HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD REGULAR MEETING

March 9, 2017
7:00 P.M.
CITY HALL, HEARING ROOM #1
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA

AGENDA

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2017 MAR -1 PM 4:06

1. CALL TO ORDER

2. ROLL CALL

3. CONSENT ITEMS

   i. Approval of minutes, February 23, 2017

4 OPEN FORUM

5. NEW BUSINESS

   ii. Appeal Hearing in cases:

      a. Consolidate cases:
         T15-0618; Ross v. Claridge Hotel
         T15-0635; Anderson v. Claridge Hotel
         T15-0636; Mason v. Claridge Hotel

      b. T15-0684; Miller v. Rockridge Real Eastate, LLC

      c. T16-0018; Yabor v. Fixler

6. SCHEDULING AND REPORTS

7. ADJOURNMENT

Accessibility. The meeting is held in a wheelchair accessible facility. Contact the office of the City Clerk, City Hall, One Frank Ogawa Plaza, or call (510) 238–3611 (voice) or (510) 839–6451 (TTY) to arrange for the following services: 1) Sign interpreters; 2) Phone ear hearing device for the hearing impaired; 3) Large print, Braille, or cassette tape text for the visually impaired The City of Oakland complies with applicable City, State and Federal disability related laws and regulations protecting the civil rights of persons with environmental illness/multiple chemical

sensitivities (EI/MCS). Auxiliary aids and services and alternative formats are available by calling (510) 238-3716 at least 72 hours prior to this event.

Foreign language interpreters may be available from the Equal Access Office (510) 239-2368. Contact them for availability. Please refrain from wearing **strongly scented products** to this meeting.

Service Animals / Emotional Support Animals: The City of Oakland Rent Adjustment Program is committed to providing full access to qualified persons with disabilities who use services animals or emotional support animals.

If your service animal lacks visual evidence that it is a service animal (presence of an apparel item, apparatus, etc.), then please be prepared to reasonably establish that the animal does, in fact, perform a function or task that you cannot otherwise perform.

If you will be accompanied by an emotional support animal, then you must provide documentation on letterhead from a licensed mental health professional, not more than one year old, stating that you have a mental health-related disability, that having the animal accompany you is necessary to your mental health or treatment, and that you are under his or her professional care.

Service animals and emotional support animals must be trained to behave properly in public. An animal that behaves in an unreasonably disruptive or aggressive manner (barks, growls, bites, jumps, urinates or defecates, etc.) will be removed.

CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

Regular Meeting
February 23, 2017
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA

DRAFT MINUTES

1. CALL TO ORDER

The HRRRB was called to order at 7:05 p.m. by Board Chair, Jessie Warner

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Edward Lai	Homeowner	X		
Benjamin Scott	Landlord	X		
Ramona Chang	Landlord		X	
Jessie Warner	Homeowner	X		
Noah Frigault	Tenant	X		
Ubaldo Fernandez	Tenant Alt	X		
Karen Friedman	Landlord	X		

<u>Staff Present</u>

Richard Illgen	Deputy City Attorney
Kent Qian	Deputy City Attorney
Connie Taylor	Rent Adjustment Program Manager

3. CONSENT ITEMS

i. Approval of consent items:

E. Lai made a motion to approve draft minutes for January 12, 2017, with corrections. N. Frigault seconded. The Board voted as follows:

Aye: N. Frigault, E. Lai, J. Warner, K. Friedman, U. Fernandez, B. Scott
Nay: 0
Abstained: 0

The motion was approved by consensus.

N. Frigault made a motion to approve draft decision in cases T15-0576; T15-0420; T15-0374; & T16-0175. U. Fernandez seconded. The Board voted as follows:

Aye: N. Frigault, E. Lai, J. Warner, K. Friedman, U. Fernandez, B. Scott
Nay: 0
Abstained: 0

The motion was approved by consensus.

4. OPEN FORUM

Ann McClain
Jill Broadhurst
James Vann
Brian Geiser

5. NEW BUSINESS

i. Mayor Libby Schaaf: Discussion of Board Attendance

Speakers:

Brian Geiser
Ann McClain

Mayor Schaaf

The Mayor discussed the importance of Board attendance and listened to comments from the Board and Staff.

ii. Presentation of Plaques to Beverly Williams and Tyfahra Singleton.

Messages of appreciation were given by Rent Adjustment Manager and Board members to Beverly Williams and Tyfahra Singleton, whose terms ended on the Rent Board.

iii. Discussion and Possible Action on Board Attendance

Board Discussion

After Board discussion, N. Frigault made a motion that staff would notify the Board at the beginning of each month of the Board schedule for the month. Board members would respond within 8 days prior to each meeting. U. Fernandez seconded. U. Fernandez offered a friendly

amendment that alternates would not respond to a notice of a regular Board Meeting. The amendment was accepted. The Board voted as follows:

Aye: N. Frigault, U. Fernandez, K. Friedman, E. Lai, J. Warner, B. Scott
Nay: 0
Abstained: 0

The motion was approved by consensus.

iv. Election of New Board Officers

U. Fernandez made a motion to nominate J. Warner as Board Chair. K. Friedman seconded. The Board voted as follows:

Aye: N. Frigault, U. Fernandez, K. Friedman, E. Lai, J. Warner, B. Scott
Nay: 0
Abstained: 0

The motion carried by consensus.

J. Warner made a motion to nominate E. Lai for provisional Vice-Chair. U. Fernandez seconded. The Board voted as follows:

Aye: N. Frigault, U. Fernandez, K. Friedman, E. Lai, J. Warner, B. Scott
Nay: 0
Abstained: 0

The motion was approved by consensus.

6. OLD BUSINESS

i. Discussion and Possible Action on Amendments to Just Cause Regulations

Speakers:

Brian Geiser
James Vann
Jill Broadhurst

Extend Time Past 10:00 p.m.

J. Warner made a motion to extend time past 10:00 p.m. U. Fernandez seconded. The Board voted as follows:

Aye: N. Frigault, U. Fernandez, K. Friedman, E. Lai, J. Warner

Nay: 0
Abstained: B. Scott

The motion was passed by consensus.

Board Discussion

A draft version of the Just Cause Regulations was presented to the Board for consideration. Several changes were suggested by the Board; an amended version will be presented to the Board at a regular meeting in March.

The only action taken was the motion by K. Friedman to remove definitions from Section 8.22.340. B. Scott seconded. The Board voted as follows:

Aye: N. Frigault, U. Fernandez, K. Friedman, E. Lai, J. Warner, B. Scott
Nay: 0
Abstained: 0

The motion was approved by consensus.

