

Attorney for PARK MANAGEMENT OF NOMAD VILLAGE MOBILE HOME PARK

IN RE NOMAD VILLAGE MOBILE HOME PARK

REMAND ARBITRATION
HEARING DATE: August 10, 2016
TIME: 9:00 A.M.
LOCATION: Board of
Supervisors Hearing Rm

1 PARK MANAGEMENT OF NOMAD VILLAGE MOBILE HOME PARK ("Park
2 Management") hereby submits its Remand Hearing Brief for the Arbitration Hearing on the
3 Remand ordered by the Santa Barbara County Board of Supervisors ("Board") in response to the
4 appeal filed by the homeowners of Nomad Village Mobile Home Park collectively
5 ("homeowners") appealing the March 5, 2016, Opinion and Award (Revised on Remand)
6 ("Remand Award") in the above-referenced Arbitration proceedings, as follows:

7
8 I

9 INTRODUCTION

10
11 Essentially, the Board has remanded this matter to the Arbitrator to make further findings
12 in support of the Remand Award. Park Management believes that the Remand Award contains
13 appropriate and sufficient findings to support the award, and also that based upon the existing
14 record further findings may be stated to support all of holdings of the Remand Award. Under the
15 applicable rules and law, the Arbitrator may, but is not required to, receive and consider further
16 evidence regarding the elements of the rent increase that are the subject of this arbitration. This
17 Remand Hearing Brief will briefly discuss the relevant background leading up to the present
18 remand hearing, and for each of the awards remanded, will discuss the evidence in the record on
19 which further findings may be made to support each of the awards, and set forth proposed
20 findings.

21 The background and analysis of each of the awards is discussed in greater detail in Park
22 Management's Hearing Brief submitted for the February 17, 2016 Remand Hearing, which is
23 incorporated herein by this reference.

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II

FACTUAL AND PROCEDURAL BACKGROUND

Initial Arbitration Hearing

The homeowners of Nomad Village Mobile Home Park ("Park") in 2011 filed a petition for arbitration regarding a rent increase issued by Park Management resulting from increased operating costs of the Park and specific capital costs related to the operation of the Park. Pursuant to the terms of the Santa Barbara County Mobilehome Rent Control Ordinance ("Ordinance") and the Mobilehome Rent Control Rules for Hearing ("Rules") an arbitration hearing was conducted on September 19 and 20, 2011, at which both sides were represented by experienced mobilehome lawyers and reported by a Court Reporter, who prepared a Reporter's Transcript ("RT1 and RT2"). The homeowners called witnesses (Dr. Kenneth Barr, and Dan Waltz) and introduced Petitioner's exhibits, Exhibits 1-8. Park Management also called witnesses (Dr. Michael St. John, Ken Waterhouse and Ruben Garcia) and introduced exhibits, Respondent's Exhibits A-T. There were also exhibits received by Stipulation, Joint Exhibits 1 & 2.

Following the Arbitration Hearing, the parties submitted a series of post-hearing briefs. Following the briefing, the Arbitrator prepared a draft award on November 22, 2011, after which time the parties submitted a stipulated series of calculations, which were incorporated into the final Opinion and Award which was issued by the Arbitrator on December 20, 2011 ("Arbitration Award"). The Arbitration Award granted some but not all of the rent increases noticed by Park Management, finding that Park Management was entitled to a space rent increase under the terms of the Ordinance, a Permanent Increase of \$25.59 and a Temporary Increase of \$67.09, for a total increase of \$92.68, as supported by Park Management's Exhibit T.

Appeal to Board of Supervisors I

The homeowners appealed the Arbitration Award to the Board of Supervisors ("Board"). Although the Rules and the governing law could not be more clear that the Board's role on

1 appeal is judicial in nature, and that the Board's inquiry is limited to the Arbitration Record, the
2 Board patently violated the law and the rights of Park Management by engaging in improper ex-
3 parte communications with the homeowners, including meeting with homeowners'
4 representatives (constituent voters) prior to the Board hearing. The Santa Barbara Superior
5 Court later found these communications to have been "improper" and "inappropriate" and in
6 violation of the law. The Board further acted illegally by vacating in its entirety the rent
7 increases granted by the Arbitration Award.

8 9 **Writ of Mandate Litigation**

10 Park Management sued the Board, and after extensive proceedings, which were
11 unnecessarily protracted by the homeowners (including by filing a frivolous separate lawsuit
12 against the County and Park Management in which summary judgment was entered against the
13 homeowners), the Court ruled in favor of Park Management and against the Board and the
14 homeowners and set aside the Board's illegal order vacating the rent increases, and remanded the
15 matter to the Board to rescind its illegal order vacating the Arbitration Award and to remand to
16 the Arbitrator for further proceedings consistent with the law and the Court's Order. On
17 November 10, 2014, the Court entered its Order on Writ of Mandate ("Order"), which attached a
18 detailed 31-page decision ("Decision") thoroughly discussing the basis of the Order. The Order
19 for the most part either upheld the Arbitration Award or remanded for further findings. Despite
20 the fact that the Court's Order was entered in November 2014, inexplicably, the Board took over
21 a year before finally complying with the Court's Order.

22 23 **Board of Supervisors Remand Hearing**

24 On January 19, 2016, the Board finally held a remand hearing, as ordered by the Court,
25 and finally rescinded its illegal order vacating any rent increase to Park Management, as also
26 ordered by the Court. At that time the Board voted to remand to the Arbitrator for further
27 hearing to consider Awards numbered 4, 5, 6, 7, 8, 11, and 12. The remand of Awards numbered
28 8 and 11 was contrary to the Court order and contrary to the Board's own legal counsel's

1 direction, since the Board was simply ordered to set aside its order vacating those awards so that
2 the Arbitration Award was reinstated.

3 4 **Remand Arbitration Hearing**

5 On February 19, 2016, the Arbitrator conducted a Remand Arbitration Hearing, at which
6 Park Management and the homeowners appeared through counsel and through representatives.
7 The Arbitrator declined to take any new evidence at the Remand Arbitration Hearing, and
8 determined to render a decision based upon the existing evidentiary record of proceedings. The
9 Remand Arbitration Hearing was transcribed by a Court reporter. On March 5, 2016, the
10 Arbitrator issued his Remand Award, awarding Park Management a permanent space rent
11 increase of \$25.59 and temporary increase of \$39.44, as itemized in the Remand Award.

12 13 **Appeal to Board of Supervisors II**

14 The homeowners again appealed to the Board. Park Management filed a Response to the
15 Appeal, pointing out that the appeal was without basis and should be denied. (See Park Owner's
16 Response, incorporated herein by reference.) County staff prepared a Board letter
17 recommending that the Board find that the Remand Award did not contain sufficient findings
18 and should be remanded to the Arbitrator to make further findings in support of the Award.
19 Ironically, the Board Letter itself is conclusionary in nature, and fails to make sufficient findings
20 in support of its conclusion. On July 19, 2016, the Board held a hearing on the homeowners'
21 appeal. Debra Hamrick addressed the Board and demanded that the Board vacate the Remand
22 Award and assign the matter to a new arbitrator. Other homeowners addressed the Board
23 demanding that the Board vacate elements of the initial arbitration award that had already been
24 upheld by the Superior Court. Park Management's representative addressed the Board, pointing
25 out that the Remand Award was proper and consistent with the Court's order and should be
26 upheld, but if the Board were to remand the matter for further findings, the Rules, as well as
27 common sense and judicial economy, clearly would dictate that the matter must be remanded to
28 the Arbitrator who actually heard and received the evidence on which the award was based.

1 Ultimately the Board voted to remand the Remand Award to the Arbitrator for further
2 findings in support of the Award. The instant Remand Arbitration Hearing followed.

3 4 III

5 DISCUSSION OF AWARDS REMANDED TO ARBITRATOR

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7 The following is a discussion of each of the separate awards remanded to the Arbitrator
8 for further findings, and a discussion of proposed further findings that would support each of the
9 awards made in the Remand Award based upon the evidence in the record. The underlined
10 portions are language from the Arbitrator's initial Arbitration Award.

11 Award No. 4. Amortization Rate

12 Award No. 4 is that "[a]ll granted temporary increases are to be amortized at 9% for
13 seven (7) years."

14 The Court affirmed the Arbitration Award as to the amortization: "The record
15 shows that there was substantial evidence to support the Arbitrator's decision of seven years and
16 nine percent. Park Management presented this amortization schedule [Exhibit C] and Dr. St.
17 John testified that these numbers were the result of his professional judgment." (Decision, p.
18 30.)

19 The Board also found that the findings supported this Award No. 4. The remand of this
20 Award was only because the other matters were remanded.

21 The Court and the Board found that the Arbitrator's findings were sufficient to support
22 the award. Accordingly, there are no grounds to change this award.

23 Award # 5. Capital Items.

24 Award No. 5 is that the homeowners are to pay the \$62,145.55 which were capital
25 improvement expenses incurred prior to the commencement of arbitration.

26 The record clearly supports the following additional finding:
27
28

1 At the time of the Arbitration Hearing, Park Management had already incurred
2 \$62,145.55 in capital improvement expenses for the Park. These expenses are itemized
3 in Exhibit J, and the invoices for these expenses are set forth in Arbitration Exhibit K.
4 Waterhouse Management Vice President Ruben Garcia, who oversees the day-to-day
5 operation and financial management of the Park, **testified that these expenses itemized**
6 **in Exhibit J, backed up by the invoices in Exhibit K, were all expenses actually**
7 **incurred by Park Management for capital items improving the Park, as set forth in**
8 **the documents.** (RT2 182:13-183:23; 188:18-189:14.) The Ordinance permits that the
9 costs of capital improvements and expenses, including reasonable financing costs, may
10 be passed on to homeowners at the time of an annual rent increase (S.B. County Code,
11 ch. 11A, § 11A), and these cost items clearly qualify.

12 Such a finding is consistent with the Court's Order, which found that there was evidence
13 of \$62,145.55 of specific items of costs incurred by Park Management for capital improvements
14 and expenses (Exhibits J and K), but that the Arbitration Award just did not make specific
15 findings allowing these expenses, separate and apart from the other capital items. (Decision, pp.
16 26-27.) The Court reversed the Board's order disallowing Award No. 5 and remanded it for
17 appropriate findings.

18 Park Management believes that the Remand Award complied with the Court Order, and
19 pointed that out to the Board. However, since the Board has remanded the matter back to the
20 Arbitrator for further findings, the findings set forth above would be consistent with the Court's
21 Order.

22 **Award # 6. Professional Fees.**

23 Award No. 6 is that the homeowners are to pay \$25,000 for professional fees associated
24 with the capital improvements.

25 The record clearly supports the following additional finding:

26 Park Management sought to recover for \$50,973 in legal fees incurred in
27 December, 2010 for legal matters related to the Park. This work is itemized in detail in
28

1 the statement in evidence as Exhibit Q, and the areas of work are summarized in single
2 page exhibit in Exhibit K. The billing statement was reviewed by Mr. Waterhouse and
3 the fees were incurred and paid by Park Management as a normal and legitimate
4 operating expense. (RT2 145: 6-14.) Dr. St. John testified that legal fees of this type are
5 properly the basis of a rent increase, and properly treated as a temporary rent increase by
6 amortizing them. (RT1 135:1-8. 95:3-15, 96:1-4.)

7 The professional fees spent on capital improvement item should not be treated as
8 a one shot expense, but rather amortized (Ex. K & Q). After considering the objections
9 raised by the Homeowners, a good portion of the line items submitted by the Park Owner
10 do not appear to be relevant to any capital improvements, therefore, a reduction of
11 \$25,000 from the original request is warranted. The remaining \$25,000 is to be charged
12 to the Homeowners. The itemized statement (Exhibit Q) has entries supporting at least
13 \$25,000 in legal time spent on issues related to the capital items of the Park, and were
14 reasonably and actually incurred by Park Management.

15 Such a finding would be consistent with the Court's Order, which found that the
16 Ordinance clearly allowed Park Management to recover for such professional fees. (Decision,
17 pp. 27-28.)

18
19 **Award # 7: Architecture and Engineering Fees**

20 Award No. 7 is that the homeowners are to pay \$40,000 for fees incurred by Park
21 Management in purchasing plans and drawings and permits from the prior operator, in order to
22 proceed with capital improvements of the Park.

23 The record clearly supports the following additional finding:

24 "Waterhouse testified he purchased certain plans to facilitate evaluating and then
25 moving forward on certain capital improvements for the Park. Given the age on some of
26 the supporting documentation, some of this work appears stale. Although the Park Owner
27 represented that the County will work with them with such things as expired permits,
28 some of this work may have little or no value as of this date. A more reasonable amount

1 to be charged would [be] \$40k.”

2 The components of the A&E fees are itemized in the spreadsheet in evidence,
3 Exhibit J. The invoices supporting these individual entries are in evidence in Exhibit L,
4 and these invoices summarize the work or other basis for the expense. These include
5 costs for the preparation of plans and drawings of the entire Park. They also include
6 costs paid to the County for permits for work at the Park.

7 Mr. Waterhouse testified that these items were purchased from the prior operator,
8 and included a number of plans and CAD drawings for the entire Park, and were and
9 remained valuable to Park Management as the current operator in moving forward with
10 capital improvements for the Park. (RT2 144:6-145:5.) He also testified that these items
11 include, the plans and drawings prepared by the Engineering Firm Penfield and Smith, in
12 addition to the fees paid to the County of Santa Barbara Planning and Development for
13 permits for work related to various aspects of the Park. (166:23-167:3.)

14 Plans and diagrams for the entire Park, particularly those which are computerized
15 CAD drawings, are obviously something of enduring value to the Park operator on an
16 ongoing basis far into the future for a variety of different purposes related to the
17 improvements to and operations of the Park. The \$40,000 awarded reflects compensation
18 for a large portion of the expense of the Plans and drawings, and excludes any permit
19 fees, which may have become stale. (Exhibits J and L.)

20
21 **Award No. 8 Property Taxes**

22 Award No. 8 is that the “Homeowners are to pay \$130,531 for the supplemental tax
23 increase payments already paid by the Park Owner.”

24 This matter is not properly remanded to the Arbitrator, as the award in the original
25 Arbitration Award was already upheld by the Court.

26 The Court found that the Board acted improperly in vacating Award No. 8. The Court
27 found that the “increases in property taxes” were properly considered by the Arbitrator as a basis
28 for a rent increase under the Ordinance, section 11A-5(f)(1), and that the Board’s purported

1 reading of the Ordinance to exclude supplemental property taxes was in violation of the clear law
2 on the subject. (Decision pp. 22-23.) The Court further found that the Arbitrator properly
3 weighed the evidence and followed Dr. St. John's opinion that the supplemental property taxes
4 should properly be charged to the Homeowners in the form of a rent increase, and that
5 substantial evidence supported the Arbitration Award. (*Id.*, pp. 23-24.)

6 On this basis, the Court upheld the Arbitration Award No. 8 and ordered that the Board
7 vacate its order reversing Award 8. **The Court did not order the matter to be remanded for**
8 **further findings or any other action.** The proposed Findings prepared by County Counsel for
9 the Board's January 19, 2016, hearing specifically found: "The Arbitrator included findings of
10 fact and was supported by substantial evidence. The Board of Supervisors determines that the
11 Arbitrator did not abuse his discretion and affirms Award 8."

12 In accordance with the foregoing, the Arbitrator should properly find that there is no
13 basis to take any further action on Arbitration Award No. 8 in light of the Court's ruling
14 upholding Award 8, and reaffirm the award.

15 This matter is not properly remanded to the Arbitrator, as the award in the original
16 Arbitration Award was already upheld by the Court.

17
18 **Award # 11 Expert and Legal Fees Incurred In Rent Control Proceedings**

19 Award No. 11 is that the "Homeowners are to pay \$110,000 for legal fees associated with
20 the challenge to the rent increase." The Arbitration Award states as follows: "After reviewing
21 the itemizations submitted by the Park Owner for expert and legal services expended in this
22 matter (Ex. R & S) and the Homeowners' response, a reasonable amount to be paid by the
23 [latter] would be \$110,000."

24 It should be noted that these were fees already incurred by Park Management for the
25 arbitration proceedings prior to the time of the initial Arbitration Award.

26 The Court found that these legal fees could properly be charged to the homeowners under
27 the terms of the Ordinance, and that the Arbitration Award properly awarded these fees as part of
28 the rent increase. The Court noted that the homeowners' expert conceded that these fees could

1 properly be the basis for a rent increase. "This evidence constitutes substantial evidence to
2 support the factual determination. Thus, the arbitrator did not abuse his discretion in making this
3 award." (Decision, p. 29.)

4 The Court found that the Board acted improperly by reversing Award No. 11 and ordered
5 that the Board vacate its order reversing Arbitration Award 11. **The Court did not order the**
6 **matter to be remanded for further consideration by the Arbitrator**; indeed, it made clear
7 that there was nothing further to consider. The proposed Findings prepared by County Counsel
8 for the Board's January 19, 2016, hearing specifically found: "The Arbitrator included findings
9 of fact and was supported by substantial evidence. The Board of Supervisors determines that the
10 Arbitrator did not abuse his discretion and affirms Award 11."

11 In accordance with the foregoing, the Arbitrator should properly find that there is no
12 basis to take any further action on Arbitration Award No. 11 in light of the Court's ruling
13 upholding Award 11, and reaffirm the award.

14
15 **Award # 12 Total Permanent and Temporary Increase**

16 The Court noted in its Decision: "the arbitrator's final calculation is again subject to
17 recalculation after further proceedings mandated by this disposition." (Decision, p. 30.)

18 The Board's order states as follows: "Because the total rent increase is based upon the
19 final adjustment of Awards 5, 6, 7, 8, and 11 which may be adjusted upon remand, the Board of
20 Supervisors also remands Award 12 to the Arbitrator for reconsideration in light of the
21 reconsideration of Awards 5, 6, 7, 8 and 11."

22 The Arbitrator properly determined the total amount of permanent and temporary
23 increases, consistent with the Court's order and supported by substantial evidence in the record.

24 The Arbitrator in the Remand Award has clearly addressed the items on which the award
25 is based, supported by substantial evidence in the record at the Arbitration Hearing, as noted
26 above. Accordingly, there are no grounds under Rule 23 for the Board to alter this award.

