (exhibit F, page 5), the same instant that the current increase commenced. Management now collects for the same capital expenses that weren't definite and certain in 2011 (exhibit 1, page 2, ¶2), funded from the same escrow account vacated in 2012, 2014 and 2016 (Waterhouse testimony, February 10). Since both the vacated increase was discontinued and the current rent increase began at the same instant on July 1, 2016, management increased homeowners' rent within 12 months of the last rent increase.

Management had ample time to voluntarily discontinue the vacated award before July 1, but did not. Homeowners' rent statements (exhibit F, page 5) include actual gas, electricity and water usage through the 6th or 7th of the month before rent is due (about 20 days). Utility usage calculations are more complicated and time-consuming than a simple change from $67.09 to $39.44 that management had up to 50 days to effect. Management did it in 39 days in 2012, and that was a more complicated reduction of both permanent base rent and temporary increases. Had management voluntarily discontinued the vacated rent increase before commencing another increase, the violation of 11A-8(a) would not have occurred.

Dated March 8, 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 March 8, 2017, I served the foregoing document entitled NOMAD VILLAGE HOMEOWNERS' POST-HEARING OPENING 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 March 8, 2017, at Santa Barbara, California