7. SCHEDULING AND REPORTS

1. Agendize a discussion of Panel Board minutes.

8. ADJOURNMENT

J. Warner made a motion to adjourn. N. Frigault seconded. The meeting was adjourned by consensus at 10:45 p.m.

CHRONOLOGICAL CASE REPORT

Case Nos.:	T15-0618; T15-0635 & T15-0636
Case Names:	Ross v. Claridge Hotel; Anderson v. Claridge Hotel & Mason v. Claridge Hotel
Property Address:	634 15th Street, #301, #405 & #619, Oakland, CA
Parties:	James Mason, Victor Anderson (Tenants) David Lagomarsino (Landlord Representative)

LANDLORD &TENANT APPEAL:

Activity	Date
Tenant Petitions filed	November 20, 25, 30, 2015
Landlord Responses filed	December 2, 2015 & February 25, 2016
Hearing Decision issued	May 3, 2016
Tenant Appeal filed in case T15-00618	May 16, 2016
Landlord Appeals filed in cases T15-0635 & T15-0636	May 23, 2016

City of Oakland
Residential Rent Adjustment Program
250 Frank Ogawa Plaza, Suite 5313
Oakland, California 94612
(510) 238-3721

APPEAL

Appellant's Name Frank J. Ross	Landlord ☐ Tenant ☒
Property Address (Include Unit Number) 634 15th st #301 Oakland CA. 94612	
Appellant's Mailing Address (For receipt of notices) 634 15th st. #301 Oakland CA. 94612	**Case Number** T15-0618 **Date of Decision appealed** 5/3/2016
Name of Representative (if any)	**Representative's Mailing Address (For notices)**

appeal the decision issued in the case and on the date written above on the following grounds:
(Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

1. ☒ **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.** *You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.*

2. ☐ **The decision is inconsistent with decisions issued by other hearing officers.** *You must identify the prior inconsistent decision and explain how the decision is inconsistent.*

3. ☐ **The decision raises a new policy issue that has not been decided by the Board.** *You must provide a detailed statement of the issue and why the issue should be decided in your favor.*

4. ☒ **The decision is not supported by substantial evidence.** *You must explain why the decision is not supported by substantial evidence found in the case record. The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.*

5. ☒ **I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.** *You must explain how you were denied a sufficient opportunity and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.*

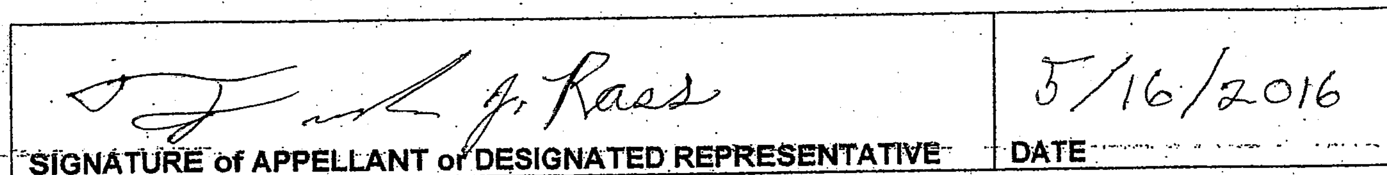
6. ☐ **The decision denies me a fair return on my investment.** *You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.*

000008

7. ■ Other. *You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached* [ ]. *Please number attached pages consecutively.*

8. You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed. I declare under penalty of perjury under the laws of the State of California that on ____________, 200___, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	David Lagomarsino
Address	SF Rents 1201 Fulton St.
City, State Zip	San Francisco, CA. 94117
Name	Claridge Hotel, LLC
Address	1201 Fulton St.
City, State Zip	San Francisco, CA. 94117



	5/16/2016
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	**DATE**

IMPORTANT INFORMATION:
This appeal must be received by the Rent Adjustment Program, 250 Frank Ogawa Plaza, Suite 5313, Oakland, California 94612, not later than 5:00 P.M. on the 20th calendar day after the date the decision was mailed to you as shown on the proof of service attached to the decision. If the last day to file is a weekend or holiday, the time to file the document is extended to the next business day.

- Appeals filed late without good cause will be dismissed.
- You must provide all of the information required or your appeal cannot be processed and may be dismissed.
- Anything to be considered by the Board must be received by the Rent Adjustment Program by 3:00 p.m. on the 8th day before the appeal hearing.
- The Board will not consider new claims. All claims, except as to jurisdiction, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 276-3721	2016 MAY 15 AM 10:56 **APPEAL**
Appellant's Name Frank J. Ross	**Landord** ___ **Tenant** _X_
Property Address (Include Unit Number 1. 634 15th Street #301 Oakland, CA 94612	
Appellant's Mailing Address (for receipt of Notices) 634 15th Street #301 Oakland, CA 94612	**Case Number** T15-0618 **Date of Decision Appealed** May 3, 2016
Name of Representative (if any)	Representative's Mailing Address (for notices)

Appeal the decision in the case and on the date written above on the following grounds:

1. The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations, or prior decision of the Board.

a. In Ms. Cohen's Hearing Decision she cites several Rent Adjustment Program hearings to which I have not had access, indeed to which I was unaware until receiving the Hearing Decision: T02-0404, *Santiago* v. *Vega;* T05-0317 *Thompson et. al* v. *Peper*; T14-0244 *Gaines* v. *Kumana*. Yet, because I was never informed that these cases existed, or, would be used against me, I was not able to access them, determine their applicability to my situation, or prepare a response to them, denying me both substantive and procedural due process.

Since Ms. Cohen has made every attempt to withhold from tenants cases and other information beneficial to their cases, and, adverse to Landlord Claridge Hotel and its representatives, I must conclude that the cases cited-above would be supportive of my position. I hereby request that written transcripts of the hearings of these cases, plus the hearing decision, be made available to me at least ten (10) days before any hearing is held in response to this appeal, or, that I have the opportunity at least ten (10) days before any hearing is held in response to this appeal to listen to the hearing tapes, receive the hearing decision, and have the opportunity to make my own transcripts, as provided by California Government Code §§6250-6253 *et seq*.

b. Ms. Cohen states on p. 4 of her hearing decision that:

"Additionally, Lagomarsino testified that the TCAC *Regulatory Agreement* requires the owner to rent only to tenants who meet certain designated income requirements. The *Agreement* requires that they only rent to tenants whose income is 40% or less of the median Alameda County income. The *Agreement* sets forth the maximum allowable rent.""

This statement is a baldface, unmitigated lie. Nothing in the agreement requires the owner to rent only to tenants whose income is 40% or less of the Gross Area Median (GMA) for Alameda County. Ms. Cohen again fails to cite the paragraph in the Regulatory Agreement which requires this, because there is none. Claridge Hotel can rent to anyone. If that tenant is above the 40% of Gross Median income level, then the hotel cannot include that tenant's unit as part of the units Claridge Hotel declares a CTCAC unit. That is the hotel's choice, not a requirement.

The Regulatory Agreement at "Section 4. *Qualified Low-Income Housing Project,* subsection b: "For the purposes of this Agreement and Section 42 of the [Internal Revenue] Code, the owner has elected to comply with ... the "40-60 test" pursuant to which "Low – income is defined as 60% of Area Median Gross Income and the Minimum Amount is 40%of the units in the Project."