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1 CONCLUSION

2
3 In accordance with the foregoing, the Arbitrator properly took the following action with
4 respect to the following Awards:

5 4. Continued to employ the amortization calculations set forth in the Arbitration Award,
6 and ordered as follows: All granted temporary increases are to be amortized at 9% for seven (7)
7 years.

8 5. Ordered that the homeowners are to pay the \$62,145.55 for capital improvements and
9 expenses already in evidence, in Exhibits J and K, finding that they were capital expenses
10 incurred before the commencement of the Arbitration.

11 6. Ordered that the homeowners are to pay \$25,000 for legal fees associated with capital
12 improvements and as ordinary and necessary operating expenses of the Park, pursuant to Exhibit
13 Q, finding that was a reasonable amount for services associated with the capital expenses and
14 improvements.

15 7. Ordered that the homeowners are to pay \$40,000 for the A&E fees associated with the
16 capital improvements, as partial reimbursement for the plans and drawings for the entire Park,
17 pursuant to Exhibits J and L, finding that amount was warranted and the fees were associated
18 with capital expenses and improvements.

19 8. No action was directed by the Court. However, since the matter was remanded by the
20 Board, the Arbitrator properly ordered as before that the homeowners are to pay \$130,531 for the
21 supplemental tax increase payments already paid by Park Management.


22 11. No action was directed by the Court. However, since the matter was remanded by
23 the Board, the Arbitrator properly ordered as before that the homeowners are to pay \$110,000 for
24 legal and professional fees associated with the challenge to the rent increase through the initial
25 arbitration hearing.

26 12. Prepared final calculations in accordance with the Arbitrator's rulings.

27 These awards may be supported by the additional findings from the record, as set forth
28 above.

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Dated: August 8, 2016


JAMES P. BALLANTINE
Attorney for Park Management
LAZY LANDING MHP, LLC;
WATERHOUSE MANAGEMENT, INC.

DECLARATION OF SERVICE BY E- MAIL

I, LISA M. PAIK, declare:

I am, and was at the time of the service hereinafter mentioned, over the age of 18 years and not a party to the within action. My business address is 329 East Anapamu Street, Santa Barbara, California 93101, and I am a resident of Santa Barbara County, California.

On August 8, 2016, I served the foregoing document described as REMAND ARBITRATION HEARING BRIEF OF PARK MANAGEMENT OF NOMAD VILLAGE MOBILE HOME PARK on the interested parties in this action by e-mailing a true and correct copy thereof as follows:

Stephen Biersmith, Arbitrator
e-mail: sbiersmith@aol.com

Debra Hamrick
Homeowners Representative
e-mail: Ianmipres@gmail.com

Natalie Dimitrova
County of Santa Barbara
Real Property Division
e-mail: ndimitrova@countyofsb.org

I caused such document to be e-mailed to the addressees.

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

Executed on August 8, 2016, at Santa Barbara, California.

_____

1 JAMES P. BALLANTINE
2 Attorney at Law
3 329 East Anapamu Street
4 Santa Barbara, California 93101
5 (805) 962-2201
6 State Bar No. 152015

7 Attorney for PARK MANAGEMENT OF
8 NOMAD VILLAGE MOBILE HOME PARK

9 ARBITRATION PROCEEDINGS UNDER THE SANTA BARBARA COUNTY
10 MOBILEHOME RENT CONTROL ORDINANCE
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13 IN RE NOMAD VILLAGE MOBILE HOME PARK)
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REMAND HEARING BRIEF
BY PARK MANAGEMENT

Before
Stephen Biersmith, Arbitrator

Date: February 16, 2016

Time: 9:00 A.M.

Location: Board of Supervisors
Hearing Room

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1 LAZY LANDING MHP, LLC, and WATERHOUSE MANAGEMENT CORP.,
2 (collectively referred to herein as “Park Management”) hereby submit their Remand Hearing
3 Brief herein.

4
5 **FACTUAL AND PROCEDURAL BACKGROUND**
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7 Nomad Village Mobile Home Park (“Park”) is a 150-space mobile home park, located at
8 4326 Calle Real, Santa Barbara, CA, 93110, between El Sueño Road and San Marcos Pass. The
9 Park was first developed in the late 1950’s and was operated for many years by Nomad Village,
10 Inc., pursuant to a ground lease or series of ground leases, which expired on July 31, 2008, and
11 were not renewed. Commencing August 1, 2008, a new ground lessee, Lazy Landing MHP,
12 LLC (“Lazying Landing”), entered into a 34-year ground lease for the property on which the
13 Park is located, pursuant to arms-length negotiations with the ground lessor and fee owner of the
14 property, the Bell Trust, at which time Waterhouse Management Corp. (“Waterhouse
15 Management”), became the management company in charge of the operation of the Park. At the
16 Arbitration hearing, Park Management confirmed on the record that they, Lazy Landing and
17 Waterhouse Management were indeed “Management” of the Park pursuant to the terms of the
18 Ordinance (RT2 150:21-151:2).

19 The Park is located in the unincorporated area of Santa Barbara County, and therefore is
20 subject to the jurisdiction of Santa Barbara County, and is subject to the provisions of the Santa
21 Barbara County Mobilehome Rent Control Ordinance (“Ordinance”) and the Mobilehome Rent
22 Control Rules for Hearing (“Rules) adopted pursuant to the Ordinance, a copy of the Ordinance
23 and Rules are Arbitration Joint Exhibit 1.) The Park is one of four mobilehome parks located in
24 the area between El Sueño Road and San Marcos Pass on the west and east, respectively, and
25 Calle Real and Cathedral Oaks Road in the south and north respectively, and are located in the
26 second Supervisorial District. The Park is a rental park, in which the mobilehomes are all owned
27 by homeowners who rent their spaces in the Park from Park Management. The tenancies are
28 subject to the terms of the Ordinance. Some homeowners entered into settlement agreements

1 with Park Management and therefore are not subject to those Arbitration proceedings.

2
3 **Notice of Rent Increase**

4 On January 26, 2011, the Park delivered to all Homeowners in the Park notices of rent
5 increases to be effective on May 1, 2011, (Exhibit A) issued pursuant to the terms of the
6 Ordinance and the California Mobilehome Residency Law (MRL). The notice covered the
7 standard CPI increase allowed under the Ordinance, which varied slightly by space, plus a
8 proposed \$161 per space increase, comprising of a permanent increase of \$58.16 per space and
9 proposed temporary increase of \$102.84 per space. The Residents were given a detailed
10 breakdown of the rent increase. (Exhibit C). The prior space rent increase at the Park was made
11 by Nomad Village, Inc., and was effective May 1, 2008. There had not been any space rent
12 increases in the Park at all since Park Management had taken over management in 2008.
13 Expenses, on the other hand, had increased significantly, including due to the County tripling the
14 Park's property taxes. There were capital projects planned and some \$320,000 had been paid by
15 Park Management into a reserve account to accomplish capital improvements, and the Park
16 Management had had other capital or one-time expenses.

17
18 **Homeowners Petition for Arbitration**

19 In April 2011, Park Management was notified that a Petition challenging the Park's rent
20 increase had been filed with Santa Barbara County. Petitioner filed a response. The terms of the
21 Ordinance and the Rules set forth a detailed process for the selection of an arbitrator to hear
22 challenges to rent increases, and for the noticing and conduct of the hearing. Pursuant to the
23 terms of the Ordinance and the Rules for Hearing, the County appointed an Arbitrator and
24 noticed an Arbitration Hearing.

25
26 **Arbitration Hearing**

27 The Arbitration Hearing was held on September 19 and 20, 2011. Prior to the hearing,
28 the Petitioner Homeowners and Park Management both submitted arbitration briefs. The

1 Homeowners were represented by San Jose Attorney Bruce Stanton, and called witnesses and
2 introduced Petitioner's exhibits, Exhibits 1-8. Witnesses called by the Homeowners were: Dr.
3 Kenneth Barr, and Dan Waltz. Respondent Park Management was represented by Santa Barbara
4 Attorney James Ballantine, and also called witnesses and introduced exhibits. (Respondent's
5 Exhibits A-T.) Witnesses called by Park Management were: Dr. Michael St. John, Ken
6 Waterhouse and Ruben Garcia. There were also exhibits received by Stipulation, Joint Exhibits
7 1 & 2.)

8 The arbitration hearing was transcribed by a court reporter who prepared a Reporter's
9 Transcript (referred to herein as RT1 for the September 19, 2011 hearing and RT2 for the
10 September 20, 2011 hearing).

11 At the conclusion of the Arbitration hearing, the parties stipulated to a briefing schedule,
12 including submission of billing statements in support of Park Management's claim for
13 reimbursement of professional fees (RT2 206:20 – 207:25) and submitted a series of post-
14 hearing briefs. Following the post-hearing briefing, the Arbitrator prepared a draft award on
15 November 22, 2011, and then Park Management submitted revised rent calculations pursuant to
16 the Arbitrator's directions, which were incorporated into the final Opinion and Award which was
17 issued by the Arbitrator on December 20, 2011 ("Arbitration Award").

18 The Arbitration Award found that Park Management was entitled to a space rent increase
19 under the terms of the Ordinance, finding: The Permanent increase is to be \$25.59 and the
20 Temporary Increase \$67.09, for a total increase of \$92.68, as supported by Respondent's Exhibit
21 T. The Arbitrator maintained jurisdiction until March 1, 2012, to oversee the effectuation of the
22 award.

23 24 **Appeal to Board of Supervisors**

25 Notwithstanding the Arbitrator's reservation of jurisdiction, in January 2012, Deborah
26 Hamrick, as homeowners' representative of the Homeowners of Nomad Village Mobile Home
27 Park, filed a Petition for Review of the Arbitration Award to Santa Barbara County Board of
28 Supervisors ("Board"). As a result of the homeowners' appeal, Park Management elected to

1 appeal a limited issue of the Award, solely the denial of a rent increase due to the doubling of the
2 costs of the ground lease.

3 The Board held a hearing on the appeal on May 15, 2012.

4 Despite the fact that the Rules clearly provide that the Board's determination must be
5 upon the "**record alone**," the Board considered matters far outside the record of proceeding.
6 Despite the fact that the standard for the Board's review of the Arbitrator's decision is to be
7 "prejudicial abuse of discretion," which is defined as "where the Arbitrator has failed to proceed
8 in the manner required by law, the decision is not supported by findings, or the findings are not
9 supported by substantial evidence," (Rule 23) the Board proceeded in a manner in which it
10 substituted its own political judgment based upon its ex-parte communications, rather than
11 simply reviewing the record of proceedings.

12 It has since been revealed that prior to the hearing, members of the Board received
13 improper ex-parte communications in opposition to the rent increase awarded by the Arbitrator,
14 including the Second District Supervisor prior to the hearing having met with the Debra
15 Hamrick, the homeowner representative, as well as other homeowners from other parks.

16 These ex-parte communications were later held by the Santa Barbara Superior Court to
17 have been "improper" and "inappropriate" and in violation of governing law.

18 At the Board hearing, the Second District Supervisor, in front of her many constituents
19 present, made a motion, which the Board approved, to reverse every single rent increase granted
20 by the Arbitrator, and to remand the Arbitrator's approval of the rent increase based on the
21 property tax increase back to the Arbitrator for reconsideration, and for recalculation.

22 The Board remanded the question of the portion of the rent increase based upon the
23 County's property tax increase of the Park, even though the Board admitted that the law clearly
24 provides for a rent increase based upon a property tax increase. In accordance with this action by
25 the Board, the Arbitrator conducted a remand hearing, on July 13, 2012, at which time Park
26 Management and the homeowners appeared through representatives, and thereafter, on August 6,
27 2012, issued an Opinion and Award on Remand ("Remand Award"). The Remand Award
28 upheld the full amount of permanent rent increase based upon the increased property taxes as set

1 forth in the Arbitration Award, the sole discretionary matter remanded to the Arbitrator. The
2 remaining aspect of the Remand Award was a ministerial calculation based upon the changes set
3 forth in the decision by the Board.

4 5 **Writ of Mandate Litigation**

6 On August 13, 2012, Park Management filed a Petition and Complaint for Writ of
7 Mandate and other relief, naming County of Santa Barbara and the Board as Respondents and
8 Debra Hamrick, as representative of the homeowners, as Real Party in Interest, on the grounds
9 that the Board's Order reversing the Arbitration Award was improper. The case was assigned to
10 the Honorable Superior Court Judge Thomas P. Anderle. The County filed its Administrative
11 Record of Proceedings. The homeowners actively participated in the Writ Action, hiring legal
12 counsel, Thomas Griffin. Resolution of the Writ Action was delayed by over a year while the
13 homeowners actively litigated the case, filing numerous motions, all of which were denied by the
14 Court, and engaging in unauthorized discovery (the Court ruled that the homeowners' were not
15 entitled to discovery since an administrative writ proceeding is determined solely on the
16 administrative record). The writ petition issues were extensively briefed for Judge Anderle.

17 On November 10, 2014, Judge Anderle entered his Order on Writ of Mandate ("Order"),
18 which attached a detailed 31-page decision ("Decision") by which Judge Anderle thoroughly
19 discussed the basis of the Order.

20 In the Order, Judge Anderle granted virtually all of the relief Park Management sought,
21 ordering that the Board **vacate** its order reversing the Arbitration Award as to Awards numbered
22 4, 5, 6, 7, 8, 11, and 12, and remanded for further findings Arbitration Awards numbered 4, 5, 6,
23 7, and 12 (these award numbers follow the numbering set forth in the Arbitration Award).

24 Thereafter, the homeowners, through Deborah Hamrick again as homeowner
25 representative, and again represented by Thomas Griffin, filed a separate writ proceeding,
26 naming the County as Respondent and Park Management as well as the land owners, the Bells,
27 as real parties in interest. In this writ proceeding, the homeowners claimed that Park
28 Management was not entitled to any rent increase or even to collect any rent at all since 2008.

1 The homeowners disqualified Judge Anderle, so the matter was assigned to Judge Colleen K.
2 Sterne. That action was resolved entirely against the homeowners on summary judgment, and
3 Judge Sterne entered Judgment against the homeowners on December 18, 2015.

4 5 **Board of Supervisors Remand Hearing**

6 On January 19, 2016, the Board held a remand hearing, as ordered by Judge Anderle. At
7 that time the Board voted to remand to the Arbitrator for further hearing to consider Awards
8 numbered 4, 5, 6, 7, 8, 11, and 12. Each is discussed herein.

9 10 **DISCUSSION OF AWARDS REMANDED TO ARBITRATOR**

11 **Award No. 4. Amortization Rate**

12 Award No. 4 is that “[a]ll granted temporary increases are to be amortized at 9% for
13 seven (7) years.”

14 The Ordinance provides for amortization over the useful life of a capital expense. (S.B.
15 County Code, ch. 11A, § 11A-6(b)(2).) The Ordinance otherwise provides no guidance as to
16 either the time span for amortization or the interest rate.

17 The Court affirmed the Arbitration Award as to the amortization: “The record shows that
18 there was substantial evidence to support the arbitrator’s decision of seven years and nine
19 percent. Petitioners presented this amortization schedule [Exhibit C] and Dr. St. John testified
20 that these numbers were the result of his professional judgment.” (Decision, p. 30.)

21 The Court further found that since certain other matters were being remanded back for
22 further proceedings and findings, that the “items subject to amortization may change as a result
23 of the further proceedings” so that Award No. 4 must be subject to potential reconsideration.
24 (*Id.*)

25 Accordingly, the amortization potentially could change, but need not be changed, under
26 the terms of the Court’s ruling. Since the Court has already affirmed the amortization as being
27 supported by substantial evidence, based upon Dr. St. John’s professional judgment, already in
28 the record, it appears unnecessary to expend further time and proceedings on this issue.

1 **Award # 5. Capital Items.**

2 Award No. 5 is that the “Homeowners are to pay the \$320,000. If any of these monies are
3 not spent on eligible items with six months from the date of this award, the residual amounts are
4 to be returned to the Homeowners.”

5 Park Management’s rent increase notice sought a rent increase for capital items in the
6 total amount of \$320,000, for the purpose of the rent increase notice. The \$320,000 figure was
7 based upon an escrow fund that Park Management had paid into that was specifically designated
8 for capital improvement expenditures for the Park, and which Park Management had committed
9 to pay for capital items relating to the Park. Park Management did not seek, and the Arbitration
10 Award did not grant, the rent increase because of the \$320,000 payment; the payment was
11 simply the basis of the amount requested.

12 The capital items in evidence at the Arbitration Hearing, were of two components, capital
13 items that had been incurred at the time of the Hearing, and those items that were prospective in
14 nature.

15 At the time of the Arbitration Hearing, Park Management had already incurred
16 \$62,145.55 in capital improvement expenses for the Park. These expenses are itemized in
17 Exhibit J, and the invoices for these expenses are set forth in Arbitration Exhibit K. Waterhouse
18 Management Vice President Ruben Garcia, who oversees the day-to-day operation and financial
19 management of the Park, testified that these expenses itemized in Exhibit J, backed up by the
20 invoices in Exhibit K, were all expenses actually incurred by Park Management for capital items
21 improving the Park, as set forth in the documents. (RT2 182:13-183:23; 188:18-189:14.)

22 Park Management also planned to incur significant capital expenditures for repaving the
23 roads and for work on the replacement of components of the common area electrical system.
24 Bids and proposals for both types of work were received into evidence. (Exhibit M.) Dr. St.
25 John testified that the road work and electrical system work proposed by Park Management is
26 properly treated as a capital expense under the Ordinance. (RT1 130:9-17.)