40% of 190 units is 76 units. So Claridge Hotel can rent 114 units to tenants who are above 60% of Gross Area Income and the 76 40%-or- less units would be 100% of required low-income tenants for Claridge Hotel LLC's tax dodging investors to receive their tax credit allocations. If Claridge Hotel falls below the 76 units rented to low-income tenants, what happens to it? Must they surrender the hotel to CTCAC? No! Will they go to prison, as the previous owner, Richard Spinter is for arson with malice for trying to burn down the Menlo Hotel, another downtown Oakland SRO? No! Are they fined by CTCAC or the IRS? No! Their tax-dodging investors will have to forego tax credits for the period in which more than 40% of the tenants have incomes above 60% of Gross Area Median (GMA) income. The Claridge Hotel could just as readily fill its room with above GMA tenants, charge them the market rates with nothing adverse happening to them except losing the tax credits for their tax-dodging investors, and, being within the provisions of the Rent Adjustment Program without even the shadow of a claim to exemption. There are no criminal ramifications for renting more than 40% of the units to above GMA tenants!

Additionally, Lagomarsino admits that those units with bathrooms are not within CTCAC requirements anyway. Hearing Decision, p. 4, fn. 8. (See 2a below.) Those units not only include my room, Rm. 301, but also puts the lie to his claim that he is required by the Regulatory Agreement to lease 100% of his residential units to persons with incomes below 40% GMA. Avoiding an unpalatable option is a choice, not a requirement.

2. The decision is inconsistent with decisions issued by other hearing officers and by Ms. Cohen herself.

a. *Gaines* v. *Kumana* T14-0244, may have facts identical to my own. By the statement contained in Ms. Cohen's Hearing Decision at p. 4, fn. 8 by Mr. Lagomarsino, he designated any unit with a bathroom as a non-TCAC unit. When I began my tenancy at the Ridge/Claridge Hotel, I was given a room with a bathroom, so I should be classified as a non-TCAC unit, the same as the tenant in *Gaines*. There are twenty (20) units in the Ridge/Claridge which have bathrooms, including my own. (Rooms _01, _25, _26 and _37, on each floor: (201, 225, 226, 237, 301 (Appellant's Ross' room), 325, 326, 337, 401, 425, 426, 437, 501, 525, 526, 537, 601,

625, 626, 637). The removal of the plumbing for the bathroom in Room 301 before my tenancy in that room, it was supposed to be temporary until repairs restoring the bathroom to usable condition could be made. Such removal does not have convert a non-TCAC unit into a TCAC unit, to the extent there can be such a thing as a TCAC unit. However, not having access, or even knowledge, of this case denies me procedural due process.

b. Ms. Cohen falsely states that "The owner filed a timely response to Frank Ross' petition." In the questions directed to Tenant Petitioner Victor Anderson on this issue, Ms. Cohen asked Mr. Anderson if the Notice of rent increase given to him for the rent increase effective January 1, 2016, contained all the documents required by 8.22.070H *et seq.*, as being material to whether the Landlord met the notice requirement. Several documents were missing in my notices of rent increases, including the Regulatory Agreement and the Notice to Tenants of the Residential Rent Adjustment Program form. No Tenant Petitioner had received the Regulatory Agreement although Ms. Cohen falsely—falsely—claimed that she had received one in my case. I also did not receive the Notice to Tenants of the Residential Rent Adjustment form. If the absence of these two forms, along with other required notices, are grounds to deny an exemption for Mr. Anderson's tenancy, it should be grounds also for me, Frank Ross, not to be exempt from the Rent Adjustment Program.

3. The decision raises a new policy issue that has not been decided by the Board.

a. Hearing Officer Barbara Cohen's interpretation of Oakland Municipal Ordinance 8.22.030.1 violates California Constitution XI, §11(a) and is thus unconstitutional as applied to Mr. Ross or to any Landlord whose claim rest solely on a Regulatory Agreement between a private sector party and the California Tax Credit Allocation Commission.

California Constitution Article XI, §11:

§11. Delegation of local powers;

"(a) The Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions."

California Supreme Court decisions beginning in 1976, before Oakland's rent control ordinance was passed, have held that a local governmental entity cannot abdicate, abnegate, surrender or bargain away its exercise of its police power. *Avco Community Developers, Inc.* v. *South Coast Regional Com.* (1976) 17 Cal.3d 785, 800. California Constitution Art. IX, §11(a) prevents an end run around this prohibition by preventing a local government using the procedure used here by Oakland Rent Adjustment Program: using a state governmental "unit, agency, or authority" to delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation ... perform[ance of] municipal functions."

This provision or its concept have been upheld by *Avco, supra*, p. 800; *Delucchi* v. *County Of Santa Cruz, et al.*, 179 CalApp3d (1986) p. 814, 823; *Interstate Marina Development*

Co. v. *County of Los Angeles* (1984) 155 Cal.App.3d 435, 448; *Alameda County Land Use Assn.* v. *City of Hayward* (1995) 76 Cal.App.4th 1716, 1720; *County Mobile Home PAC* v. *County of San Diego* 62 Cal.App.4th (1998) 727. All cases involve the attempt of local governments in California to abdicate, abnegate, abandon, surrender or delegate their exercise of their police posers (rent control, zoning, building permits, Williamson Act, Coastal Commission).

Ms. Cohen was informed by Tenant Petitioner Victor C. Anderson in his Prepared Testimony submitted to the RAP on March 11, 2016, that the Regulatory Agreement could not be used to grant an exemption to the exercise of a municipality's police powers, citing California Constitution Article XI, §11(a) and concurring California case law. Mr. Anderson, at the same hearing attended by Mr. Ross, raised this objection to the use of the Regulatory Agreement, to which Ms. Cohen erroneously replied that since she had already ruled that Landlord's representative Mr. Lagomarsino, could not claim an exemption in Mr. Anderson's case, Mr. Anderson could not raise the objection to the Regulatory Agreement's use. However, the facts relating to the use of the Regulatory Agreement applies to Mr. Ross and all tenants of the Claridge Hotel, LLC and its landlord, or it's representatives! There claim's are not covered by the Rent Adjustment Program based on the Regulatory Agreement with the California Tax Credit Allocation Committee.

b. The Rent Adjustment Program and Hearing Officer Barabara Cohen ruled in my case (Frank Ross) that the California Tax Credit Allocation Commission is such "government unit, agency, or authority..." in ruling against me, knowing the California Constitution Article XI, §11(a) barred the use of the Regulatory Agreement. Hearing decision p. 5. I, Frank Ross, do hereby allege that the finding of lack of jurisdiction claimed by Ms. Cohen is an abdication, abnegation, surrender and delegation of the exercise by the City of Oakland's of the exercise of its police powers prohibited by Article XI of the California Constitution, and that the use of the Regulatory Agreement between the California Tax Credit Allocation Committee and any private sector owner or successor-in-interest violates §11(a) of that article, and is thus void as contrary to public policy and the California Constitution.

c. The California Supreme has stated repeatedly that state law does not exempt local government legislation where the purpose of the statutes is sufficiently distinct from that of the local ordinances or charter amendments. *Birkenfeld* at p. 149. It has thus held that local legislation is sufficiently distinct in:

unlawful detainer law, Code of Civil Procedure §1161. (*Birkenfeld, supra*; *Fisher* v. *City of Berkeley* 37 Cal.3d (1984) 644,; *Rental Housing Assn.* v. *City of Oakland*; 171 CalApp 4th 741.);

Evidence Code §500 (*Fisher* at p. 698)

Civil Code §1942, (rent withholding)(*Fisher, supra*)

Civil Code §1947 (rent payment)(*Fisher, supra*)

Code of Civil Procedure section 1021 (Attorney's fees): *City of Santa Paula* v. *Narula* (2003) 114 Cal.App.4th 485, 493; *Segundo* v. *Rancho Mirage City* (9th Cir.1989) 873 F.2d 1277.

Pension laws: *DeCelle* v. *City of Alameda* (1963) 221 Cal.App.2d 528,

Fair Employment and Housing Act (FEHA) (Gov. Code, §§12900 *et seq.)* 12993, subd. (c): *Rental Housing Assn. v. City of Oakland*; 171 CalApp4th 741.

Civil Code section 47, subdivision (b) (the litigation privilege): *Action Apartment Assoc. v. City of Santa Monica*, 41 Cal4th () 1232; *Rental Housing Assn.*,

Penal Code §§12125(a)(regulation of unsafe guns);

§12220 (regulation of machine guns) ;

§12280 (regulation of assault weapons). *Great Western Shows, Inc.* v. *County of Los Angeles*, 27th Cal 4th 853 (2002)(Legislature pre-empted discrete areas of gun regulation rather than the entire field of gun control).

§594.1 (regulation of aerosol spray paint): *Sherwin-Williams Co.* v. *City of Los Angeles* (1993), 4 Cal4th 893.

If the California Supreme Court is willing to deny pre-emption to the state's penal laws, it is difficult to see any state law, regulation, or program which can prevail over a local government's exercise of the police power. The Rent Adjustment Program creates certain rights for tenants of dwelling units in the City of Oakland:

a. The right to have rent increases limited to once in any twelve-month period (§8.22.070A.1.)
b. The right to have that increase limited to the Consumer Price Index (CPI) (§8.22.070A.2);
c. The right to notice of a rent increase 30-days before the rent increase is effective. (§8.22.070B.2.a)
d. The right to a hearing to challenge the rent increase on several grounds. (§8.22.110 *et seq.*)
e. An expedited procedure to recover overpayments. (§8.22.110 *et seq.*)

These rights are not found in either the CTCAC enabling legislation or regulations, or, the IRC enabling legislation or regulations on which the CTCAC regulations are based. I, Frank Ross, refer the Appeals Board to section 4a of this appeal, below. The Rent Adjustment Program regulations do not duplicate, contradict, or enter any area fully occupied by federal or state law, either expressly or by legislative implication, nor, enter an area fully occupied by federal or state law or regulation, either expressly or by legislative implication. Therefore, even if CTCAC was, by an extremely overbroad interpretation of "government agency regulating, controlling, or subsidizing" residential dwelling units, there is nothing in the Regulatory Agreement, the enabling legislation, or the regulations as published in the California Code of Regulations (CCR) that supports an exemption. In fact, the City of Oakland in *Rental Housing Assn.*, *supra*, in defense of the just cause eviction section of this same law, (Art. III, §§8.22.300 *et seq.*), administered by the same program (Rent Adjustment Program) of the same department (Housing and Community Development) argues strenuously that its regulations are ***not*** pre-empted by state laws.

4. The decision is not supported by substantial evidence.

a. I, Frank Ross, have a severe hearing impairment such that any conversation by multiple persons, are heard by me as white noise. At the hearing on February 16, 2016, I informed Ms. Cohen of this fact. The group hearing, in itself not within the procedures provided for in the regulations of the Rent Adjustment Program, and, the enabling ordinances of the City of Oakland, presented situations in which I was unable to hear, and thus understand, what was being said, especially by Ms. Cohen and Mr. Lagomarsino, who often conducted their conversations as if the Tenant Petitioners were mere potted plants, of no interest or importance. The testimony allegedly given by Mr. David Lagomarsino at the March 18, 2016 hearing, if as Ms. Cohen states it, is contrary to the testimony he gave at the February 16, 2016, hearing and to other statements he made. First, my room, 301, is one of the non-TCAC rooms by the reasoning Mr. Lagomoarsino gave in fn. 8. Secondly, the Regulatory Agreement does not include any provisions in its 16 numbered paragraphs which address landlord-tenant relations. Third, in an answer to Mr. Victor Anderson's letter to the California Tax Allocation Commission dated March 7, 2016, Mr. Anderson requested, among other things:

"6. The specific legislative section or regulation permitting multiple rent increases in a 12-month period in contravention of local ordinances, as claimed by the putative owners.

"7. The specific legislative section or regulation exempting the project from municipal health and safety codes, as claimed by the putative owners.

In response to the above, Robert S. Hedrick, Senior Attorney, State Treasurer's Office, responded on March 26, 2016, by email:

"In response to your Public Records Act request, please find a copy of the regulatory agreement and one assumption agreement relating to the property at 634 15th Street, Oakland California. *We have no documents responsive to your request for legislation or regulations that permit multiple rent increases in a 12-month.* Similarly we have *no documents responsive to your request for legislation or regulations that exempt the property from municipal health and safety codes*." Emphasis added.

Copies of both Mr. Anderson's March 7, 2016, letter to Mark Stivers, Executive Director, California Tax Credit Allocation Committee, and, Mr. Hendricks' email response will be available at the appeal hearing, or, sooner if officially requested by the Appeals Board in writing.

As California Tax Credit Allocation Commission's regulations as published in the California Code of Regulations (CCR) would be among the public records requested. I gather that there are no regulations purporting to granting to any CTAC Regulatory Agreement,that's grants the contractor the exemption. Ms. Cohen and Mr. Lagomarsino falsely claim either one does. Such exemption is not in the Regulatory Agreement, and, not in the CCRs. So, where did Ms. Cohen find its existence?

b. Grounds for exemption and burden of proof. Under *Birkenfeld* v. *City of Berkeley* (1976) 17 Cal.3d 129, the California Supreme Court established rent control as a valid exercise of a local government's police power. In *Birkenfeld*, as in most rent control cases in California, the landlord sought to invalidate Berkeley's rent control ordinance by claiming California Civil

Code §827 pre-empted the rent control ordinance. The California Supreme Court held in *Birkenfeld* that only procedural prescription in state law overrode municipal ordinances enacting rent control, but that substantive requirements could add additional requirements. The above-cited provisions of the Rent Adjustment Program regulations are just such additional requirements.

Burden of proving existence of landlord-tenant clauses overriding City of Oakland's tenant protection provisions.