27 Waterhouse Management President Ken Waterhouse confirmed that the \$320,000 was for
28 funds that he caused to be paid into an escrow account, and that it was funds solely dedicated for

1 capital improvements for the Park. (Exhibit K; RT2 145:15-147:1.) He confirmed that these
2 funds would all in fact be spent on capital improvements to the Park. (RT2 166:7-22.) He
3 further confirmed that the amounts to be spent on capital improvements to the Park will certainly
4 exceed \$320,000. (RT2 179:1-13.) He pointed out that one of the challenges in determining the
5 exact scope of work to be done was Park Management's ongoing dialogue with the County and
6 their ever-shifting positions regarding work that they claimed needed to be done at the Park.
7 (RT2 166:11-22.) Regardless, he confirmed with certainty that work far in excess of \$320,000
8 had to, and would, be done at the Park: "We know the dollars will be spent." (*Id.*)

9 The Ordinance provides for capital improvements and capital expenses as follows:
10 "'Capital Improvement' is any addition or betterment made to a mobilehome park which consists
11 of more than mere repairs or replacement of existing facilities or improvements and which has a
12 useful life of five or more years." (S.B. County Code, ch. 11A, § 11A-2(a).) "'Capital expense'
13 is a repair or replacement of existing facilities or improvements which has an expected life of
14 more than one year." (*Id.*, § 11A-2(b).) "The cost of capital improvements incurred or proposed,
15 including reasonable financing costs, may be passed on to homeowners at the time of an annual
16 increase" (S.B. County Code, ch. 11A, §11A-6(a)(1).) "If management fails to begin
17 construction of a capital improvement within six months after approval of the cost of the capital
18 improvement, then management shall discontinue the increase for the capital improvement and
19 shall credit any amounts collected to each homeowner." (*Id.*, § 11A-6(a)(5).) Similar provisions
20 apply for capital expenses. (*Id.* § 11A-6(b).) Accordingly, the Ordinance permits the pass
21 through of the costs of capital improvements and expenses, whether those costs have already
22 been incurred or are merely proposed.

23 The homeowners conceded that the Ordinance allows Park Management to notice a rent
24 increase prospectively for expenses not yet incurred. Their expert, Dr. Baar, agreed:

25 Q. The ordinance -- I think, we can agree that
26 the ordinance does allow the park owner to recover
prospectively, right?

27 A. Yes.

28 Q. And then do the work within six months?

1 A. Right.

2 Q. You've seen that part of the ordinance,
3 correct?

4 A. Correct.

5 (RT1: 166:1-9.)

6 The Court found that the evidence of proposed prospective capital improvements and
7 capital expenses was not sufficiently “definite and certain” and that the Arbitration Award
8 contained no findings that any proposal was definite and certain so that the finding “to include
9 collection of \$320,000 was not supported by substantial evidence.” (Decision, p. 26.) However,
10 the Court did find that there was evidence of \$62,145.55 of specific items of costs incurred by
11 Park Management for capital improvements and expenses (Exhibits J and K), but the Arbitration
12 Award did not make specific findings allowing these expenses, and the Board improperly
13 overturned this award and in doing so “the Board has not proceeded in the manner required by
14 law.” (Decision, pp. 26-27.) The Court reversed the Board’s order disallowing Award No. 5 and
15 remanded it for appropriate action and appropriate findings, and the Board has remanded the
16 matter back to the Arbitrator.

17 At the remand Arbitration hearing, these findings can easily be made that the \$62,145.55
18 of specific items of costs incurred by Park Management for capital improvements and expenses
19 (Exhibits J and K) are for capital items provided for under the Ordinance, based upon the
20 evidence in the record, cited above. In addition, Park Management representatives will be
21 available for any further evidence requested by the Arbitrator.

22 As to the prospective matters introduced at the Arbitration Hearing, those items have
23 already been performed. Although the Homeowners’ precipitous appeal of the Arbitration
24 Award a few weeks after its issuance prevented it from becoming final, Park Management
25 elected to go forward with the work based upon the ruling, rather than delay for the Award to
26 become final.

27 Both the common area electrical work and the roadwork have been performed. Park
28 Management is prepared to proffer at the Remand Arbitration Hearing, documents, including

1 invoices, showing that the work that was performed and the amount of costs actually incurred by
2 Park Management, exceeding \$320,000. Park Management would propose that evidence be
3 taken at the Remand Arbitration on this narrow issue, as it would be in accordance with the
4 evidence originally presented at the Arbitration Hearing and in accordance with the terms of the
5 Arbitration Award.

6 It should be noted that the Arbitrator has the discretion to elect to hear new evidence at
7 the remand hearing. Nothing about the Court Order or the Rules would preclude the Arbitrator
8 from hearing additional evidence on this point. The law is clear that the Arbitrator can elect to
9 hear additional evidence. Where further administrative proceedings are warranted, they may
10 involve the admission of new evidence.” (*Voices of the Wetlands v. California State Water*
11 *Resources Control Bd. (Duke Energy Moss Landing, LLC)* (2007) 157 Cal.App.4th 1268, 1333-
12 1334, and cases cited therein, affirmed in *Voices of Wetlands v. State Water Resources Control*
13 *Bd.* (2011) 52 Cal.4th 499.) The Supreme Court made clear that when the trial court remands a
14 matter back to an administrative agency when the agency’s findings were insufficient to support
15 the agency’s decision, the agency is free to elect to admit new evidence to allow it to fill an
16 evidentiary gap:

17 No reason appears to construe section 1094.5 to preclude such new evidence when the
18 court, having found insufficient record support for the agency's decision, remands for
19 reconsideration of that matter. But once the court has reviewed the
20 administrative record, and has found it wanting, section 1094.5 does not preclude the
21 court from remanding for the agency's reconsideration in appropriate proceedings that
22 allow the agency to fill the evidentiary gap.

21 (*Id.*, 52 Cal.4th 499, 535.)

23 **Award # 6. Professional Fees.**

24 Award No. 6 is that the homeowners are to pay \$25,000 for professional fees associated
25 with the capital improvements.

26 The Arbitration Award states as follows:

27 “The professional fees spent on capital improvement item should not be treated as a one
28 shot expense, but rather amortized (Ex. K & Q). After considering the objections raised
by the Homeowners, a good portion of the line items submitted by the Park Owner do not

1 appear to be relevant to any capital improvements, therefore, a reduction of \$25,000 from
2 the original request is warranted. The remaining \$25,000 is to be charged to the
Homeowners.”

3 The Court found that the Ordinance clearly allowed Park Management to recover for
4 professional fees related to a capital item: “where professional fees may be correctly categorized
5 as a cost of either a capital improvement or capital expense, such fees may be passed on.”
6 (Decision, pp. 27-28.) The Court reversed the County Board of Supervisors’ Order reversing the
7 Arbitration Award No. 6, and remanded back to the Arbitrator for further findings as which
8 professional fees are awarded based upon being related to capital expenses.

9 Park Management sought to recover for \$50,973 in legal fees incurred in December, 2010
10 for legal matters related to the operation of the Park. This work is itemized in detail in the
11 statement in evidence as Exhibit Q, and the areas of work are summarized in single page exhibit
12 in Exhibit K. The billing statement was reviewed by Mr. Waterhouse and the fees were incurred
13 and paid by Park Management as a normal and legitimate operating expense. (RT2 145: 6-14.)

14 The Arbitration Award was a reasonable award as stated. The itemized statement
15 (Exhibit Q) clearly has entries supporting \$25,000 in legal time spent on issues related to the
16 capital items of the Park. If requested to do so by the Arbitrator, Park Management could
17 identify capital items that would easily justify the \$25,000 in matters relating to the capital items
18 by the Park for inclusion in further findings.

19 Because the matter was remanded back to the Arbitrator for further review and findings,
20 Park Management will clarify that it is entitled to recover **all** such professional fees incurred by
21 Park Management, **both** as fees related to capital expenses **and** as fees incurred as ordinary and
22 necessary operating expenses in operating the mobilehome park. The evidence in these
23 proceedings would support awarding the full \$50,973 sought by Park Management, not just for
24 legal fees related to capital expenses, but also for matters constituting ordinary and necessary
25 operating expenses, provided for in the Ordinance.

26 As noted by the Court, Park Management is entitled to recover its costs for legal services
27 in connection with **capital expenses and improvements** under section § Section 11A-6,
28 subdivisions (a)(1) and (b)(1) of the Ordinance. In addition, Park Management is also entitled to

1 recover its costs for legal services incurred in the operation of the Park as an **ordinary and**
2 **necessary operating expense** under section § 11A-5(f)(1) of the Ordinance, as found by the
3 Court in allowing Park Management to recover its professional fees incurred in these rent control
4 proceedings (see discussion under Award #11).

5 Although much of the work related to capital improvements and expenses, the work also
6 dealt with matters dealing with the operation of the Park generally, such as dealing with the
7 landowner, governmental agencies, and homeowners with respect to the Park operations, as may
8 be seen from a review of the detailed billing statement (Exhibit Q) and the one page summary of
9 work (included in Exhibit K).

10 Dr. St. John noted that Park Management was entitled to recover the full \$50,973 in legal
11 fees, either through a permanent rent increase by including it the MNOI analysis, or through a
12 temporary rent increase as proposed.

13 Q. With respect to professional
14 fees, such as legal fees and for professional
15 consultants, is it related to dealings with regulatory
16 agencies and the like, is that something that's
17 typically an expense that's included in an expense
18 calculation, either through MNOI or through another kind
19 of amortized pass-through?

20 A. In my experience it is.

21 (RT1 135:1-8.)

22 Dr. St. John further commented on the subject:

23 That's the judgment that
24 was made because a \$51,000 legal expense is not the kind
25 of expense that occurs every single year, so if it was
26 to be left in the budget, it would make a big difference
27 in the outcome.

28 If on the other hand you take it out here,
delete it completely from the MNOI, it means that the
rent increase from the MNOI is significantly lower than
it would otherwise be. But if that amount is
appropriately amortized and allowed over some number of
years at some rate of interest, then that is an
alternative way to account for these particular legal
fees and, in my judgment, it's a way that is more fair.

... ..

1It's not an element in the MNOI.
2 It is included elsewhere, because this was an amount
3 that truly was paid in connection with expenses and has
4 to be accounted for one way or another.

(RT1 95:3-15, 96:1-4.)

5 The proposition that the Arbitrator may properly consider legal fees incurred by Park
6 Management as an **ordinary and necessary operating expense** under section § 11A-5(f)(1) of
7 the Ordinance, as well as a capital item to the extent that the fees deal with **capital expenses and**
8 **improvements** under section § Section 11A-6, subdivisions (a)(1) and (b)(1) of the Ordinance, is
9 apparent under the terms of the Ordinance, the Court's Decision, and existing law. Indeed, the
10 Court and the Homeowners expressly acknowledged that Park Management was entitled to
11 recover its legal fees incurred as an operating expense for the purpose of these rent control
12 proceedings (see discussion regarding Award No. 11, below). In *Carson Harbor Village, Ltd. v.*
13 *City of Carson Mobilehome Park Rental Review Board* (1999) 70 Cal.App.4th 281, 294, cited by
14 the Court, the Court of Appeal noted that attorneys fees related to mobilehome park operations,
15 such as determining compliance with regulations affecting the Park and dealing with regulatory
16 agencies, as well as for such matters as evictions and responding to lawsuits by homeowners,
17 were properly recoverable through a rent increase. The Court of Appeal also found that these
18 fees could also be treated as a temporary rent increase. In the case before the Arbitrator, several
19 matters were proposed and upheld by the Court to be treated as amortized, temporary expenses,
20 and this treatment is discussed in a separate section herein, *infra*.

21 22 **Award # 7: Architecture and Engineering Fees**

23 Award No. 7 is that the homeowners are to pay \$40,000 for fees incurred by Park
24 Management in purchasing plans and drawings and permits from the prior operator, in order to
25 proceed with capital improvements of the Park.

26 The Court found as follows: "The same analysis [as with Award No. 6] applies to Award
27 No. 7 for architecture and engineering (A&E) fees. As with other professional fees, the
28 Ordinance provides for passing on such fees to the extent such fees are properly categorized as

1 “costs” of capital improvements and expenses.

2 The Arbitration Award states as follows:

3 “Waterhouse testified he purchased certain plans to facilitate evaluating and then moving
4 forward on certain capital improvements for the Park. Given the age on some of the supporting
5 documentation, some of this work appears stale. Although the Park Owner represented that the
6 County will work with them with such things as expired permits, some of this work may have
7 little or no value as of this date. A more reasonable amount to be charged would [be] \$40k.”

8 The components of the A&E fees are itemized in the spreadsheet in evidence, Exhibit J.
9 The invoices supporting these individual entries are in evidence in Exhibit L, and these invoices
10 summarize the work or other basis for the expense. These include costs for the preparation of
11 plans and drawings of the entire Park. They also include costs paid to the County for permits for
12 work at the Park.

13 Mr. Waterhouse testified that these items were purchased from the prior operator, and
14 included a number of plans and CAD drawings for the entire Park, and were and remained
15 valuable to Park Management as the current operator in moving forward with capital
16 improvements for the Park. (RT2 144:6-145:5.) He also testified that these items include, in
17 addition to the plans and drawings prepared by the Engineering Firm Penfield and Smith, fees
18 paid to the County of Santa Barbara Planning and Development for permits for work related to
19 various aspects of the Park. (166:23-167:3.) There was also discussion at the hearing between
20 the Arbitrator and Park Management that although these permits had expired, the County had
21 indicated that they will work with Park Management and extend the timelines for the permits so
22 that there was perceived value in the permits. (RT2 179:18-180:11; 181:8-17.)

23 The fact of the matter is that the County did in fact waive further permit fees for work
24 that was ultimately performed at the Park, and the invoices for the expenses actually incurred for
25 the work that Park Management proposes to submit do not include any additional permit fees.
26 Regardless, the Arbitrator’s findings with respect to this item were reasonable and well taken.
27 Plans and diagrams for the entire Park, particularly those which are computerized CAD
28 drawings, are obviously something of enduring value to the Park operator on an ongoing basis

1 far into the future for a variety of different purposes related to the improvements to and
2 operations of the Park. The \$40,000 awarded reflects compensation for a large portion of the
3 expense of the Plans and drawings. Limiting the award to compensation for the expense of these
4 drawings is a reasonable resolution.

5
6 **Award No. 8 Property Taxes**

7 Award No. 8 is that the “Homeowners are to pay \$130,531 for the supplemental tax
8 increase payments already paid by the Park Owner.”

9 The Court found that the “increases in property taxes” were properly considered by the
10 Arbitrator as a basis for a rent increase under the Ordinance, section 11A-5(f)(1), and that the
11 Board’s purported reading of the Ordinance to exclude supplemental property taxes was in
12 violation of the clear law on the subject. (Decision pp. 22-23.) The Court further found that the
13 Arbitrator properly weighed the evidence and followed Dr. St. John’s opinion that the
14 supplemental property taxes should properly be charged to the Homeowners in the form of a rent
15 increase. (*Id.*, pp. 23-24.) The Court upheld the Arbitration Award:

16 There is substantial evidence to support the arbitrator’s decision. Consequently, under the
17 standard of review to be used by the Board under the Hearing Rules, the arbitrator did not
18 abuse his discretion by making a determination supported by substantial evidence,
19 notwithstanding the Board’s view that it would have reached a different result reweighing
20 the evidence. Thus, the Board has not proceeded in the manner required by law by
21 reversing Award No. 8 on the basis of either an erroneous interpretation of the Ordinance
22 or a reweighing of the evidence not permitted by Hearing Rules, rule 23(a).”

23 (Decision, p. 24.)

24 On this basis, the Court ordered that the Board vacate its order reversing Arbitration
25 Award No. 8. The Court did **not** order the matter reconsidered for further findings or any other
26 action.

27 County Counsel presented the following Findings to the Board for adoption at the
28 Board’s remand hearing, which it prepared in adherence to the Court’s Order:

The Arbitrator included findings of fact and was supported by substantial evidence. The
Board of Supervisors determines that the Arbitrator did not abuse his discretion and
affirms Award 8.

1 Instead of following the Court's Order and their own Counsel, the Board made the
2 following revised findings, improperly finding that the "Arbitrator abused his discretion," despite
3 the fact that the Court found that the Arbitrator's award was proper, and remanded the matter
4 back to the Arbitrator:

5 The Arbitrator did not make findings to bridge the analytic gap between the evidence
6 presented and the ultimate decision made by the Arbitrator. The Arbitrator did not
7 identify whether the supplemental tax increase was categorized as an increase in
8 operating costs, cost of a capital improvement, or capital expense so as to be passed
9 through to the homeowners; thus, the Board of Supervisors determines that the Arbitrator
abused his discretion. The Board of Supervisors remands this Award to the Arbitrator to
make findings of fact on which the Arbitrator's decision is based that are supported by a
preponderance of the evidence.

10 The Board's reference to "capital improvement, or capital expense" is non-sensical. The
11 increased property taxes are clearly an operating expense properly considered by the Arbitrator
12 as the basis for a rent increase under the express terms of the Ordinance, as already held by the
13 Court. To the extent that the Board's reference to capital items meant to refer to the treatment of
14 the supplemental property taxes as an amortized temporary increase, similar to how a capital
15 item is treated, that treatment has been expressly found by the Court to be proper, and the
16 homeowners conceded that treatment was proper, as discussed herein in the section on temporary
17 increases, *infra*.

18 Clearly under the express terms of the Ordinance, increased property taxes are a basis for
19 a rent increase, as section 11A-5(f)(1) of the ordinance specifically provides that "increases in
20 property taxes" are the type of increased operating expense that the Arbitrator "shall consider" in
21 determining a rent increase.

22 The Homeowners' own consultant conceded that property taxes are a proper basis for a
23 rent increase in any rent controlled jurisdiction, and did not dispute that a property tax increase is
24 properly a basis for a rent increase under the Ordinance. (See, e.g. RT1 221:5-8.)

25 There is no dispute that Park Management incurred the expense of the supplemental
26 property taxes. Dr. St. John testified that Park Management did incur some \$130,000 in property
27 tax increases that were not recovered by the permanent rent increase, and that the most
28

1 reasonable means by which to recover them was through the temporary increase, amortized as he
2 prepared it.

3 A. It was. And just to state it again for
4 clarity, this \$130,531 tax increase is the amount that
5 the park owner really did pay, I mean that's actual
6 out-of-pocket, \$130,000 and change without being
7 compensated at all, whereas under the system we're using
8 here, park owners deserve compensation for cost
9 increases.