The burden of proof for establishing an exemption lies with the party seeking the exemption under California Evidence Code §500. This would be Claridge Hotel through its representative, Mr. Lagomarsino. Although I was unable to hear the conversation between Ms. Cohen and Mr. Lagomarsino discussing this issue, I am informed by the other Tenant Petitioners that Ms. Cohen asked leading questioning to which Mr. Lagomarsino answered in the affirmative, without ever presenting or supporting any claims for an exemption, unless coached, led, directed, or instructed by Ms. Cohen. Even so, to the extent that Ms. Cohen's question sought to establish that the Regulatory Agreement provided grounds for an exemption, she failed. It is notable that in her decision Ms. Cohen fails to cite one clause of the Regulatory Agreement which provides the same tenant protections as the Rent Adjustment program, or, for that matter, any landlord-tenant provision. In fact, while she cites the Regulatory Agreement as the basis for her decision, she does not cite one single paragraph, sentence, or clause of that Agreement in support of her decision.

First, as stated above and elsewhere in this appeal, there is no provision in the sixteen (16) numbered paragraphs of the Regulatory Agreement that addresses landlord-tenant issues. Second, California Constitution Art. XI, §11(a) bars the use of the Regulatory Agreement as the basis of an exemption to the exercise of a local government's police power. Third, even if a state "government unit, agency, or authority" other than a state housing agency or authority could provides an exemption, in the California Supreme Court has ruled in a wide variety of cases that the state law must exempt the same specific action that the local government regulates.

c. Ms Cohen dismisses my petition by falsely stating that the "Regulatory Agreement sets forth the allowable rents the owner can charge for the subject units." Hearing decision, p. 5. Again, Ms. Cohen fails to state any paragraph, sentence, or clause of the Regulatory Agreement which says that. Nor are there any published regulations in the CCRs that says that.

5. I was denied a sufficient opportunity to present my claim or respond to petitioner's claim.

As stated elsewhere in this appeal, I, Frank Ross, have a severe hearing impairment such that any conversation by multiple persons are heard by me as white noise. At the hearing on February 16, 2016, I informed Ms. Cohen of this fact. The group hearing, in itself not within the procedures provided for in the official regulations of the Rent Adjustment Program, or, by the enabling ordinances of the City of Oakland, presented situations in which I was unable to hear, and thus understand, what was being said, especially by Ms. Cohen and Mr. Lagomarsino, who

often conducted their conversations as if the Tenant Petitioners were mere potted plants, of no interest or importance.

The testimony allegedly given by Mr. David Lagomarsino at either hearing was virtually unheard by me, especially at the hearing of March 18, 2016. Ms. Cohen made no attempt to inform me, or the other Tenant Petitioners, of her intention to conduct the hearing solely to determine whether or not there was jurisdiction of the Rent Adjustment Program over the Claridge Hotel; the basis for a lack of jurisdiction; the claims of Mr. Lagomarsino of having an exemption; or, the basis for my challenging such claims. Her decision ruling a lack of jurisdiction is based solely on the testimony of Mr. Lagomarsino, which I was unable to challenge since I did not hear it.

7. Other. There are numerous misstatement of facts in the Hearing Decision, such as my (Mr. Frank Ross) issues before the Rent Adjustment Board; statements attributed to Mr. Lagomarsino; and, facts concerning co-Tenant Petitioners Victor C. Anderson and James Mason. I, Frank Ross, hereby demand that a written transcript of the hearing held on February 16, 2016, and, of the hearing held on March 18, 2016, be made available to me no later than ten (10) days before the hearing on this appeal. I make this demand pursuant to Govt. Code §§6250-53 et seq., and, any and all ordinances of the City of Oakland and regulations of the Rent Adjustment Program relating to the Rent Adjustment Program and appeals of its hearing decisions.

Throughout these hearings, Ms. Cohen has acted as the attorney for the owners, falsely claiming the submission of documents required by owner when such documents have not been submitted, supplying such documents, withholding evidence, relying on ex parte communication with owner's representatives, and conducting the hearing so as to deny me a proper opportunity to present my case.

Frank J. Ross

CITY OF OAKLAND

250 FRANK OGAWA PLAZA, SUITE 5313, OAKLAND, CA 94612

Department of Housing and Community Development
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3254

HEARING DECISION

CASE NUMBERS: **T15-0618, Ross v. Claridge Hotel**
T15-0635, Anderson v. Claridge Hotel
T15-0636, Mason v. Claridge Hotel

PROPERTY ADDRESS: **634 15th Street, #301, #405 and #619, Oakland, CA**

DATES OF HEARING: **February 16, 2016, and March 18, 2016**

DATE OF DECISION: **May 3, 2016**

APPEARANCES: **James Mason, Tenant (Apt 619)**
Victor Anderson, Tenant (Apt 405)
Frank Ross, Tenant (Apt 301)
David Lagomarsino, Owner Representative
Kevin Kumana, Owner Representative (2/16 only)
Nick DuBois, Owner Representative (2/16 only)

SUMMARY OF DECISION

Victor Anderson's petition is granted. James Mason's petition is granted in part. Frank Ross' petition is dismissed.

INTRODUCTION

Tenant Frank Ross filed a petition on November 20, 2015, which alleges that a rent increase from $550 to $750, effective February 1, 2016, exceeds the CPI and is unjustified; that no written notice of the Rent Program (*RAP Notice)* was given to him together with the rent increase; that at present there exists a health, safety, fire or building code violation in the building; that the contested rent increase is the second rent increase in a 12 month period; and, that his housing services have decreased.

Mr. Ross also claimed that a prior rent increase, effective July 1, 2015, which increased his rent from $520 to $550 per month, exceeds the CPI and was unjustified.

The owner filed a timely response to Frank Ross' petition, claiming that the unit is exempt from the RAP because the rent for the unit is controlled, regulated or subsidized by a governmental unit, agency or authority other than the City of Oakland Rent Adjustment Ordinance. The Owner attached to its Owner Response a copy of the *Regulatory Agreement* it has with the State of California *Tax Credit Allocation Committee (TCAC).*

Tenant Victor Anderson filed a petition on November 25, 2015, which alleges that a rent increase from $500 to $575, effective January 1, 2016, exceeds the CPI and is unjustified; that no *RAP Notice* was given to him together with the rent increase; that the contested rent increase is the second rent increase in a 12 month period; and, that he wished to contest an exemption from the Rent Adjustment Ordinance.

Tenant James Mason filed a petition on November 30, 2015, which alleges that a current proposed rent increase exceeds the CPI and is unjustified; that at present there exists a health, safety, fire or building code violation in the unit; and that there are serious problems with his rental unit in that there are roaches, medflies, loud noises from the next room, that there is no air conditioning in the bathroom and that the bathroom looks bad.

At the first Hearing date, February 16, 2016, the Owner had not filed any response to either the tenant petition filed by Mr. Anderson or the tenant petition filed by Mr. Mason. The tenants objected to proceeding with the Hearing, without any knowledge as to the Owner's claims. The Hearing was continued in order to allow the Owner to file responses to the Tenant Petition (reserving the issue of whether or not there was "good cause" for the late filing). Additionally, the tenants were provided a copy of the *Regulatory Agreement* between the owner and the *Tax Credit Allocation Committee ("TCAC").*
Between the first and second day of Hearing, the Owner filed a late response to the Tenant Petitions of Anderson and Mason. In the Owner Responses the owner claimed that the units are exempt from the RAP because the rent for the units are controlled, regulated or subsidized by a governmental unit, agency or authority other than the City of Oakland Rent Adjustment Ordinance.

THE ISSUES

1. Does the Rent Adjustment Program have jurisdiction over the Petition filed by tenant Ross?
2. Did the owner have good cause for failing to file a timely response to the Tenant Petitions filed by Anderson and Mason?
3. As to Anderson and Mason, if there is no good cause for the failure to file a timely response, when, if ever, were they served with RAP Notices?
4. As to Anderson and Mason, if there is no good cause for the failure to file a timely response, are the rent increases valid?
5. As to Anderson and Mason, what is the legal rent?
6. As to Mason, have his housing services been decreased, and, if so, by what percentage of the total housing services that are provided by the owner?

7. What, if any, restitution is owed between the parties and how does that impact the rent?

EVIDENCE

Owner Responses: David Lagomarsino, the Director of Operations for SF Rent, testified that he is the representative of the owner of the Claridge Hotel, where the tenants reside. He was unable to testify exactly why the Owner Responses were late. These responses were previously handled by an employee named Fritz Jacobs, who used to work for the owner. Jacobs left the employ of the company on February 1, 2016. Jacobs was responsible for filing all Owner Responses to any Tenant Petition filed before he left the employ of the company. He was not out sick or otherwise unavailable during the time period between when the Tenant Petitions were filed and the Owner Responses were due.

Tenants' Rental History:

Mr. Ross: Frank Ross testified that he has lived at the Claridge Hotel since July of 2005 at an initial rent of $475. He was told at the time that because he did not have a bathroom in his room, his room was under Rent Control. Additionally, when he originally rented the unit, he was required to establish his income, and his ability to rent the unit was based on his ability to establish that his income did not exceed a certain threshold.

Mr. Anderson: Victor Anderson testified that he has lived at the Claridge since July of 2007. Originally he rented room 405, but moved into room 407 in August of 2014. His original rent in room 405 was $475. This continued when he moved into room 407. In February of 2015, he was given a rent increase notice, purporting to increase his rent from $475 to $500 a month, effective April 1, 2015.[1] He was served with a *RAP Notice* with this rent increase.[2] He has been paying that rent increase.

Anderson further testified that on November 1, 2015, he was served with a *60 Day Notice of Change of Monthly Rent* purporting to increase his rent from $500 to $575, effective January 1, 2016. He was not served with a *RAP Notice* with this rent increase. Anderson has continued to pay $500 per month since receiving the rent increase notice.

Mr. Mason: James Mason testified that he moved into the Claridge in March of 2009 at an initial rent of $525. In January of 2015, he was given a rent increase notice, purporting to increase his rent to $572.25. Official Notice is taken of the Rent Adjustment Program case file T15-0092, in which Mr. Mason objected to this rent increase. The *Hearing Decision* in that case determined that the rent increase was invalid and stated that the tenant's rent was $525 a month.[3] According to the Hearing Decision in that case the tenant did receive the *RAP Notice* with that rent increase.

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[1] Exhibit 2, page 2

[2] Exhibit 2, page 4

[3] The Owner appealed that *Hearing Decision*. The appeal was heard on April 20, 2016. The Owner did not show up at the *Appeal Hearing*, so the owner's appeal was dismissed.

Mason further testified that in November of 2015, he was served with a *Sixty Day Notice of Change of Monthly Rent* purporting to increase his rent from $572.25 to $650.00 a month, effective February 1, 2016.[4] Additionally, he testified that despite the fact that there was a Hearing Decision issued in T15-0092, stating that his rent was $525.00 a month, the owner was still attempting to collect back rent from him.[5]

Mason testified that he has continued to pay $525.00 a month. The owner representative did not dispute this testimony.

Tax Credit Allocation Committee: David Lagomarsino testified that SF Rents has owned the building since August of 2014. The building is covered by a *Regulatory Agreement* with the State of California *TCAC*. The *Regulatory Agreement* was admitted into evidence as Exhibit 1 as to Mr. Ross only.[6] The *Regulatory Agreement* specifies that there are 190 low-income units in the building.[7] The building has 204 units. Of the 14 units that are not part of the 190 low income units, there are three units that are considered commercial space.

Lagomarsino further testified that as of the Hearing date in February of 2016, there were approximately 60 vacancies in the building (which remained the same at the Hearing date in March 2016). The current tenants who live in the building live in units designated as *TCAC* units. The non-*TCAC* units are not rented to prospective tenants until all the *TCAC* units are rented. Additionally, the *non-TCAC* units are not specific designated units, but are the last vacant units in the building.[8]

Additionally, Lagomarsino testified that the *TCAC Regulatory Agreement* requires the owner to rent only to tenants who meet certain designated income requirements. The *Agreement* requires that they only rent to tenants whose income is 40% or less of than the median Alameda County income. The *Agreement* also sets forth the maximum allowable rent.

Decreased Housing Services: Both Mr. Ross and Mr. Mason made claims of decreased housing services. Since the RAP has no jurisdiction over Mr. Ross' claims (see below), he was not asked about his claims at the Hearing. With respect to Mr. Mason, Official Notice is taken of case T15-0092. In that case he brought the same claims of decreased services. Additionally, he testified to the following:

Cockroaches: Mr. Mason testified that he sees cockroaches on a daily basis. He further testified that the fact that at the inspection in the last case there were no cockroaches present is because they only come out at night. Every month the

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[4] Exhibit 3

[5] See Exhibit 3, page 2, which is a Statement from the Claridge Hotel for James Mason showing regular monthly charge of $572.25 in June –November of 2015.

[6] Since the Owner only filed timely responses to Mr. Ross' case, it was only allowed to produce evidence in his case. (See below.) Therefore, this Exhibit was only admitted into evidence in Mr. Ross' case.

[7] See Exhibit A to the Regulatory Agreement.

[8] Lagomarsino was asked about a tenant who had a case against the Rent Adjustment Program in 2014, where Jacobs testified that her unit was not a *TCAC* unit (See Gaines v. Kumana, T14-0244). He testified that her unit was designated as a non-*TCAC* unit when she signed her lease, because she had a bathroom.

management does some kind of pest control. He testified that he thinks he gets cockroaches even though they are spraying monthly because his room is right next to the garbage room. Mr. Ross also testified that there is monthly pest control in this building.

Flies: Mason testified that every time he goes into his unit there are little fruit flies who come into his unit.

Loud Noises: Mason testified that because his room is right next to the garbage room he hears loud noises all night. When the garbage door is open by another tenant, the garbage door swings open into his closed door. This noise wakes him up.

Condition of Bathroom: The tenant complained in his petition that there was no air conditioning in the bathroom and that it looked bad. He testified that there are three bathrooms on his floor and one is currently being remodeled. Of the bathrooms on his floor, only one has a window, the other two do not. They all have ventilation fans. Additionally, there was no air conditioning in the bathroom when he moved into the unit.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Does the RAP Have Jurisdiction Over Mr. Ross' Petition?

The Oakland Rent Ordinance[9] states:

A. . . The following dwelling units are not Covered Units[10] for the purposes of this Chapter 8.22.030: . . . 1. Dwelling units whose rents are controlled, regulated (other than by this Chapter), or subsidized by any governmental unit, agency or authority.