10 Q. And actually, it's fair to say that that is --
11 even more specifically to say, that's the amount of
12 increase that the park owner is out-of-pocket. In fact,
13 the park owner is out-of-pocket more than that in the
14 total property taxes, that \$130,000 is just the increase
15 number for the period of time in question?

16 A. Yes. I mean, I would only say the rest of the
17 property tax amount was covered by the income, by the
18 space rents, but this amount is not covered by space
19 rents and should be.

20 (RT1 77:19-78:10.)

21 The Homeowners never disputed at the Arbitration hearing that these supplemental
22 property taxes could not be recovered through a temporary award, amortized for a limited period
23 of time. This methodology, undisputed by the Homeowners, was upheld by the Court.

24 The only objection by the Homeowners was as to the “regulatory lag” or the delay from
25 the time that the Park Management incurred the expense (which was long after the transfer date)
26 to the time that it was the subject of the rent increase. This “regulatory lag” objection was
27 dispelled by Dr. St. John. The Court found that the issue was properly decided by the Arbitrator.

28 The Court noted that the testimony of Dr. St. John supported the Arbitration Award:

“[T]he County isn’t quick, usually, in changing the tax rates, they wait a while
and then they eventually change the taxes and then they send our supplemental
tax bills. ... Then the question is, how long will it be before the park owner begins
being compensated for that tax increase? And the answer is, until May 2011. The
increases that were imposed, effective May 1, 2011, covered that amount, so from
then forward the park owner is whole, but for the period from August 2008 to
May 2011 the park owner was obligated to pay these amounts but the residents
were not obligated – before this proceeding, or otherwise, wouldn’t be obligated
to pay it. But in my view, these are amounts that residents, in the end, have to pay.
This is an increase, it’s a legitimate increase, it’s government imposed, it’s not

1 within the park owner's discretion, it is an extra cost."

2 St. John continued: "So I think [homeowners' counsel] might tell us ... you
3 should have petitioned right away. Well, okay, but that would imply that we have
4 to petition kind of for every year, every single time an increase comes up we're
5 going to have to petition, petition, petition, and these petition processes are quite
6 time consuming, if you don't know. And so to my mind, it simply does not make
7 good sense to, in effect, command the park owners do an entire NOI fair return
8 petition every year. That doesn't make good sense, and the way to not do that is to
allow park owners to do this kind of a fair return hearing periodically, when
appropriate, when it feels appropriate, and then to be compensated for – to be
compensated after the arbitrator has decided on the justification for the increases
in question, to be compensated for the past."

9 (Decision, pp. 23-24.)

10 There is nothing properly before these remand proceedings that would give rise to any
11 basis for any change to Arbitration Award No. 8.

12
13 **Award # 11 Expert and Legal Fees Incurred In Rent Control Proceedings**

14 Award No. 11 is that the "Homeowners are to pay \$110,000 for legal fees associated with
15 the challenge to the rent increase." The Arbitration Award states as follows: "After reviewing
16 the itemizations submitted by the Park Owner for expert and legal services expended in this
17 matter (Ex. R & S) and the Homeowners' response, a reasonable amount to be paid by the
18 [latter] would be \$110,000."

19 The Court found that these fees could properly be charged to the homeowners under the
20 terms of the Ordinance, and that the Arbitration Award properly awarded the fees as part of the
21 rent increase. The Court noted that the Homeowners conceded that these fees could properly be
22 the basis for a rent increase. The Court further found that the Arbitrator proceeded properly,
23 allowing Park Management to submit an itemized statement of fees, and the Homeowners to
24 respond, and making an award based upon these submissions. "This evidence constitutes
25 substantial evidence to support the factual determination. Thus, the arbitrator did not abuse his
26 discretion in making this award." (Decision, p. 29.)

27 As noted by the Court, there was no disagreement that the Park Management is entitled to
28 recover its professional fees incurred in these proceedings, nor the treatment of it in amortizing

1 these costs over seven years. The Court quoted the following admission in this regard by Dr.
2 Baar:

3 “[Q.] Now, with respect to the anticipated professional fees relating to the rent
4 increase, as I understand your position there, you don’t necessarily quarrel with
5 the idea that the park owner is entitled to recover professional fees relating to the
6 rent increase?”

7 “A. That’s right.

8 “Q. Nor do you argue with the methodology employed here, which is to do it as a
9 temporary as opposed to the base for a permanent rent increase?”

10 “A. Right, that’s correct. [¶] ... [¶]

11 “Q. ... So, your sole quarrel is with the number?”

12 “A. That’s correct.”

13 (Decision, p.29.)

14 The Court concluded that “Baar’s testimony is substantial evidence that legal fees, if
15 reasonable in amount, are appropriately included as a basis for a rent increase as an ordinary and
16 necessary operating expense.”

17 The Court found that the Board of Supervisors acted improperly: “The Board did not
18 proceed in the manner required by law by reversing Award No. 11 on the grounds that these
19 legal fees were not to be considered by the arbitrator under the terms of the Ordinance.”
20 (Decision, pp. 29-31.) The Court ordered that the Board vacate its order reversing Arbitration
21 Award 11.

22 The Court did **not** order the matter to be remanded for further consideration by the
23 Arbitrator; indeed, it made clear that there was nothing further to consider. County Counsel
24 understood this fact. The findings that County Counsel prepared for the Board, which it
25 expressly stated at the Board’s remand hearing, were carefully drafted to be consistent with the
26 Court Ruling.

27 County Counsel presented the following Findings to the Board for adoption, which it
28 prepared in adherence to the Court’s order:

The Arbitrator included findings of fact and was supported by substantial
evidence. The Board of Supervisors determines that the Arbitrator did not abuse

1 his discretion and affirms Award 11.

2 Instead of following the Court's Order and their own Counsel, the Board made the
3 following revised findings, improperly finding that the "Arbitrator abused his discretion," despite
4 the fact that the Court found that the Arbitrator's Award was proper, and remanding the matter
5 back to the Arbitrator:

6 The Arbitrator did not make findings to bridge the analytic gap between the
7 evidence presented and the ultimate decision made by the Arbitrator. Findings for
8 this Award are especially important because legal fees are not expressly identified
9 in the Ordinance as an allowable operating expense. The Arbitrator did not make
10 findings regarding the final calculation of the legal fees awarded nor did the
11 Arbitrator identify whether the legal fees were categorized as an increase in
12 operating costs, cost of a capital improvement, or capital expense so as to be
13 passed through to the homeowners. Thus, the Board of Supervisors determines
14 that the Arbitrator abused his discretion. The Board of Supervisors remands this
15 Award to the Arbitrator to make findings of fact on which the Arbitrator's
16 decision is based that are supported by a preponderance of the evidence.

17 Pursuant to the Court's Order, Arbitration Award No. 11, awarding Park Management a
18 rent increase based upon \$110,000 in professional fees incurred through the date of the
19 application made by Park Management during the initial arbitration, is not at issue in this
20 Remand Arbitration proceeding. However, as discussed in the section below, the professional
21 fees incurred by Park Management since the initial Arbitration Hearing through these Remand
22 proceedings is properly before the Arbitrator.

23 **The Arbitrator Should Determine and Award Professional Fees Incurred Through Remand**

24 The Homeowners have expressly agreed that Park Management is entitled to recover its
25 fees and expenses incurred in the writ proceedings and through remand, and that these fees and
26 expenses should be determined by the Arbitrator upon remand.

27 The Homeowners' expert, Dr. Baar testified to this upon the homeowners' attorney's
28 questioning:

Q.My questions to you are, when an
administrative hearing decision such as this is appealed
to the courts, do the courts typically, if they find
something wrong with that decision, remand it back to
the administrative body for further or additional

1 hearings?

2 A. Yes, that's the standard procedure.

3 Q. Do you have any knowledge as to whether or
4 not, as part of that remand process, and **at that time of**
5 **the remand, that the park owner would then be able to**
6 **claim additional expenses as they're then being**
7 **incurred?**

8 A. You can say that would be an additional
9 clarification to make. In these cases, park owner
10 claims expenses as to they've incurred as legal expenses
11 for the application, and then **if it goes to court and**
12 **gets remanded back, then a second, additional claim is**
13 **made at that time.**

14 Q. So on remand, the park owner is able to
15 calculate the additional expenses that are now being
16 incurred, because of the litigation, correct, the
17 appeal?

18 A. Right.

19 Q. And typically, the litigation in this case
20 would be a writ of mandamus that would name the City [sic-County] as
21 a party defendant, correct?

22 A. Yes.

23 Q. Because the hearing officer is employed [sic-appointed] by the
24 City [sic-County] and --

25 A. Right.

26 Q. -- the residents are real parties in interest?

27 A. Right. See, the park owner, their expense to
28 date was \$35,000. **If they end up going to court and**
prevailing in a writ of mandate action, they are not
boxed in, they can come back again.

(RT1 243:23-245:7, emphases added.)

Accordingly, Park Management respectfully submits that the Arbitrator should employ the same procedure that it employed at the initial arbitration proceeding. Following the Remand Hearing, Park Management can submit an application for professional fees supported by a detailed summary of professional fees incurred to date, the homeowners can have a reasonable

1 opportunity to respond, Park Management would have any opportunity to reply, and the matter
2 would then be submitted to the Arbitrator for determination of an appropriate award.

3
4 **Amortization of Professional Expenses**

5 To the degree that the homeowners are now objecting to the treatment of professional
6 fees (and the supplemental property taxes although they are not properly involved in these
7 remand proceedings) as an amortized temporary rent increase, similar to the treatment of a
8 capital expense, the homeowners ignore that this treatment has already been adjudicated to be
9 proper and that the homeowners have already conceded that this treatment is appropriate.

10 The homeowners repeatedly throughout the Arbitration Hearings conceded that the
11 treatment of professional fees as an amortized temporary expense, or as a "pass through," in the
12 same manner in which a capital item is treated, is the appropriate treatment for the professional
13 fees at issue in these proceedings.

14 The Homeowners' attorney expressly conceded:

15 And finally, the anticipated professional fees
16 relating to the rent increase itself of \$125,000, the
17 homeowners do not disagree that it is beneficial for the
18 homeowners to have any such fees passed through so that
19 they are paid once and then they drop off of the rent
statement. We don't disagree with those remarks that
counsel made, so we are not here to say that those
should become operating expenses.

20 (RT1 41:1-8.)

21 Dr. St. John explained that the treatment of large essentially one-time or non-recurring
22 expenses, including professional expenses, could be analogized as a capital expense, not because
23 they are capital expenses, but because they are large essentially one-time expenses:

24 They're not capital improvements, that's true,
25 but they are large expenses that shouldn't be treated
26 simply as an annual -- an annual cost item.

27 (RT1 84:15-17.)

28 Dr. St. John gave a detailed explanation of the basis for amortizing the expenses, and
treating them as a temporary expense, and why it is favorable for the homeowners:

1 Q. Essentially, you made a distinction between
2 either treating it as a normal operating expense,
3 treating these expenses as a normal operating expense
4 for the purposes of calculating a permanent rent
5 increase under MNOI or pulling it out and making it
6 something separate, essentially. Is that correct, a
7 fair distinction?

8 A. It is a fair distinction.

9 Q. And let me ask before we go on with the
10 analysis, in your professional opinion is it appropriate
11 to include in some manner for the purposes of rent
12 increase under a mobile home rent control ordinance,
13 expenses of this type that a park operator would
14 incur -- for example, legal and appraiser and other
15 professional fees relating to property tax litigation
16 and to rent increase hearings and litigation?

17 A. Yeah, I do, I think that it's appropriate.

18 Q. So to start off as a basis, you think the type
19 of expense we're talking about is an appropriate expense
20 to be included in some way in a rent control space rent
21 increase?

22 A. Oh, completely, I do think it is. And
23 parenthetically, if I can just say, if these amounts
24 were to be included in the MNOI and if the arbitrator
25 were to ask me or Dr. Baar to compute it that way, it
26 would come out less advantageous to the residents.
27 So --

28 Q. And the reason for that would be because if
you included it as a MNOI analysis, or a similar type of
operating income analysis for the purposes of a
permanent increase of rent, you'd essentially have an
extraordinary expense being deemed to being a normal
operating expense and it would essentially be forever,
become a permanent rent increase that would go on
forever for the residents and would be based on what
arguably would be a fiction -- that is, that this
extraordinary expense is really a regular recurring
expense?

A. Correct.

Q. So what you're saying is by treating it this
way as a temporary increase, it's more fair to the
homeowners?

1 A. That's right.

2 (RT1 84:24-86:16.)

3 Dr. St. John went on to state:

4 Q. And in this case, however, the fees that we're
5 talking about are not part of the permanent MNOI
6 increase but they're a separate, temporary pass-through
7 item the way they're being calculated here, correct?

8 A. Yes, in the way they're being calculated here.
9 And the footnote I wanted to make a few minutes ago is
10 to say all of these items that we're speaking about
11 right now could either be handled through MNOI or in
12 this manner, and we're suggesting that they be handled
13 in this manner so they would be amortized to lessen the
14 impact on the residents. If these large, chunky amounts
15 were to be included in the MNOI either for this year or
16 for another year, it would have quite an impact and
17 might make the rent increase higher.

18 (RT2 22:2-15.)

19 Q. There was a fair amount of time spent
20 regarding your treatment of the items 5 and 6 on the
21 Exhibit C spreadsheet, the professional fees, and you
22 talked about analogizing them to, essentially, capital
23 improvements.

24 A. Yes.

25 Q. Is it the case that the only other way to
26 treat them would be to consider them under the MNOI
27 analysis?

28 A. Yes, as far as I know, the only other way
would be to put them into the MNOI equation.

Q. And would it be the case, in that case, it
would essentially result an inflated number for a
present year and lead to a permanent rent increase
that's essentially an inflated permanent rent increase,
if you treated it that way?

A. It might very well. Some of these expenses
span more than one year, so only a portion would be in
any particular year, when you do MNOI you only include
those years, so we'd have to see how it would come out.

1 But this way, the beauty of doing it this way is we take
2 all of the expenses in one category, no matter which
3 year they appear in, we sum them, we then amortize them,
4 and we then apply them.

5 Q. And is that pretty favorable for homeowners,
6 making it temporary versus permanent?

7 A. I believe it is.

8 (RT2 116:17-117:18.)

9 Dr. Baar unequivocally agreed with Dr. St. John that the professional fees incurred in
10 connection with the rent control proceedings are recoverable by Park Management, and are
11 properly amortized as a temporary expense.

12 Q. So it's your experience that an application
13 such as this may properly charge residents for the
14 professional fees generated in connection with this
15 application process, correct?

16 A. For the rent increase application, yes. Yes,
17 That's -- if you have a cost in getting a fair return,
18 that's a reasonable cost.

19 Q. And typically, it would be done, structurally
20 speaking, the way this exhibit shows, which is rather
21 than make it an operating cost and put it in the NOI
22 formula and roll it into the base rent that never goes
23 away, it's a separate line item pass-through, if you
24 will, correct?

25 A. Yes. And typically it's amortized because
26 it's not the kind of expense that occurs frequently.

27 Q. Okay. So you're in agreement with what
28 Dr. St. John was saying about how doing it this way is
better for the tenants?

A. Yes. Well, it's an amortized expense so it
should end.

Q. So you're in agreement with him on that?

A. Yes.

(RT1 174:8-175:4.)

1 The Court in its Decision affirmed the treatment of these various items as temporary rent
2 increases. Notably, in *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental*
3 *Review Board* (1999) 70 Cal.App.4th 281, 293, cited by the Court, the Court of Appeal held that
4 although the ordinance in question did not specifically provide for allocation of an operating
5 expense over an extended period of time, the hearing officer (in that case a rent control board)
6 had sufficient flexibility to do so and amortizing it to treat it as a temporary rent increase. That
7 was also the Court's ruling in this case in upholding the propriety of the temporary rent increases
8 in this case.

9
10 **Award # 12 Total Permanent and Temporary Increase**

11 The Court noted in its Decision: "the arbitrator's final calculation is again subject to
12 recalculation after further proceedings mandated by this disposition." (Decision, p. 30.)

13 The Board's order states as follows: "Because the total rent increase is based upon the
14 final adjustment of Awards 5, 6, 7, 8, and 11 which may be adjusted upon remand, the Board of
15 Supervisors also remands Award 12 to the Arbitrator for reconsideration in light of the
16 reconsideration of Awards 5, 6, 7, 8 and 11."

17 Just as the Arbitrator did in finalizing the Arbitration Award, after making rulings on the
18 matters at the Remand Arbitration, the Arbitrator should order that Dr. St. John submit an exhibit
19 containing the appropriate rent increase calculations consistent with the Arbitrator's final award.

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4. Continue to employ the amortization calculations set forth in the Arbitration Award, and order as follows:

5. Order that the homeowners are to pay the \$62,145.55 for capital improvements and expenses already in evidence, in Exhibits J and K.

6. Order that the homeowners are to pay \$50,973.00 for legal fees associated with capital improvements and as ordinary and necessary operating expenses of the Park, pursuant to Exhibit Q.

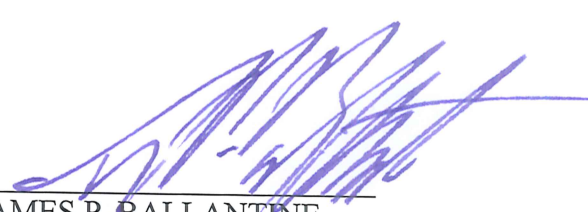
8. No action was directed by the Court. However, since the matter was remanded by the Board, order as before that the Homeowners are to pay \$130,531 for the supplemental tax increase payments already paid by Park Management.

In addition, order a briefing schedule by which the Park Management shall submit an application and billing statements for additional legal and professional fees incurred through the remand proceedings, and the homeowners shall have an opportunity to respond, and Park

1 Management an opportunity to reply, and make an award in accordance with the evidence
2 submitted.

3 12. Direct Park Management to prepare final calculations, in the form similar to the prior
4 calculations attached to the Arbitration Award, in accordance with the Arbitrator's rulings.
5

6 Dated: February 16, 2016
7

8 
9 JAMES P. BALLANTINE
10 Attorney for Petitioners
11 LAZY LANDING, LLC;
12 WATERHOUSE MANAGEMENT, INC.
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DECLARATION OF SERVICE BY E- MAIL

I, LISA M. PAIK, declare:

I am, and was at the time of the service hereinafter mentioned, over the age of 18 years and not a party to the within action. My business address is 329 East Anapamu Street, Santa Barbara, California 93101, and I am a resident of Santa Barbara County, California.