The *TCAC Regulatory Agreement* which is in force at the subject building, sets forth the allowable rents the owner can charge for the subject units. Therefore, Mr. Ross' unit is exempt from the Rent Ordinance, and the Rent Adjustment Program presently has no jurisdiction over that unit. Without such jurisdiction, the Rent Adjustment Program cannot make an order setting rent for Mr. Ross' unit.[11] Therefore, Mr. Ross' petition is dismissed.

Was there good cause for the owner's failure to file a timely response to the petitions of tenants Mason and Anderson?

Tenants Mason's and Anderson's petitions were served on the owner on December 8, 2015. The Rent Adjustment Ordinance[12] requires an owner to file a response to a tenant petition within 35 days after service of a notice by the Rent Adjustment Program (RAP)

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[9] O.M.C. Section 8.22.030
[10] A "Covered Unit" is a rental unit that is not exempt from the Rent Ordinance (O.M.C. Section 8.22.020).
[11] O.M.C. Section 8.22.070(F) states that a decrease in housing services in considered to be an increase in rent.
[12] O.M.C. § 8.22.090(B). The Ordinance requires that the Owner respond in 30 days. However, 5 additional days are added because the Tenant Petition is sent by mail. CCP § 1013(a).

that a tenant petition was filed. "If a tenant files a petition and if the owner wishes to contest the petition, the owner must respond . . ."[13] The owner responses were therefore due on January 12, 2016.

The owner's representative testified that through February 1, 2016, there was an employee of SF Rents, Fritz Jacobs, whose job it was to respond to tenant petitions. Jacobs was not absent from work or otherwise unable to file timely responses to these tenant petitions. The owner representative did not know why he had failed to respond, but did know that there wasn't any emergency that prevented him from responding timely. Absent an emergency of some kind, there is no good cause for failing to file a timely *Response*.

The owner did ultimately file late responses in both cases; however, these were filed after the first day of Hearing.

The owner did not have good cause for failing to file timely responses. Because of the failure to file timely responses, the owner was precluded from introducing evidence at the Hearing as it relates to Anderson and Mason, although he was permitted to cross-examine the tenants and present a summation.[14,15]

Due to the failure of the owner to file a timely response to the Anderson and Mason petitions, the issue of whether or not their units are exempt from the RAP cannot be considered.

As to tenants Anderson and Mason, when, if ever, were they served with a RAP Notice?

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy[16] and together with any notice of rent increase or change in the terms of a tenancy.[17] An owner can cure the failure to give notice at the start of the tenancy, but may not raise the rent until 6 months after the first *RAP Notice* is given.[18] The owner has the burden of proving that the *RAP Notice* was served[19].

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[13] O.M.C. § 8.22.070(C)

[14] Santiago v. Vega, Case No. T02-0404

[15] The fact that these cases were consolidated for the convenience and that the *TCAC Regulatory Agreement* was in evidence as to Mr. Ross' claim, does not prevent this result. The owner is required to follow the proper procedures with respect to each *Tenant Petition* filed. An exemption based on the fact that the unit is rent regulated by another agency, is not a permanent exemption. The owner is required to establish the exemption in every case. In the cases of Mason and Anderson, the owner did not produce a timely filed response; and as such, cannot establish that the units in question are rent regulated.

[16] O.M.C. § 8.22.060(A)

[17] O.M.C. § 8.22.070(H)(1)(A)

[18] O.M.C.§ 8.22.060 (C)

[19] Housing, Residential, Rent and Relocation Board Decision in Thompson et al v. Peper, T05-0317

Mason credibly testified that he was first served with *RAP Notice* in early 2015, with a prior rent increase[20]. Anderson credibly testified that he was first served with a *RAP Notice* in February 2015, with a prior rent increase. Each tenant credibly testified that they were not served with a *RAP Notice* with the rent increases that were the subject of their petitions.

As to Anderson and Mason are the rent increases valid?

The contested rent increases served on Anderson and Mason are invalid for two reasons. First, neither notice was served with a *RAP Notice*. Therefore, they are invalid. Additionally, a second separate reason to invalidate the rent increases is that since the *Owner Response* was filed late and without good cause, the owner has not provided any evidence to justify the increase or to establish an exemption. For both these reasons the rent increases as to Anderson and Mason are invalid.

As to Anderson and Mason, what is the rent?

As to tenant Mason, the rent remains $525.00 a month, since the prior rent increase was deemed invalid in case T15-0092.

As to tenant Anderson, the rent remains $500 a month.

As to Mason, have his housing services been decreased, and, if so, by what percentage of the total housing services that are provided by the owner?

Tenant Mason brought forth the same claims of decreased housing services that he raised in his prior case, T 15-0092. According to his testimony, there do not seem to be significant changed conditions since that Hearing. A tenant cannot simply repeat the same claims of decreased services and expect a different result. These claims are denied.

What, if any, restitution is owed to the parties?

Since Mason and Anderson have not been paying the contested rent increases, no restitution is owed between the parties.

ORDER

1. As to tenant Frank Ross, the tenant petition is dismissed. The Rent Adjustment Program does not have jurisdiction over his claim since he lives in a unit whose rent is controlled, regulated or subsidized by a governmental agency or authority.

2. As to tenant Mason, the base rent for his unit is $525.00 a month.

3. As to tenant Anderson, the base rent for his unit is $500 a month.

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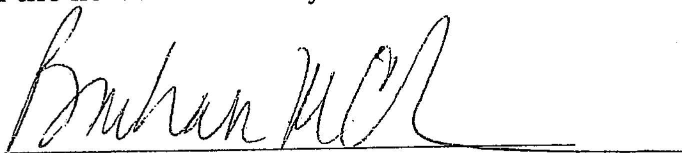
[20] Additionally, the Hearing Decision in T15-0092 determined that Mason was served with a *RAP Notice* in early 2015.

4. **Right to Appeal**: This decision is the final decision of the Rent Adjustment Program Staff. Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.



Dated: May 3, 2016

Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number(s): T15-0618, T15-0635, T15-0636

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached **Hearing Decision** by placing a true copy of it in a sealed envelope in City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

James Mason
634 15th Street, #619
Oakland, CA 94612

Victor Anderson
PO Box 32106
Oakland, CA 94604

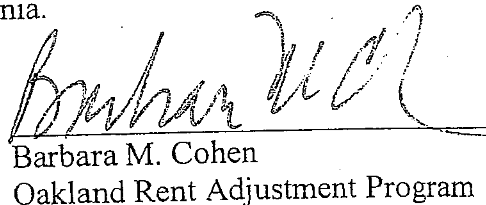
Frank Ross
634 15th Street, #301
Oakland, CA 94612

David Lagomarsino
SF Rents
1201 Fulton Street
San Francisco, CA 94117

Claridge Hotel, LLC
1201 Fulton Street
San Francisco, CA 94117

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 3, 2016, in Oakland, California.