On February 16, 2016, I served the foregoing document described as REMAND HEARING BRIEF OF PARK MANAGEMENT on the interested parties in this action by e-mailing a true and correct copy thereof as follows:

Stephen Biersmith, Arbitrator
e-mail: sbiersmith@aol.com

Thomas H. Griffin, Esq.
e-mail: tommilaw2003@yahoo.com

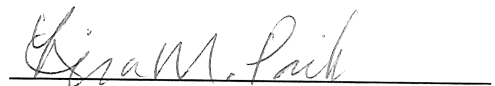
Jenna Richardson, Esq.
Deputy County Counsel
Office of County Counsel of Santa Barbara County
e-mail: jrichardson@co.santa-barbara.ca.us

Natalie Dimitrova
County of Santa Barbara
Real Property Division
e-mail: ndimitrova@countyofsb.org

I caused such document to be e-mailed to the addressees.

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

Executed on February 16, 2016, at Santa Barbara, California.



FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

NOV 17 2014

Darrel E. Parker, Executive Officer
BY Tom Chavez, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA**

**LAZY LANDING, LLC, a California
limited liability company, and
WATERHOUSE MANAGEMENT, INC.**

Petitioners and Plaintiffs

vs

**THE COUNTY OF SANTA BARBARA
BOARD OF SUPERVISORS OF THE
COUNTY OF SANTA BARBARA,
and Does 1 through 100, inclusive**

Respondent and Defendant

**DEBRA HAMRICK, as Representative of
homeowners of Nomad Village Mobile
Home Park, as Alleged in Petition Filed
under Santa Barbara County Mobilehome
Control Ordinance,**

Real Party in Interest

Case No. 1403359

**ORDER ON
WRIT OF MANDATE**

**Assigned to the
Honorable Thomas P. Anderle
Department 3**

This matter came on for hearing on June 17, 2014. Petitioners Lazy Landing, LLC, and Waterhouse Management, Inc. ("Petitioners") was represented by James P. Ballantine. Respondent the County of Santa Barbara Board of Supervisors of the County of Santa Barbara ("the Board") was represented by Jennifer Richardson. Real Party in Interest Debra Hamrick ("Hamrick") was represented by Thomas Griffin.

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**THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA**

TENTATIVE RULING

**Judge Thomas Anderle
Department 3 SB-Anacapa
1100 Anacapa Street P.O. Box 21107 Santa Barbara, CA 93121-1107**

CIVIL LAW & MOTION

Lazy Landing LLC et al vs County of Santa Barbara et al	
Case No:	1403359
Hearing Date:	Tue Jun 17, 2014 9:30
Nature of Proceedings: Motion Strike First Amended Complaint; Writ of Mandate; Demurrer First Amended Complaint; Motion Strike Amended Complaint	
(1) Motions to Strike "First Amended Complaint" of Real Party in Interest Debra Hamrick	
(2) Demurrer to First Amended Cross-Complaint of Real Party in Interest Debra Hamrick	
(3) Petition for Writ of Mandate	
Ruling:	
(1) For the reasons set forth herein, the motions to strike the "First Amended Complaint" of real party in interest Debra Hamrick are granted without leave to amend. Hamrick's "First Amended Complaint" is ordered stricken.	
(2) The demurrer to Hamrick's "First Amended Complaint" is ordered off calendar as moot.	
(3) As set forth herein, the petition for writ of administrative mandate is granted in part and denied in part. The court grants the petition as to respondent Board's determination as to arbitrator award numbers 4, 5, 6, 7, 8, 11, and 12, and otherwise denies the petition. Respondent Board will be	

EXHIBIT A

required to vacate its decision on these awards and, on reconsideration, exercise its discretion in the manner required by law.

Background:

This is a petition for writ of administrative mandate challenging the action of respondent County of Santa Barbara (County) by its Board of Supervisors (Board) affirming in part and reversing in part the decision of a rent-control arbitrator as to the request for certain increases in rent at a mobile home park.

I. Motions to Strike and Demurrer to Cross-Complaint

On August 13, 2012, petitioners and plaintiffs Lazy Landing, LLC, and Waterhouse Management, Inc., (collectively, petitioners) filed their original combined petition for writ of mandate and complaint for declaratory relief, inverse condemnation, and violation of constitutional rights. On November 7, 2012, petitioners filed their operative pleading, the amended and supplemental petition and complaint (FAC).

On February 1, 2013, the court entered an order on the stipulation of the parties bifurcating the issues presented by the FAC. The order provides that the petition for writ of mandate and request for declaratory relief would be heard first and that all matters relating to the non-writ causes of action “including responsive pleadings and discovery” should be stayed until the court’s final ruling on the writ causes of action. (Order, filed Feb. 1, 2013, ¶ 3.)

On January 14, 2014, the court entered an order on the stipulation of the parties setting a briefing schedule and setting hearing on the writ petition for April 29, 2014.

On February 20, 2014, Hamrick, without leave of court, filed a complaint (the Hamrick Complaint) in this action asserting four causes of action: (1) declaratory relief; (2) accounting, damages, penalties, and attorney fees; (3) injunctive relief; and (4) constructive trust. Hamrick seeks this relief in varying respects against County, petitioners, and third parties John R. Bell, Randy J. Bell and Robert M. Bell as owners of the land underlying the Park.

County moved to strike the Hamrick Complaint as not having been filed in conformance with law. Petitioners also moved to strike the Hamrick Complaint on the same grounds. In addition, County demurred to the Hamrick Complaint.

On April 21, 2014, Hamrick, again without leave of court, filed a first amended complaint (Hamrick FAC).

On April 22, 2014, the court granted the motions to strike the Hamrick Complaint on the grounds that the Hamrick Complaint was filed without leave of court. The filing of the Hamrick FAC was first brought to the court's attention at the hearing on these motions to strike.

County and petitioners separately move to strike the Hamrick FAC on the grounds that it is not timely and not filed with leave of court. County also demurs to the Hamrick FAC.

Hamrick opposes the motions to strike and the demurrer.

II. Petition for Writ of Mandate

Nomad Village Mobile Home Park (Park) is a 150-space mobile home park in which individual mobile homes are owned by homeowners who rent the spaces upon which the homes are located from the Park. (1 Administrative Record [AR] 253; 2 AR 305.) The Park was developed in the 1950s and was operated from 1958 to July 2008 by Nomad Village, Inc., which leased the land on which the Park is operated (the Property). (2 AR 305-506.) The Park is located at 4326 Calle Real, Santa Barbara, California, within the unincorporated area of Santa Barbara County and is subject to the Santa Barbara County rent control ordinance, Santa Barbara County Code, chapter 11A (the Ordinance). (See 3 AR 727.)

The fee interest in the Property is owned by the Bell Trust. (2 AR 306, 381.) The lease of the Property to Nomad Village, Inc., expired on July 31, 2008. (2 AR 403.) The Bell Trust entered into a new 34-year ground lease (the Ground Lease) for the Property, commencing on August 1, 2008, with petitioner Lazy Landing, LLC, (Lazy Landing) as lessee. (2 AR 381.) The Ground Lease provides for rent consisting of (1) a one-time payment of \$500,000 upon commencement of the lease term, (2) an amount equal to 20 percent of all collected rents from the Property, and (3) all real property taxes assessed against the Property and personal property taxes belonging to the lessee and located and used by the lessee in connection with the Property. (2 AR 381-328.)

Petitioner Waterhouse Management, Inc., (Management) now operates the Park for Lazy Landing. (2 AR 304.)

By written notice dated January 26, 2011, Management gave notice pursuant to the Ordinance of a monthly base rent increase effective May 1, 2011. (2 AR 347.) Management also gave written notice, dated January 26, 2011, of a monthly space rent increase effective May 1, 2011. (2 AR 349.) The particulars of the requested rent increases are discussed below.

Following the notice, Management and representatives of Park homeowners engaged in ultimately unsuccessful discussions to reach an agreement regarding the rent increases. On February 28, 2011,

Park homeowners filed a petition for arbitration contesting the proposed rent increase. (1 AR 77.)

An arbitration hearing was conducted on September 19 and 20, 2011, by arbitrator Stephen Biersmith. (3 AR 724-977; 4 AR 979-1187.) The arbitrator took testimony and heard argument; the parties submitted post-arbitration briefing. The arbitrator prepared and served a draft arbitration award (Draft Award), dated November 22, 2011. (Petitioners' Opening Brief [POB], exhibit C.) The Draft Award left certain calculations and elements for the parties to determine. After further input from the parties, the arbitrator issued his final award (Award), dated December 20, 2011. (1 AR 8-25.) The Award makes 14 particular findings and awards. (1 AR 22-23.)

By letter brief dated January 13, 2012, Park homeowners, with real party in interest Debra Hamrick as the homeowners' representative, petitioned for review of the Award. (1 AR 27-56.) The homeowners' petition challenges eight of the findings and awards. (1 AR 27-37.) On January 17, 2012, Management filed its petition challenging two of the findings and awards. (1 AR 58-74.)

On May 1, 2012, the Board set a hearing on the petitions for review for May 15, 2012. (1 AR 1-6.) Prior to the Board's hearing on May 15, the Board, and certain Supervisors, received emailed comments from the public which were not contemporaneously provided to Management. (5 AR 1349-1429.) At the May 15 hearing, Supervisor Wolf stated that the day prior to the hearing she met with Ann Anderson, Martha Hassenklug, Jim Richards and Hamrick. (5 AR 1437, 1444.)

At the May 15 hearing, the Board listened to public comment and argument from petitioners and real party. (5 AR 1433-1499.) At the conclusion of the hearing, the Board voted to affirm the Award as to two findings and awards, to reverse the decision in whole as to six findings and awards, and to remand to the arbitrator for reconsideration as to two findings and awards. (5 AR 1535.) The particulars of the Board's action are discussed below.

A hearing was held by the arbitrator on remand on July 13, 2012. (POB, exhibit E, p. 2.) The arbitrator issued his award on remand (Remand Award) on August 6. (POB, exhibit E.)

On August 13, 2012, petitioners filed their original petition in this matter. On November 7, 2012, petitioners filed the operative pleading in this matter, their amended and supplemental verified petition and complaint (FAC). The FAC asserts four causes of action: (1) writ of mandate; (2) declaratory relief; (3) inverse condemnation; and (4) violation of constitutional rights. In the FAC, petitioners seek to set aside the May 15, 2011, decision of the Board of Supervisors reversing and remanding the original award of the arbitrator and to obtain a judicial declaration to that effect; petitioners also seek a declaration that the act of the Board of Supervisors is an unconstitutional taking and compensation based on that taking.

On February 1, 2013, the court entered an order on the stipulation of the parties bifurcating the issues presented by the FAC. The order provides that the petition for writ of mandate and request

for declaratory relief would be heard first and that all matters relating to the non-writ causes of action “including responsive pleadings and discovery” should be stayed until the court’s final ruling on the writ causes of action. (Order, filed Feb. 1, 2013, ¶ 3.)

Now before the court is the hearing on the petition for writ of mandate.

Analysis:

I. Hamrick FAC

“The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: [¶] ... [¶] (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.” (Code Civ. Proc., § 436, subd. (b).) “The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice.” (Code Civ. Proc., § 437, subd. (a).)

In support of these motions and demurrer, petitioners request that the court take judicial notice of: (exhibit 1) its written order of May 13, 2014, granting petitioners’ motion to strike the Hamrick Complaint; (exhibit 2) the transcript of proceedings of the court in this action on April 22, 2014; and (exhibit 3) the transcript of proceedings of the court in this action on April 29, 2014. These requests for judicial notice are granted. (Evid. Code, § 452, subd. (d)(1).)

Hamrick repeats her argument from the April 22 hearing that her “complaint” may be filed at any time. These arguments were fully addressed in the court’s ruling of April 22; the court incorporates its ruling of April 22 herein by this reference. To briefly summarize, Hamrick asserts that the requirements for filing a compulsory cross-complaint set forth in Code of Civil Procedure section 426.30 does not apply because section 426.30 does not apply to special proceedings (Code Civ. Proc., § 426.60, subd. (a)) and a petition for writ of mandate is a special proceeding. While Hamrick is correct that the compulsory cross-complaint statutes do not apply to writ petitions, this reasoning is irrelevant to the only issue presented by the motion to strike, namely, whether the Hamrick Complaint, and now the Hamrick FAC, may be filed without leave of court.

Notwithstanding its title, the Hamrick FAC is in substance a complaint in intervention. (See Code Civ. Proc., § 387, subd. (a).) A complaint in intervention generally requires leave of court for filing. (*Ibid.*) A complaint in intervention is in legal effect a cross-complaint. (*Turner v. Citizens National Bank* (1962) 206 Cal.App.2d 193, 202.) Permissive cross-complaints, to be filed without leave of court, must be filed with the answer and prior to the setting of trial. (Code Civ. Proc., § 428.50, subds. (a), (b).)

Hamrick had not requested leave to file the Hamrick Complaint and the court had not granted Hamrick leave to file the Hamrick Complaint. The filing of the Hamrick Complaint was untimely

and required leave of court for its filing. (Code Civ. Proc., § 428.50, subds. (a), (c).) Because leave of court was required and had not been obtained, the court ordered the Hamrick Complaint stricken. Before this order was entered, however, on April 21, Hamrick filed the Hamrick FAC.

“Any pleading may be amended once by the party of course, and without costs, at any time before the answer or demurrer is filed, or after demurrer and before the trial of the issue of law thereon, by filing the same as amended and serving a copy on the adverse party, and the time in which the adverse party must respond thereto shall be computed from the date of notice of the amendment.” (Code Civ. Proc., § 472.)

Although section 472 permits the filing of an amended pleading, section 472 does not authorize the filing of an amended pleading where the original pleading was not authorized. “But while the section is to be construed liberally as conferring an equal right to amend upon both parties as to all pleadings, still its terms are not to be enlarged by such construction so as to confer greater rights upon one in that respect than are accorded to the other” (*Tingley v. Times Mirror Co.* (1907) 151 Cal. 1, 9-10.) A party cannot avoid obtaining the leave to amend as required by section 428.50 by filing, without leave, a first amended cross-complaint immediately after filing, without leave, an untimely original cross-complaint.

The Hamrick FAC was not filed in conformity with the laws of this state for the same reason that the Hamrick Complaint was not filed in conformity with the laws of this state. The motions to strike will be granted and the Hamrick FAC will be ordered stricken. Hamrick shall not file any further complaints or cross-complaints in this action without first obtaining leave of court to do so.

II. Petition for Writ of Mandate

(1) Procedural Objections to Writ Petition

In her opposition, Hamrick asserts that there is a lack of subject matter jurisdiction, that petitioner’s original petition was not timely served and that the FAC was not timely filed.

(A) Subject Matter Jurisdiction

Hamrick argues that “the court lacks jurisdiction to provide petitioners with any relief in furtherance of their unlawful and criminal acts” based upon Hamrick’s contention that petitioners do not have a legal permit to operate a mobile home park. (Hamrick Opposition, at p. 6.) Absent a valid permit, Hamrick argues that petitioners do not have standing and hence the court does not have subject matter jurisdiction.

“As a general rule, a party must be ‘beneficially interested’ to seek a writ of mandate. [Citation.] ‘The requirement that a petitioner be “beneficially interested” has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large. [Citations.]’ (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165.)

Petitioners here were parties to the administrative proceedings below as the Park operators and managers. “[E]lemental principles of justice require that parties to the administrative proceeding be permitted to retain their status as such throughout the final judicial review by a court of law, for the fundamental issues in litigation remain essentially the same.” (*Bodinson Mfg. Co. v. California Employment Com.* (1941) 17 Cal.2d 321, 330.) Consequently, petitioners have standing as persons “beneficially interested” to challenge the Board’s action which resulted in the setting of new rental rates for Park homeowners. This court therefore does not lack subject matter jurisdiction over this writ proceeding.

A somewhat different issue is whether the Award or the Board’s action on the Award is legally improper based upon Hamrick’s argument that petitioners did not have a valid license to operate the Park. Hamrick’s argument in this regard is based upon Hamrick’s request for judicial notice of documents not in the administrative record. As noted below, the court will deny the request for judicial notice of these records.

The proceeding that is the subject of the petition is a proceeding to increase the maximum rent schedule pursuant to the Ordinance. While the court agrees with the general proposition that a valid license is necessary to operate the Park, the license issue is not related to the amounts to be included in the maximum rent schedule under the Ordinance. To the extent that licensing was or could have been a defense or an issue in fixing the maximum rent schedule in the arbitration, Hamrick and the homeowners were required to raise that issue in the arbitration. “[I]ssues not presented at an administrative hearing cannot be raised on review.” (*Niles Freeman Equipment v. Joseph* (2008) 161 Cal.App.4th 765, 787.) Accordingly, the court will not consider the merits of Hamrick’s licensing argument in determining the merits of this petition for writ of mandate.

(B) Service and Filing

Hamrick also argues that the court lacks subject matter jurisdiction because the petition for writ of mandate was untimely served and filed.

“Any such petition shall be filed not later than the 90th day following the date on which the decision becomes final. If there is no provision for reconsideration of the decision, or for a written decision or written findings supporting the decision, in any applicable provision of any statute, charter, or rule, for the purposes of this section, the decision is final on the date it is announced. ... If there is a provision for a written decision or written findings, the decision is final for purposes of

this section upon the date it is mailed by first-class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the party seeking the writ. Subdivision (a) of Section 1013 does not apply to extend the time, following deposit in the mail of the decision or findings, within which a petition shall be filed.” (Code Civ. Proc., § 1094.6, subd. (b).)

As Hamrick points out, the Board’s decision was announced on May 15, 2012. (5 AR 1498.) Also as Hamrick points out, the original petition was filed on August 13, 2012, which was the 90th day following the date of that announcement. Moreover, the rules of proceedings relating to the Board’s review of the Award provide for a written decision that is “final on the date it is signed.” (Mobilehome Rent Control Rules for Hearings, rule 23(e).) The final decision was signed on June 14, 2012. (5 AR 1544, 1546.) The original petition was timely filed as provided by Code of Civil Procedure section 1094.6, subdivision (b).

Hamrick argues that the petition was required to have been immediately served.

An application for a writ of mandate may follow one of two procedural paths. Either the petitioner may request the issuance of an alternative writ or the petitioner may make a noticed motion for the issuance of a peremptory writ. (Code Civ. Proc., § 1087, 1088, 1088.5.) Here, petitioners have not sought an alternative writ, but utilize the motion procedure.

“When an application is filed for the issuance of any prerogative writ, the application shall be accompanied by proof of service of a copy thereof upon the respondent and the real party in interest named in such application. ... However, when a writ of mandate is sought pursuant to the provisions of Section 1088.5 [by noticed motion], the action may be filed and served in the same manner as an ordinary action under Part 2 (commencing with Section 307).” (Code Civ. Proc., § 1107.)

“In a trial court, if no alternative writ is sought, proof of service of a copy of the petition need not accompany the application for a writ at the time of filing, but proof of service of a copy of the filed petition must be lodged with the court prior to a hearing or any action by the court.” (Code Civ. Proc., § 1088.5.) Although some statutory schemes require service within a specific time period (e.g., Gov. Code, § 66499.37 [review of actions under Subdivision Map Act]), Hamrick points to no authority requiring service of the petition at any specific time for the review of the decision here at issue.

Petitioners filed their amended and supplemental petition on November 7, 2012.

“An amendment to a complaint is deemed a statement of the facts existing at the commencement of the action, and takes effect as if it had been originally incorporated in the pleading.” (*Nungaray v. Pleasant Valley Lima Bean Growers & Warehouse Association* (1956) 142 Cal.App.2d 653, 662.)
“An amended complaint relates back to the original complaint when it (1) is based on the same

general set of facts as the original, (2) seeks relief for the same injuries, and (3) refers to the same incident.’ [Citation.]” (*Edwards v. Superior Court* (2001) 93 Cal.App.4th 172, 180.)

“The complaint, whether original or amended, can properly speak only of things which occurred either before or concurrently with the commencement of the action. The office of a supplemental complaint is to bring to the notice of the court and the opposite party things which occurred after the commencement of the action, and which do or may affect the rights asserted and the relief asked in the action as originally instituted.” (*California Farm & Fruit Co. v. Schiappa-Pietra* (1907) 151 Cal. 732, 742-743.)

Here, the amended and supplemental petition and complaint realleged the same facts as set forth in the original petition and complaint, but included additional facts relating to the Remand Award. Thus, the issues raised in the FAC relate back to the filing of the original petition and complaint.

The filing and service of the original petition and the FAC are timely and not barred by Code of Civil Procedure section 1096.6, subdivision (b).

(2) Applicable Arbitration Procedures

The Ordinance provides procedures for increasing rents to mobilehome tenancies. The procedure commences with management’s notice of an increase in the maximum rent schedule. (S.B. County Code, ch. 11A, § 11A-5(a).) Where the noticed increase is in excess of 75 percent of a particular consumer price index, the notice must “[i]temize amounts for increased operating costs; any capital expenses incurred in the prior year to be undertaken for which reimbursement is sought, hereinafter ‘new’ capital expenses; any capital expenses allowed in prior years but not fully reimbursed, hereinafter ‘old’ capital expenses; any offset against new or old capital expenses; and capital improvements.” (*Id.*, § 11A-5(a)(3)(A).) The notice must also set a meet and confer session between management and the homeowners. (*Id.*, § 11A-5(a)(3)(B).)

The homeowners may file a petition for an arbitration hearing to contest the proposed increase if the increase is in excess of 75 percent of the increase in the consumer price index. (S.B. County Code, ch. 11A, § 11A-5(b).) A hearing is then set by the real property division manager of Santa Barbara County, acting as clerk. (*Id.*, §§ 11A-4(c), 11A-5(c).) The arbitrator may deny a hearing on various procedural grounds. (*Id.*, § 11A-5(d), (e).) If a hearing is not denied on these grounds, a hearing on the merits is conducted. (*Id.*, § 11A-5(f).)

“[T]he arbitrator shall consider all relevant factors to the extent evidence thereof is introduced by either party or produced by either party on request of the arbitrator.

“(1) Such relevant factors may include, but are not limited to, increases in management’s ordinary and necessary maintenance and operating expenses, insurance and repairs; increases in property

taxes and fees and expenses in connection with operating the park; capital improvements; capital expenses; increases in services, furnishings, living space, equipment or other amenities; and expenses incidental to the purchase of the park except that evidence as to the amounts of principal and interest on loans and depreciation shall not be considered.” (S.B. County Code, ch. 11A, § 11A-5(f).)

“The arbitrator shall automatically allow a rent increase of seventy-five percent of the CPI increase (hereinafter ‘automatic increase’). (S.B. County Code, ch. 11A, § 11A-5(g).) “The arbitrator may allow an increase in excess of the automatic increase for increased costs where increases in expenses and expenditures of management justify such increase.” (*Id.*, § 11A-5(h).)

“To determine the amount of any increase in excess of the automatic increase, the arbitrator shall:

“(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;

“(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.

“(3) Next, 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.

“(4) Next, add an amount to cover new capital expenses. Where one-half of the automatic increase is more than the actual increase in operating costs for the year then ending, the arbitrator shall offset the difference against any increases for new capital expenses.

“(5) Next, add an amount to cover old capital expenses. Where one-half of the automatic increase is more than the actual increase in operating costs for the year then ending, the arbitrator shall offset the difference against any increase for old capital expenses unless such difference has already been used to offset an increase for a new capital expense or another old capital expense. The arbitrator shall have discretion to review operating costs and the sufficiency of any offset, but not to redetermine the right of management to reimbursement for an old capital expense.

“(6) Finally, add an amount to cover increased costs for capital improvements, if any. The arbitrator shall have discretion to add such amount as is justified by the evidence and otherwise permitted by this chapter.” (S.B. County Code, ch. 11A, § 11A-5(i).) This determination procedure is further refined with respect to capital improvements and capital expenses. (*Id.*, § 11A-6.)

“The total increase shall not exceed the amount in management’s notice of rent increase.” (S.B. County Code, ch. 11A, § 11A-5(j).) “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.” (*Id.*, § 11A-5(k).) “Increases in the maximum rent schedule set by the arbitrator shall become effective as of the effective date in the notice of rent increase.” (*Id.*, § 11A-5(l).)

The hearing is held in conformance with the Rules for Hearings (Hearing Rules) adopted by Santa Barbara County. (1 AR 91-111.) The Hearing Rules provide for review of the arbitrator's decision by the Board:

"The decision of the Arbitrator shall be reviewed by the Board of Supervisors upon a petition alleging prejudicial abuse of discretion. Abuse of discretion is established where the Arbitrator has failed to proceed in the manner required by law, the decision is not supported by findings, or the findings are not supported by substantial evidence." (Hearing Rules, rule 23(a).)

"This review shall ordinarily be made on the record alone; however, the Board may elect to hear oral argument from the parties, their representatives, and/or their attorneys. The Board shall affirm or reverse the Arbitrator's decision in whole or in part and may remand the case to the Arbitrator for reconsideration in light of the Board's review or, where appropriate, the Board may make a new decision without remand." (Hearing Rules, rule 23(b).)

"The Board shall render its decision no later than thirty (30) judicial days following its receipt of all pleadings, records and transcripts, as covered in subparagraphs c and d above. The decision of the Board is final on the date signed, and there shall be no further review or appeal except as specifically provided by Rules 24 and 25." (Hearing Rules, rule 23 (e).)

"Rehearings are available only on matters remanded by the Board of Supervisors." (Hearing Rules, rule 24.) "Code of Civil Procedure sections 1094.5 and 1094.6 are applicable to judicial review of Arbitrators' decisions under the Santa Barbara County Mobilehome Rent Control Ordinance and Rules." (Hearing Rules, rule 25.)

(3) Board Hearing

(A) Procedural Issues

(i) Timeliness of Board Decision

Petitioners assert that Board's action was untimely under the Hearing Rules. The final pleading for the Board's review was filed with County on February 10, 2012. (5 AR 1311.) On May 1, 2012, the Board set a hearing date for the review of May 15, 2012.

"The Board shall render its decision no later than thirty (30) judicial days following its receipt of all pleadings, records and transcripts, as covered in subparagraphs c and d above. The decision of the Board is final on the date signed, and there shall be no further review or appeal except as specifically provided by Rules 24 and 25." (Hearing Rules, rule 23 (e).)

Petitioners argue that the decision was then due 30 judicial days after February 10, 2012. However, the Board did not conduct the hearing until May 15, 2012, and did not enter its final determination until June 12, 2012, more than 30 judicial days after February 10.

County argues that the record was given to the Board on May 10, 2012. (County Opposition, p. 16; 5 AR 1443.) The hearing and final decision were thus within 30 judicial days.

Hearing Rules, rule 23 carefully distinguishes between actions of the Clerk of the Ordinance and the Board. “The petition for review shall be filed by a party or his representative with the Clerk of the Ordinance no later than the fifteenth judicial day following the date the Clerk mailed the Arbitrator’s decision to the parties.” (Hearing Rules, rule 23(c).) “The Clerk shall furnish the Board with the official record of the hearing” (Hearing Rules, rule 23(d).) The 30 day deadline for the Board to act commences from “its receipt” of the record. Under rule 23(d) the Board receives the record from the Clerk. The final decision is therefore timely under the express language of the Hearing Rules. Moreover, as County points out, the Board’s deadline is directory only and the Board does not lose jurisdiction to decide the review after the deadline passes. (*Anderson v. Pittenger* (1961) 197 Cal.App.2d 188, 193-194.)

The timing of the rendering of the decision by the Board does not affect the validity of the decision in any way.

(ii) Ex Parte Communications

Petitioners assert in their moving papers that County violated petitioners’ due process rights by the Board’s ex parte communications with homeowner representatives.

“Just as in a judicial proceeding, due process in an administrative hearing also demands an appearance of fairness and the absence of even a probability of outside influence on the adjudication. In fact, the broad applicability of administrative hearings to the various rights and responsibilities of citizens and businesses, and the undeniable public interest in fair hearings in the administrative adjudication arena, militate in favor assuring that such hearings are fair.” (*Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 90.)

With respect to ex parte communication, “[t]he basic standard is stated several different ways, e.g., ‘regarding any issue in the proceeding,’ ‘upon the merits of a contested matter,’ ‘concerning a pending or impending proceeding.’ We do not assign significance to the varying terminology. ‘It is, in essence, a rule of fairness meant to insure that all interested sides will be heard on an issue.’ [Citation.] It extends to communication of information in which counsel knows or should know the opponents would be interested. [Citation.] Construed in aid of its purpose, we conclude the standard

generally bars any ex parte communication by counsel to the decisionmaker of information relevant to issues in the adjudication.” (*Mathew Zaheri Corp. v. New Motor Vehicle Board* (1997) 55 Cal.App.4th 1305, 1317.)

There is no substantial dispute that ex parte communications occurred between members of the Board and members of the public. (5 AR 1436-1437, 1444.) The ex parte communications consisted of emails (5 AR 1358-1429) and a meeting between Supervisor Wolf with individuals including real party Hamrick (5 AR 1444). The ex parte communications were disclosed in general terms at the May 15, 2014, Board meeting but were not disclosed in specific terms, as in the contents of the emails, until after the Board’s decision.

In the context of the Board acting in a quasi-judicial capacity, the ex parte communications were improper. As discussed below, the Board treated public comments as additional argument. The ex parte communications were arguments in favor of the homeowners which, as a general matter, petitioners would have reason to want to know prior to the hearing.

County responds to this issue by point out that under the California Constitution, “[t]he people have the right to instruct their representatives” (Cal. Const., art. I, § 3, subd. (a).) This right, however, has not been construed to permit unrestrained ex parte communications. Procedural due process rights of the parties to the adjudication must also be considered. The procedural due process right involved is the right to a fair and unbiased hearing. (*Mathew Zaheri Corp. v. New Motor Vehicle Board, supra*, 55 Cal.App.4th at p. 1319.) Ex parte communications have the potential to violate due process because “[w]hen an administrative adjudicator uses ‘evidence’ outside the record there is a denial of a fair hearing because, as to that ‘evidence,’ there has been no hearing at all, for the disadvantaged party has not been heard.” (*Ibid.*)

The court is mindful of the difficulty that exists for members of the Board sitting in a quasi-judicial capacity. Adjudicatory issues before the Board may be closely related to legislative and policy issues about which communication from constituents would be both expected and appropriate. Issues of written communications may be resolved by prompt disclosure and an opportunity to respond. (See *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2006) 40 Cal.4th 1, 17.) Nonetheless, the ex parte communications here, in particular, Supervisor Wolf’s meeting with Hamrick and others, was inappropriate where the subject of the meeting was apparently the subject of the May 15 hearing and came only one day prior to the hearing.

The fact of ex parte communications does not by itself require reversal of a decision under review. “If the trial court appropriately concludes that the agency did not rely upon the information provided in the ex parte communication, and that the decisionmaker was not guilty of actual misconduct giving rise to a presumption of bias, there is no deprivation of a fair hearing and no denial of due process.” (*Mathew Zaheri Corp. v. New Motor Vehicle Board, supra*, 55 Cal.App.4th 1305, 1319-1320.) “[T]o warrant reversal such misconduct must be shown prejudicial or intentional and heinous.” (*Id.* at p. 1318.) “‘Prejudice’ connotes that the Board’s decision stemmed, at least in

part, from the asserted misconduct.” (*Ibid.*) “Alternatively, one might use the test of *People v. Watson* (1956) 46 Cal. 2d 818, 836 ... [after an examination of the entire cause, including the evidence, it is reasonably probable that a result more favorable to defendant would have been reached in the absence of the misconduct].” (*Id.* at p. 1318, fn. 11.)

Based upon the discussion below with respect to the substantive merits of the writ petition, the court concludes that no prejudice or intentional and heinous misconduct has here occurred by the ex parte communications, and that after an examination of the entire record, it is not reasonably probable that a result more favorable to petitioners would have been reached in the absence of the misconduct.

(iii) Extra-Record Evidence

Petitioners also assert that the Board improperly violated its own rules by considering evidence outside of the record in permitting participation at the hearing of members of the public. “This review shall ordinarily be made on the record alone; however, the Board may elect to hear oral argument from the parties, their representatives, and/or their attorneys.” (Hearing Rules, rule 23(b).)

County responds that its obligations under the Brown Act (Gov. Code, § 54950 et seq.) require the Board to permit public input:

“Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body’s consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2.” (Gov. Code, § 54954.3, subd. (a).)

The Board harmonized these two obligations by passing the following motions:

“In accordance with Rule 23(b) of the Mobile Home Rent Controls Rules for Hearings, the Board should limit [its] review of the Arbitrator’s decision to the paper record alone, which consists of Attachments A through P to the Board Agenda Letter. The Board will not consider any new evidence, and should receive Brown Act public comment as argument that focuses on evidence that is already contained in the record, rather than as new evidence.” (5 AR 1534.)

Petitioners argue that the Brown Act does not apply here because this appeal is not a matter of public interest and that the procedure adopted violates the terms of rule 23(b). Petitioners point out that rule 23(b) permits oral argument from the parties, their representatives, and/or their attorneys, but not from the general public. Permitting and considering argument by the general public violates

the express terms of rule 23(b). Moreover, petitioners argue, rule 23(b)'s limitation on the persons entitled to argue makes this a matter of private, not public interest.

Petitioners cite no authority for the proposition that a decision by the Board is not an item of interest to the public within the meaning of the Brown Act. The law is contrary:

“Section 54954.3, subdivision (a), provides: ‘Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body’s consideration of the item, that is within the subject matter jurisdiction of the legislative body ...’ This language has been construed to mean that for each agenda of a regular meeting, there must be a period of time provided for general public comment on *any* matter within the subject matter jurisdiction of the legislative body, as well as an opportunity for public comment on each specific agenda item as it is taken up by the body.” (*Galbiso v. Orosi Public Utility District* (2008) 167 Cal.App.4th 1063, 1079.)

The May 15 hearing was an agenda item of the Board. (1 AR 75.) The Brown Act provides the public a right to comment on the agenda items of the Board.

There is a conflict between the language of rule 23(b) and the requirements of the Brown Act. The Hearing Rules do not discuss public input at the Board. This discrepancy may be the result of respective effective dates of the Hearing Rules and the public comment provision of the Brown Act. (Compare 1 AR 111 [“9/25/86”] with Stats. 1986, ch. 641, § 6.) In any case, the Brown Act applies to counties. (Gov. Code, § 54951.) To the extent that rule 23(b) could be interpreted to conflict with the Brown Act, the requirements of the Brown Act, as state legislation on a matter of statewide concern, applies notwithstanding rule 23(b). (See *San Diego Union v. City Council* (1983) 146 Cal.App.3d 947, 958.)

The record demonstrates that the Board relied solely upon the record before the Board in reaching its determinations on review of the arbitrator’s decision. Accordingly, petitioners’ challenge to the Board’s determinations by its permitting public comment is rejected.

Petitioners also argue that limiting petitioners’ counsel’s rebuttal time to less than the total of time allowed for public comments created an unfair hearing. Petitioners have failed to specify what rebuttal was precluded by this limitation or to identify how the limitation caused any prejudice to petitioners. As a result, the court does not find that limitations imposed on petitioners’ counsel resulted in an unfair hearing.

(iv) Standard of Review

“The inquiry in such a case shall extend to the questions whether the respondent has proceeded

without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.” (Code Civ. Proc., § 1094.5, subd. (b).) “Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.” (Code Civ. Proc., § 1094.5, subd. (c).)

The parties dispute the standard applicable to this court in determining this petition for writ of mandate. Petitioners assert that this court reviews the arbitrator’s final decision, not the Board’s decision: “To summarize, we review the hearing officer’s factual determinations for substantial evidence. [Citation.] We independently review the hearing officer’s interpretation of the Ordinance, according that interpretation due deference.” (*MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 220.)

County argues that this writ seeks to overturn the decision of the Board, not the decision of the arbitrator, and thus this court reviews the Board’s decision for substantial evidence, not the decision of the arbitrator. (See *McMillan v. American General Finance Corp.* (1976) 60 Cal.App.3d 175, 181-182 [review of city council appeal of planning commission decision].)

As is noted below, the standard of review depends upon the specific decision that is at issue.

(iv) Findings

An issue related to the standard of review is the issue of the sufficiency of the Board’s findings. The arbitrator issued a detailed opinion and award setting forth the arbitrator’s findings. (1 AR 8-25.) The Board conducted a hearing in which members of the Board made comments concerning the specific arbitration awards under consideration and issued a brief written order setting forth the Board’s orders on review.

The parties dispute the sufficiency of the Board’s findings. As County points out, the Hearing Rules do not expressly require that the Board make written findings. In reply, petitioners argue that Hearing Rules, rule 23(e) requires written findings by the Board. Rule 23(e) states only that the “decision of the Board is final on the date signed,” implying that there must be a written decision. The written decision by the Board provides certainty as to what was decided and a date certain for finality. The text of the Hearing Rules does not imply that the Board is obligated to provide findings in writing or in any detail not required by other law.

The parties agree that some findings are required by *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506 (*Topanga*):

“[I]mplicit in section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. If the Legislature had desired otherwise, it could have declared as a possible basis for issuing mandamus the absence of substantial evidence to support the administrative agency’s action. By focusing, instead, upon the relationships between evidence and findings and between findings and ultimate action, the Legislature sought to direct the reviewing court’s attention to the analytic route the administrative agency traveled from evidence to action. In so doing, we believe that the Legislature must have contemplated that the agency would reveal this route.” (*Topanga, supra*, 11 Cal.3d at p. 515.)

“Administrative findings are substantively sufficient under the foregoing authorities if they (1) inform the parties of the bases on which to seek review [citation], and (2) permit the courts to determine whether the decision is based on lawful principles [citation].” (*McMillan v. American General Finance Corp.* (1976) 60 Cal.App.3d 175, 185.)

Written findings of fact, labeled as such, are not the only findings sufficient to comply with the requirements of *Topanga*. (*City of Carmel-By-The-Sea v. Board of Supervisors* (1977) 71 Cal.App.3d 84, 91.) A reviewing court may look to the record to determine the findings upon which the decision is based. (*Ibid.*) Under some circumstances oral remarks made at a public hearing and for which a transcript is prepared may be reviewed in determining the sufficiency of the findings. (*Id.* at p. 92; see also *Harris v. City of Costa Mesa* (1994) 25 Cal.App.4th 963, 971.)

In order to determine the sufficiency of the findings, it is necessary to consider each finding separately.

(B) Rulings of Arbitrator

The arbitrator made 14 itemized awards as follows:

“1.The CPI increase as calculated and proposed by the Park Owners in its letter dated January 26, 2011 can be charged to the Homeowners.

“2.The Homeowners do not have to pay the additional 10% increase in ground rents.

“3.The Homeowners are to pay the Park Owners for all real property taxes assessed by the County.

“4.All granted temporary increases are to be amortized at 9% for seven (7) years.

“5.The Homeowners are to pay the \$320,000. If any of these monies are not spent on eligible items with six months from the date of this award, the residual amounts are to be returned to the

Homeowners.

- "6.The Homeowners are to pay \$25,000 for professional fees associated with the capital improvements.
- "7.The Homeowners are to pay \$40,000 for the A&E fees associated with the capital improvements.
- "8.The Homeowners are to pay \$130,531 for the supplemental tax increase payments already paid by the Park Owner.
- "9.The Homeowners do not need to pay for the uncompensated increases associated with the lease payments.
- "10.The Homeowners have elected not to proceed with a property tax appeal or reassessment and should not be charged with professional fees associated with the same.
- "11.The Homeowners are to pay \$110,000 for legal fees associated with the challenge to the rent increase.
- "12.The Permanent Increase is to be \$25.59 and the Temporary Increase \$67.09 as supported by Respondent's Exhibit T.
- "13.The Parties are to work towards agreement and payment of any overpayments by the Homeowners as a result of this award by March 1, 2012.
- "14.The Arbitrator will maintain jurisdiction until the expiration of the time line noted in #13 above." (1 AR 22-23.)

Following the hearing on May 15, 2012, the Board adopted the following decisions:

Award Nos. 1 and 10 were not challenged and not subject to Board action. Award Nos. 2 and 9 were affirmed. As to Award Nos. 4, 5, 6, 7, 8, and 11, the Board found that the arbitrator abused his discretion and reversed the decision in whole. As to Award Nos. 3 and 12, the Board remanded the award back to the arbitrator. (5 AR 1546.)

Petitioners here challenge the decision of the Board as to Award Nos. 3 through 8 and 12 in reversing or remanding the arbitrator's decision and the decision of the arbitrator, affirmed by the Board, as to Award Nos. 2 and 9.

(i) Ground Lease

The issue addressed by the arbitrator in making Award Nos. 2 and 9 arises from a change in the ground lease for the Property. Prior to the present Ground Lease, the lease provided for ground rent to be paid by the operator of the Park to the owner of the Property of 10 percent of the gross rents received from homeowners by the operator of the Park. (2 AR 404.) The arbitrator found that historically, this 10 percent had been passed through and paid by the homeowners or their predecessors in interest without challenge. (1 AR 18.) The new Ground Lease increases the ground

rent percentage to 20 percent. (1 AR 18.) The issue presented was whether the additional 10 percent in the new Ground Lease would properly be passed through to the homeowners as an operating expense as sought by petitioners or the additional 10 percent was a cost of acquisition that would not be passed through to the homeowners. (*Ibid.*)

The arbitrator found that the additional 10 percent was not an operating cost as a basis for a rent increase under the Ordinance. The arbitrator stated that expert testimony characterized this ground rent increase as a cost of acquisition. The arbitrator reasoned that to allow a pass through of such cost would take away the incentive of a future operator to keep this percentage down. (1 AR 18.) Here, the arbitrator noted, the Ground Lease included a provision for a \$500,000 one-time payment which could not be recouped as an operating cost. If the rule were to allow this additional percentage rent to be passed through, the one-time payment could easily be lowered to an equally valuable higher percentage rent, thus converting the same payment from a non-recoupable acquisition cost to a recoupable operating cost. (*Ibid.*) The arbitrator noted that the Ordinance does not address this issue expressly. By comparing the Ordinance to ordinances in other jurisdictions, the arbitrator reasoned that the omission makes it more likely that the Ordinance did not intend to permit the additional percentage rent to be passed through to the homeowners.

The arbitrator's award on this issue was appealed by petitioners to the Board. (1 AR 59.) The Board affirmed the arbitrator's award on this issue. The court reviews this affirmation by reviewing the arbitrator's award itself for reversible error under the standards of Code of Civil Procedure section 1094.5. (See *MHC Operating Limited Partnership v. City of San Jose, supra*, 106 Cal.App.4th at p. 220.)

The Ordinance provides: "[T]he arbitrator shall consider all relevant factors to the extent evidence thereof is introduced by either party or produced by either party on request of the arbitrator. [¶] (1) Such relevant factors may include, but are not limited to, increases in management's ordinary and necessary maintenance and operating expenses, insurance and repairs; increases in property taxes and fees and expenses in connection with operating the park; capital improvements; capital expenses; increases in services, furnishings, living space, equipment or other amenities; and expenses incidental to the purchase of the park except that evidence as to the amounts of principal and interest on loans and depreciation shall not be considered." (S.B. County Code, ch. 11A, § 11A-5(f).)

"To determine the amount of any increase in excess of the automatic increase, the arbitrator shall: [¶] ... [¶] (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. [¶] (3) Next, 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." (S.B. County Code, ch. 11A, § 11A-5(i)(2), (3).)

The Ordinance expressly gives the arbitrator discretion to add operating costs as are justified by the evidence. The issue here is whether the arbitrator abused his discretion by not including the

additional percentage rent as an amount in excess of the automatic increase.

Petitioners assert that the arbitrator committed legal error by considering the language of other ordinances and by equating a ground lease interest with an ownership interest in the Property. The arbitrator considered two analytically separate issues in making his award. The arbitrator considered whether the additional percentage rent was in the nature of "ordinary and necessary maintenance and operating expenses" and, having concluded that it was instead "in the line of acquisition costs," whether such acquisition costs should nonetheless be included as "operating costs."

At the arbitration hearing, the arbitrator received conflicting expert testimony as to whether the additional percentage rent should be included as an operating cost. Petitioners' expert testified that inclusion of ground lease expense would be an appropriate expense to consider under the methodology of the Ordinance. (3 AR 777.) The homeowners' expert testified that the ground lease expense was in effect an acquisition cost similar to mortgage or interest expenses that are expressly excluded from consideration by the Ordinance. (3 AR 879-884.)

As explained in his award, the arbitrator did not rely upon the language of other ordinances as determinative of whether or not ground lease payments are necessarily deemed "operating expenses" under the Ordinance. In the absence of a statutory definition or controlling precedent, the arbitrator reasonably considered whether ground lease payments would ordinarily be included within "operating expenses" in the mobile home rent control context. As petitioners point out, the other ordinances demonstrate that there is no general rule precluding the inclusion of ground lease expenses within operating expenses.

Ultimately, the arbitrator exercised his discretion not to pass through the additional percentage rent based upon the arbitrator's conclusion that this additional percentage rent was not a true operating expense and that the policies indicated by the Ordinance did not favor inclusion of the additional percentage rent. Petitioners argue that the arbitrator erred by equating the ground lease interest with an ownership interest. The arbitrator did not equate these interests so much as analogize these interests in the context of the language of the Ordinance and the policies implied by the Ordinance. This type of analogy is hardly unusual:

"A tenant entering into a ground lease views itself as taking ownership of the land for a term of years. The tenant wants to ensure its ability to recoup the value of improvements it makes to the leased premises, particularly if the tenant is entering into the lease expressly to construct improvements on the leased land. ... For the tenant, the ground lease is, in essence, a form of financing, with rent payments treated as a portion of its debt service for the overall project. The landlord, in the eyes of the tenant, is a passive recipient of an income stream." (Ground Lease Practice (Cont.Ed.Bar 2d ed. 2009) § 12.2.)

The court agrees that the Ordinance does not expressly include or exclude ground lease payments as "operating expenses." The Ordinance does expressly provide the arbitrator with discretion to make

determinations based upon the evidence presented. Petitioners have not shown that the arbitrator abused his discretion in including the historically approved ground rent and in excluding the additional percentage rent from the "operating expenses." There is substantial evidence supporting the arbitrator's award in this regard. Correspondingly, petitioners have not shown that the Board abused its discretion in affirming Award Nos. 2 and 9 or that the Board improperly or prejudicially relied upon any ex parte communication or extra-record evidence in affirming these arbitrator's awards.

(ii) Real Property Taxes

Award No. 3 is that the "Homeowners are to pay the Park Owners for all real property taxes assessed by the County." The Board remanded this award back to the arbitrator.

Petitioners note that on remand, the arbitrator reviewed the evidence in light of the Board's decision and, reaching the same conclusion, reentered the award that the Homeowners are to pay the Park Owners for all real property taxes assessed by the County. (Petitioners' Exhibits, exhibit E.) The arbitrator's awards on remand are not substantively before the court in this proceeding. However, the court considers the Remand Award for the purpose of determining that the petition is moot to the extent it challenges the Board's decision to remand. Granting the petition to command the Board to affirm the arbitrator's Award No. 3 would result in the same award that now exists after remand. The petition is moot as to Award No. 3.

Award No. 8 is that the "Homeowners are to pay \$130,531 for the supplemental tax increase payments already paid by the Park Owner."

"[T]he arbitrator shall consider all relevant factors to the extent evidence thereof is introduced by either party or produced by either party on request of the arbitrator. [¶] (1) Such relevant factors may include, but are not limited to, ... increases in property taxes and fees and expenses in connection with operating the park" (S.B. County Code, ch. 11A, § 11A-5(f)(1).)

At its hearing, the Board's comments regarding property taxes focused upon (1) the text of the Ordinance and (2) the evidence before the arbitrator. The following interchange occurred at the Board Hearing:

"[Supervisor Farr:] ... Now I just want verification, I think that this was something that Supervisor Wolf asked. It seems to me when I read the ordinance that it does say very clearly that property taxes are something that can be considered. Is that correct?

"Supervisor Wolf: Okay.

"[Senior Deputy County Counsel Munoz]: Madam Chair, the ordinance section 11(a) (-5), subdivision (f), subdivision (1) says that such following factors may include increases in property

taxes.

“[Supervisor Farr:] So that would affect not only Arbitrator’s Award for No. 3, but also for No. 8, which is a supplemental tax increase. [¶] ... [¶]

“Supervisor Wolf: Because supplemental tax is not delineated in the ordinance as are some of the other fees and that was why I came to some of the decisions that I did. But Counsel may be able to answer that specifically on the supplemental tax. I didn’t – I did not find it in the ordinance.

“Mr. Munoz: Madam Chair, Supervisor Wolf. That same subdivision f (1) does not delineate between supplemental or non-supplemental tax. It just specifies increase in property taxes. It would be within your Board’s discretion to interpret the meaning of that 11 a-5 subdivision f1.” (5 AR 1485-1486, capitalization altered.) (Note: The Supervisor Farr is the Board Chair. The title of “Chair” was used at the Board hearing. Supervisor Farr’s title as “Supervisor” is used herein to avoid confusion.)

Later, the Board again took up the issue of Award No. 8:

“[Supervisor Wolf:] ... And I’m inclined to state that No. 8 is the abuse of discretion. There was the expert witness, [Baar], talked about the break in time and that it was not equitable to people who moved into [or] out of the Park, it was a timing issue. So I was inclined to agree with that expert on the supplemental and to say that that was an abuse of discretion and that it not be included. [¶] ... [¶]

“[Supervisor Farr:] You know, I have to say that my reading of the ordinance seems pretty clear that it can be included. And so the supplemental may be one thing but the regular property tax I think is something that’s in the ordinance. But if there’s some clarification or not of that? Supervisor Gray?

“Supervisor Gray: My reading of the evidence and it seems to be that they can include property taxes. And so that I would think that that should be. I would agree with the Arbitrator.” (5 AR 1491-1492.)

The first point raised by the Board is that supplemental assessments are not included in the Ordinance for consideration by the arbitrator.

“‘The standard of judicial review of agency interpretation of law is the independent judgment of the court, giving deference to the determination of the agency appropriate to the circumstances of the agency action.’ ‘[T]he binding power of an agency’s interpretation of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation.’” (*McCormick v. County of Alameda* (2011) 193 Cal.App.4th 201, 207-208, internal quotation marks and citations omitted.)

The Board’s interpretation of section 11A-5(f)(1) of the Ordinance as not including supplemental assessments is erroneous. “The supplemental assessment provision imposes a new timing

mechanism for valuation and collection. It does not alter the tax rate or impose new taxes. ... Rather, property owners are simply paying taxes based on the value closer to the time of a change in ownership or the completion of new construction.” (*Shafer v. State Board of Equalization* (1985) 174 Cal.App.3d 423, 427-428) “Taxes on the supplemental roll become a lien against the real property on the date of the change in ownership or completion of new construction. [Citation.] Thus, these taxes accrue at the time of the events triggering reassessment. ‘The subsequent assessment and levy are necessary in order to fix the amount of the tax due, but they do not result in the creation of a new obligation; they simply are administrative steps necessary to the enforcement of the right which accrued on the lien date.’ [Citation.]” (*Id.* at p. 428.)

Thus, the supplemental assessment reflects an increase in property taxes within the meaning of section 11A-5(f)(1) of the Ordinance. To the extent that the Board’s reversal of Award No. 8 was based a determination that the arbitrator abused his discretion by considering the supplemental property tax assessments because supplemental property tax assessments were not proper subjects of consideration under section 11A-5(f)(1), the Board’s findings to that extent do not support its reversal of Award No. 8.

The arbitrator was entitled under the Ordinance to consider the supplemental property tax assessments in determining the rate increase. The Board’s second basis for reversal as set forth in the above comments is a disagreement as to the arbitrator’s result.

At the arbitration, as commented upon by Supervisor Wolf, the Homeowners’ expert, Kenneth K. Baar, testified that the supplemental tax increase was a past property tax increase. (3 AR 892.) Baar testified:

“[T]here’s no perfect system in regards to past expenses, but this seems, I don’t know, in some ways extreme because basically what is going to happen is if these expenses are allowed, they are not going to be paid by the residents who are – many of the residents are the same, but there are some residents who have replaced the residents who were there three years ago and they will be paying this cost increase that, you know, was incurred three years earlier and usually you can’t – there’s no clear boundary between cumulative past increases, as opposed to regulatory lag where you couldn’t have come in sooner to get the increase. And this, to me, more looks like accumulating past increases. I mean, subject to that qualification. You know, I don’t think it’s reasonable but I’d say it’s not a black-and-white issue, but it doesn’t look reasonable to me.” (3 AR 892-893.)

Baar’s testimony is contrasted with petitioners’ expert, Michael St. John, who testified:

“[T]he County isn’t quick, usually, in changing the tax rates, they wait a while and then they eventually change the taxes and then they send our supplemental tax bills. ... Then the question is, how long will it be before the park owner begins being compensated for that tax increase? And the answer is, until May 2011. The increases that were imposed, effective May 1, 2011, covered that amount, so from then forward the park owner is whole, but for the period from August 2008 to May

2011 the park owner was obligated to pay these amounts but the residents were not obligated – before this proceeding, or otherwise, wouldn't be obligated to pay it. But in my view, these are amounts that residents, in the end, have to pay. This is an increase, it's a legitimate increase, it's government imposed, it's not within the park owner's discretion, it is an extra cost." (3 AR 794-795.)

St. John continued: "So I think [homeowners' counsel] might tell us ... you should have petitioned right away. Well, okay, but that would imply that we have to petition kind of for every year, every single time an increase comes up we're going to have to petition, petition, petition, and these petition processes are quite time consuming, if you don't know. And so to my mind, it simply does not make good sense to, in effect, command the park owners do an entire NOI fair return petition every year. That doesn't make good sense, and the way to not do that is to allow park owners to do this kind of a fair return hearing periodically, when appropriate, when it feels appropriate, and then to be compensated for – to be compensated after the arbitrator has decided on the justification for the increases in question, to be compensated for the past." (3 AR 795.)

St. John effectively agreed with Baar that whether or how to include these expenses is a "judgment call." (3 AR 796.)

As a judgment call, the arbitrator could have followed Baar's opinion that inclusion of the supplemental property tax payments at that time was unreasonable. Instead, the arbitrator weighed the evidence and followed St. John's opinion to include those payments as reasonable. There is substantial evidence to support the arbitrator's decision. Consequently, under the standard of review to be used by the Board under the Hearing Rules, the arbitrator did not abuse his discretion by making a determination supported by substantial evidence, notwithstanding the Board's view that it would have reached a different result reweighing the evidence. Thus, the Board has not proceeded in the manner required by law by reversing Award No. 8 on the basis of either an erroneous interpretation of the Ordinance or a reweighing of the evidence not permitted by Hearing Rules, rule 23(a).

(iii) Capital Expenses

Award No. 5 is that the "Homeowners are to pay the \$320,000. If any of these monies are not spent on eligible items with six months from the date of this award, the residual amounts are to be returned to the Homeowners." The \$320,000 refers to the amount that is in an escrow account for use as capital improvement or replacements at the Property. (2 AR 419 [exhibit K]; 4 AR 146.)

The Ordinance provides for capital improvements and capital expenses as follows:

"'Capital Improvement' is any addition or betterment made to a mobilehome park which consists of more than mere repairs or replacement of existing facilities or improvements and which has a useful

life of five or more years.” (S.B. County Code, ch. 11A, § 11A-2(a).) “‘Capital expense’ is a repair or replacement of existing facilities or improvements which has an expected life of more than one year.” (*Id.*, § 11A-2(b).)

“The cost of capital improvements incurred or proposed, including reasonable financing costs, may be passed on to homeowners at the time of an annual increase” (S.B. County Code, ch. 11A, § 11A-6(a)(1).) “If management fails to begin construction of a capital improvement within six months after approval of the cost of the capital improvement, then management shall discontinue the increase for the capital improvement and shall credit any amounts collected to each homeowner.” (*Id.*, § 11A-6(a)(5).) Similar provisions apply for capital expenses. (*Id.* § 11A-6(b).) “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.” (*Id.*, § 11A-5(k).)

At the arbitration hearing, petitioners made two claims for an increase in rent based upon capital improvements and capital expenses. Petitioners sought an increase in rent based upon \$62,145.55 in capital improvement expenses previous incurred. (2 AR 418 [exhibit J]; 4 AR 1168.) Petitioners also sought an increase in rent based upon the \$320,000 in the escrow account and for which petitioners had received proposals. (2 AR 499-504 [exhibit M]; 4 AR 1125, 1145, 1158.) Ken Waterhouse of Management explained, “we don’t know where it’s going to end up at this point in time, what work we’re actually going to perform.” (4 AR 1145.) Nonetheless, the funds in the escrow account are obligated to be spent and the total amount spent will exceed \$320,000. (4 AR 1145, 1158.)

In discussing this item, the arbitrator first commented that the homeowners are not required to pay the \$320,000 simply because it was put in escrow as a condition of Lazy Landing’s acquisition of the Park. (1 AR 19-20.) However, the arbitrator noted that the Ordinance permits the collection of funds for prospective capital improvements and expenses, with the restriction that those monies must be spent on eligible items within six months or returned. (1 AR 20.) The arbitrator decided the \$320,000 can be collected by a temporary increase, “but any amounts which are not itemized as being eligible and/or spent by from six months of the date of this award, including for the capital replacement of the meters, must be returned and no longer charged to the Homeowners.” (*Ibid.*)

The Board reversed the arbitrator’s award in full. The comments in support of this reversal are few. Supervisor Farr stated:

“And I would say that the Arbitrator abused his discretion and I would not include that. This amount of money that was paid—well, it was paid into as part of escrow; it was not a subsequent capital expense. And actually the Arbitrator said initially that it should not be allowed because the owner was not sure what it should be spent on. Now capital is noted in the ordinance, it’s specified in the ordinance but it’s not—I don’t have clear and convincing evidence that this is something that should be passed on to the mobile park [home]owners.” (5 AR 1488.)

“It seems pretty clear that capital expenses are supposed to be itemized and fit whatever the criteria is, and I never saw an itemized list and I think that was also mentioned. So, you know, there may be capital expenses that are charged later, but there’s no specific list here as to what this \$320,000 is to be spent on. And I think that was where the issue of electrical upgrades came in as well, whether that was included or not.” (5 AR 1489.)

As quoted above, the Ordinance permits the pass through of the costs of capital improvements and expenses, whether those costs have already been incurred or are merely proposed. The Ordinance qualifies that proposed costs may be considered only where they are “definite and certain.” The Ordinance does not provide or otherwise permit the pass through of capital improvements or expenses merely because the funds for such capital improvements or expenses have generically been set aside. Thus, the Ordinance does not, as a matter of law, permit the pass through of the \$320,000 escrow funds or any part thereof absent a showing that the proposed capital improvement or capital expense is “definite and certain.”

The evidence of proposed capital improvements and capital expenses consists of proposals to Management for certain construction items. Waterhouse in his testimony was clear that none of these proposals were definite or certain and it was uncertain what work was actually going to be performed. Petitioners presented no substantial evidence that any of the proposed capital improvements or capital expenses were “definite and certain.” The arbitrator made no findings that any proposal was definite or certain and impliedly found to the contrary by qualifying Award No. 5 that “[i]f any of these monies are not spent on eligible items with six months from the date of this award, the residual amounts are to be returned to the Homeowners.” The absence of any “eligible items” in evidence or in the Award demonstrates the arbitrator’s expectation that what is “eligible” would be determined after the effectiveness of Award No. 5. The requirement that such items be “definite and certain” necessarily incorporates a determination that such item be at that time “eligible” for collection.

Because the finding of the arbitrator to include collection of \$320,000 was not supported by substantial evidence, the Board correctly determined that this finding, insofar as it related solely to the \$320,000 funds in escrow, was a prejudicial abuse of discretion. This is essentially the point discussed by Supervisor Farr at the May 15 hearing. The record does not show that this determination was prejudicially affected by ex parte communications.

However, the arbitrator also had before him evidence of specific items of incurred costs in the amount of \$62,145.55, assertedly for capital improvements and capital expenses eligible to be passed through to the homeowners. The arbitrator treated all of the expenses together, without making findings specific to the \$62,145.55 claimed under section 11-6 of the Ordinance. Consequently, the decision of the arbitrator is not supported by findings as to the \$62,145.55 in claimed costs. The lack of findings on this issue constitutes prejudicial abuse of discretion by the arbitrator.

The Board did not address the \$62,145.55 claim in reversing Award No. 5. This failure makes the

Board's decision an abuse of the Board's discretion in two regards. First, the Board has not proceeded in the manner required by law by reversing Award No. 5 in its entirety rather than by remanding Award No. 5 to the arbitrator to make findings as to the \$62,145.55 claim. The \$62,145.55 claim was properly raised before the arbitrator and the arbitrator was required to make a written decision including the findings upon which the decision is based. (Hearing Rules, rule 18.) "When the administrative agency's findings are not adequate, an appropriate remedy is to remand the matter so that proper findings can be made." (*Glendale Memorial Hospital & Health Center v. State Department of Mental Health* (2001) 91 Cal.App.4th 129, 140.)

Second, to the extent the Board's reversal of Award No. 5 was intended to overturn the arbitrator's ruling even as to the \$62,145.55 claim, the Board's limited discussion provides no basis upon which this court can meaningfully review the propriety of the Board's action. Although the Board need not make elaborate findings and the Board may adopt as its findings the reasoning set forth in a staff report or otherwise, findings solely in the language of the applicable legislation are improper. (*Dore v. County of Ventura* (1994) 23 Cal.App.4th 320, 328.)

The Board has not proceeded in the manner required by law. The court will remand Award No. 5 to the Board so that the Board may expressly address the \$62,145.55 claim, take appropriate action, and make appropriate findings.

Award No. 6 is that the homeowners are to pay \$25,000 for professional fees associated with the capital improvements. The arbitrator found as follows:

"The professional fees spent on capital improvement item should not be treated as a one shot expense, but rather amortized (Ex. K & Q). After considering the objections raised by the Homeowners, a good portion of the line items submitted by the Park Owner do not appear to be relevant to any capital improvements, therefore, a reduction of \$25,000 from the original request is warranted. The remaining \$25,000 is to be charged to the Homeowners."

The Board's limited comment from Supervisor Wolf was: "No. 6 is professional fees; No. 7 is A&E fees; No. 11 is legal fees. None of those are noted in the ordinance. That's one reason I would state that there was abuse of discretion and going back to the record, from the expert witness testimony and the comments by the Arbitrator. So for those items, No. 6, No. 7 and 11, I say that there was an abuse of discretion and that they not be reconsidered." (5 AR 1489-1490.)

Section 11A-6, subdivisions (a)(1) and (b)(1), provides for passing through the "cost of" capital improvements and capital expenses. "Costs" are not defined specifically to include or to exclude professional fees. Thus, where professional fees may be correctly categorized as a cost of either a capital improvement or capital expense, such fees may be passed on. To the extent that the Board bases its reversal of Award No. 6 on a categorical exclusion of such fees, the reversal is based upon an erroneous interpretation of the Ordinance and the Board fails to proceed in the manner required by law. However, the arbitrator does not identify which professional fees are awarded and which

professional fees are not except by the total amount awarded. In light of the arbitrator's lack of findings in awarding capital improvement and capital expense costs, discussed above, which will be the subject of further proceedings, the arbitrator's findings here may have been influenced by its erroneous determination as to the \$320,000 escrow funds. Remand is appropriate as to this award as well. (See *American Funeral Concepts v. Board of Funeral Directors & Embalmers* (1982) 136 Cal.App.3d 303, 311.)

The same analysis applies to Award No. 7 for architecture and engineering (A&E) fees. As with other professional fees, the Ordinance provides for passing on such fees to the extent such fees are properly categorized as "costs" of capital improvements and expenses. The arbitrator's findings are as follows:

"Waterhouse testified he purchased certain plans to facilitate evaluating and then moving forward on certain capital improvements for the park. Given the age on some of the supporting documentation, some of this work appears stale. Although the Park Owner represented that the County will work with them with such things as expired permits, some of this work may have little or no value as of this date. A more reasonable amount to be charged would [be] \$40k." (1 AR 20.)

As County points out, the arbitrator did not identify in his findings how the total was reduced to \$40,000, as for example, whether particular items were disallowed or whether the total was simply adjusted. Especially in light of the above discussion regarding the lack of findings as to permissible capital improvements and capital expenses, the arbitrator's findings are insufficient to determine whether the allowed fees are or are not "costs" of capital improvements or capital expenses as permitted by the Ordinance. In addition, the arbitrator's findings here may have been influenced by its erroneous determination as to the \$320,000 escrow funds. Remand is appropriate as to this award, too.

(iv) Legal Fees

Award No. 11 is that the "Homeowners are to pay \$110,000 for legal fees associated with the challenge to the rent increase." The arbitrator found as follows:

"After reviewing the itemizations submitted by the Park Owner for expert and legal services expended in this matter (Ex. R & S) and the Homeowners response, a reasonable amount to be paid by the [latter] would be \$110,000." (1 AR 21.)

The Ordinance does not expressly include or exclude legal fees incurred in connection with rent increase notices and proceedings. The Ordinance provides: "[T]he arbitrator shall consider all relevant factors to the extent evidence thereof is introduced by either party or produced by either party on request of the arbitrator. [¶] (1) Such relevant factors may include, but are not limited to, increases in management's ordinary and necessary maintenance and operating expenses, insurance

and repairs” (S.B. County Code, ch. 11A, § 11A-5(f)(1).)

The above quotation of the comments of the Board for Award No. 6 was also directed to Award No. 11. By this comment, the basis for the Board reversing Award No. 11 was the absence of an express inclusion of legal fees in the list of relevant factors. Legal fees may under appropriate circumstances be considered as operating expenses. Some mobilehome rent control ordinances expressly include attorney’s fees as allowable operating expenses (see *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Board* (1999) 70 Cal.App.4th 281, 293); some ordinances expressly exclude attorney’s fees as allowable operating expenses (see *Oceanside Mobilehome Park Owners' Association v. City of Oceanside* (1984) 157 Cal.App.3d 887, 895). The categorization of legal fees for rent increase applications as generally within the ambit of operating expenses and 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 arbitrator was presented with evidence as to legal fees by both the homeowners and petitioners at the arbitration hearing. Baar, the homeowners’ expert, testified on examination:

“[Q.] Now, with respect to the anticipated professional fees relating to the rent increase, as I understand your position there, you don’t necessarily quarrel with the idea that the park owner is entitled to recover professional fees relating to the rent increase?

“A. That’s right.

“Q. Nor do you argue with the methodology employed here, which is to do it as a temporary as opposed to the base for a permanent rent increase?

“A. Right, that’s correct. [¶] ... [¶]

“Q. ... So, your sole quarrel is with the number?

“A. That’s correct.” (3 AR 957-958.)

Baar’s testimony is substantial evidence that legal fees, if reasonable in amount, are appropriately included as a basis for a rent increase as an ordinary and necessary operating expense.

Petitioners submitted itemized statements of fees. (2 AR 569-585 [exhibits R, S].) Baar testified that in his opinion the amount of the fees requested was out of line for a typical rent increase application. (3 AR 958-959.) The arbitrator resolved this factual dispute as to the reasonable amount of the fees by determining the reasonable fees to be \$110,000. This evidence constitutes substantial evidence to support the factual determination. Thus, the arbitrator did not abuse his discretion in making this award.

The Board did not proceed in the manner required by law by reversing Award No. 11 on the grounds that these legal fees were not to be considered by the arbitrator under the terms of the

Ordinance.

(v) Amortization

Award No. 4 is that “[a]ll granted temporary increases are to be amortized at 9% for seven (7) years.” The Ordinance provides for amortization over the useful life of a capital expense. (S.B. County Code, ch. 11A, § 11A-6(b)(2).) The Ordinance otherwise provides no guidance as to either the time span for amortization or the interest rate.

The arbitrator provided no findings or analysis to support this award apart from the award itself. (1 AR 17-23.) The Board, by Supervisor Wolf, commented that arbitrator abused his discretion: “Why? Because the expert witnesses, one Mr. [Baar], and a seven percent amortization rate was a possibility but he wasn’t sure. ... Mr. Waterhouse, on the nine percent in seven years, he thought 15 years was okay. Mr. St. [John] said, would not contest a longer period like 15 years for streets and electrical replacements. So in my mind it’s very, very discretionary and an abuse of discretion and it’s not, and again, the most important thing is that it’s not noted in the ordinance.”

Supervisor Farr responded: “And I would agree with that. I think that this was picked right out of what the financing terms were in another agreement. So I thin – I would agree with you, Supervisor Wolf, and disagree with this finding.” (5 AR 1487-1488.)

The Board’s consideration of Award No. 4 was incomplete. Award No. 4 addressed all temporary increases; the Board’s disposition was to reverse all temporary increases. As it stood at the conclusion of the May 15 hearing, Award No. 4 was superfluous.

The record shows that there was substantial evidence to support the arbitrator’s decision of seven years and nine percent. Petitioners presented this amortization schedule (2 AR 327 [exhibit C]) and St. John testified that these numbers were the result of his professional judgment (3 AR 792). As Supervisor Wolf noted at the Board’s hearing, there would also be an evidentiary basis for other amortization schedules.

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. (See *American Funeral Concepts v. Board of Funeral Directors & Embalmers*, *supra*, 136 Cal.App.3d at p. 311.)

While the Board did not err in remanding Award No. 12 for recalculation, the arbitrator’s final

calculation is again subject to recalculation after further proceedings mandated by this disposition. This Award will therefore be subject to reconsideration by the Board. (See *American Funeral Concepts v. Board of Funeral Directors & Embalmers*, *supra*, 136 Cal.App.3d at p. 311.)

(4) Disposition

Award Nos. 1, 10, 13 and 14 are not at issue in this petition. As discussed above, the challenge to the Board's ruling on Award No. 3 is moot. The court will deny the petition as to Award Nos. 2 and 9, finding no abuse of discretion. Based upon the foregoing, the court concludes that the Board has prejudicially abused its discretion by not proceeding in the manner required by law as to Award Nos. 4, 5, 6, 7, 8, 11, and 12. The court will grant the petition as to these Awards, and mandate that the Board vacate its reversal of these Awards, and, on reconsideration, exercise its discretion in the manner required by law.

(5) Request for Judicial Notice

In support of her arguments, Hamrick requests that the court take judicial notice of: (exhibit A) the Ordinance; (exhibit B) California Health and Safety Code sections 18500 et seq. and California Code of Regulations, title 25 et seq.; (exhibit C) permits issued for the Park by County; (exhibit D) business entity detail from the California Secretary of State; (exhibit E) a mortgage profit and loss statement for Lazy Landing; and (exhibit F) Treasury Regulations section 1.162-11.

As a general rule, the court determines a petition for administrative writ by reference solely to the administrative record and not by reference to evidence outside of the administrative record. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 578.) With respect to exhibits C and D, judicial notice of these items is requested in order to assert arguments that could have been, but were not, asserted in the arbitration. These exhibits are otherwise irrelevant to the writ petition. Because the court does not consider these arguments because they were not raised in the arbitration, the court denies these requests for judicial notice as irrelevant. (See *Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063.) Exhibit E is not a document that is properly the subject of judicial notice, but confusingly consists of excerpts from the administrative record. The court deems the request for judicial notice as a citation to the administrative record.

Exhibits A, B, and F are to California law and regulations and to federal regulations. The court will grant these requests (Evid. Code, § 451, subds. (a), (b)), but notes that a simple citation would have sufficed. (*Mangini v. R. J. Reynolds Tobacco Co.*, *supra*, 7 Cal.4th at p. 1064.)