Barbara M. Cohen
Oakland Rent Adjustment Program

ANDERSON

2016 MAY 23 PM 3:14

City of Oakland **Residential Rent Adjustment Program** 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721	**APPEAL**

Appellant's Name Claridge Hotel, LLC	**Landlord** ☒ **Tenant** ☐
Property Address (Include Unit Number) 634 15th St., Unit 405 Oakland, CA 94612	
Appellant's Mailing Address (For receipt of notices) 1201 Fulton St. San Francisco, CA 94117	**Case Number** T15-0635 **Date of Decision appealed** 5/3/2016
Name of Representative (if any) David Lagomarsino or Kevin Kumara	**Representative's Mailing Address (For notices)** 1201 Fulton St San Francisco, CA 94117

I appeal the decision issued in the case and on the date written above on the following grounds:
(Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

1. ☒ **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.** *You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.*

2. ☒ **The decision is inconsistent with decisions issued by other hearing officers.** *You must identify the prior inconsistent decision and explain how the decision is inconsistent.*

3. ☒ **The decision raises a new policy issue that has not been decided by the Board.** *You must provide a detailed statement of the issue and why the issue should be decided in your favor.*

4. ☒ **The decision is not supported by substantial evidence.** *You must explain why the decision is not supported by substantial evidence found in the case record. The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.*

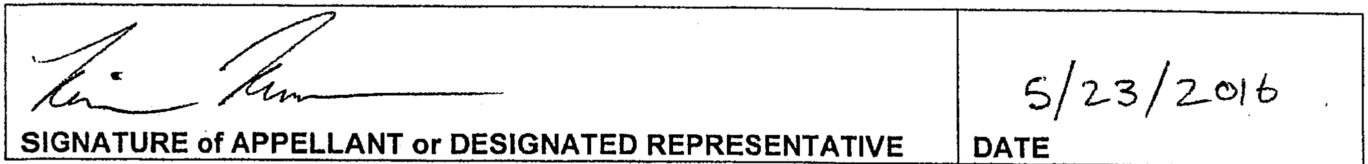
5. ☒ **I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.** *You must explain how you were denied a sufficient opportunity and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.*

6. ☐ **The decision denies me a fair return on my investment.** *You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.*

7. ☒ Other. *You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached* 19. *Please number attached pages consecutively.*

8. You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed. I declare under penalty of perjury under the laws of the State of California that on May 23, 2016, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	Victor Anderson
Address	634 15th St., Unit 405
City, State Zip	Oakland, CA 94612
Name	
Address	
City, State Zip	



SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	5/23/2016 **DATE**

IMPORTANT INFORMATION:
This appeal must be received by the Rent Adjustment Program, 250 Frank Ogawa Plaza, Suite 5313, Oakland, California 94612, not later than 5:00 P.M. on the 20th calendar day after the date the decision was mailed to you as shown on the proof of service attached to the decision. If the last day to file is a weekend or holiday, the time to file the document is extended to the next business day.

- Appeals filed late without good cause will be dismissed.
- You must provide all of the information required or your appeal cannot be processed and may be dismissed.
- Anything to be considered by the Board must be received by the Rent Adjustment Program by 3:00 p.m. on the 8th day before the appeal hearing.
- The Board will not consider new claims. All claims, except as to jurisdiction, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.

1. The decision is inconsistent with OMC Chapter 8.22, Rent board Regulations, California Law, the California Constitution, and Federal law.

The decision of the RAP Hearing in cases T15-0635 and T15-0636 must be reversed and these cases dismissed. The Oakland Rent Adjustment Program, and the Rent Control Ordinance, have no jurisdiction over properties where rent is regulated by the California Tax Credit Allocation Committee (TCAC) that are the subject of this appeal because both are residential units where rent is subsidized by a federal or state agency or the rent for those units is controlled by state and/or federal law. Residential units where rent is subsidized by a federal or state agency are exempt from Oakland's Residential Rent Adjustment Program. *See,* Oakland Municipal Code, §§ 8.22.020, 8.22.030. Moreover, irrespective of Oakland's Rent Ordinance's stated exemption of those units, any local regulation of the rent of those units is preempted by State law. "If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void." *Sherwin-Williams Co. v. City of Los Angeles,* 4 Cal.4th 893, 897 (1993), (*citing: Candid Enterprises, Inc. v. Grossmont Union High School Dist.* 39 Cal.3d 878, 885 (1985.))

Whether the RAP, inclusive of their agents and hearing officers, are precluded from exercising discretion to make any determination or ruling regarding rents of the two tenants that are the matter of this appeal is dependent, as a condition precedent, on those tenants falling under the jurisdiction of the RAP and Oakland Rent Control Ordinance. The RAP is part of Oakland's Municipal Code, and therefore, it is local legislation. *See,* OMC § 8.22.030. Local legislation cannot undermine state law: "A conflict exists if the local legislation `duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.'" *Sherwin-Williams Co. v. City of Los Angeles, 4 Cal.4th 893, 897 (1993) (citing, Candid Enterprises, Inc. v. Grossmont Union High School Dist., supra,* 39 Cal.3d 878, 885 (1985)). Moreover, "[w]hen a conflict arises between state and local laws, state law preempts the local legislation." *Village Trailer Park v. Santa Monica Rent Control Bd.,* 124 Cal. Rptr. 2d 857, 861 (2002.) The RAP Hearing Officer was supplied with the Claridge Hotel's TCAC Regulatory Agreement for the project building located at 634 15th St., Oakland, California.

In the cases at hand, the rent for units in a TCAC Regulated Project, The Claridge Hotel in this appeal, are directly regulated by TCAC, a state agency, and controlled by Federal and State law. Every year:

> [T]he U.S. Department of Housing and Urban Development (HUD) published the 2016 Income Limits applicable to low income housing funded with Low Income Housing Tax Credits (LIHTC) and projects financed with tax-exempt housing bonds, both are referred to by HUD as Multifamily Tax Subsidy Projects (MTSPs). TCAC utilizes the information published by HUD to calculate maximum rents and income limits for California LIHTC projects. *2016 Rent and Income Limits Policy Memo,* available online at: *http://www.treasurer.ca.gov/ctcac/2016/supplemental.asp (Emphasis added.)*

Further, any local ordinance, including the RAP, attempting to set, modify or control the rent of a unit in a TCAC project is "contradictory" to State law. As the court in *Sherwin-Williams Co.,* noted, "local legislation is 'contradictory' to general law when it is inimical thereto. *See, Ex parte Daniels,* 183 Cal. 636, 641-648 (1920) [finding "contradiction" where local legislation purported to fix a lower maximum speed limit for motor vehicles than that which general law fixed].)" *Sherwin-Williams Co.,* 4 Cal.4th, at 897 (1993.) Thus, the RAP, as it pertains to residential units in a TCAC project, is a conflicting local regulation to state law, and thus preempted by the state Law.

In other words, Article XI, § 7 of the California constitution effectively precludes application of Oakland's local rent control laws to "units that have rents that are controlled [or] regulated [by] a governmental unit, agency, or authority," which is likely why those units are specifically exempted from the ordinance in the very text of the ordinance. *See,* Oakland Municipal Code, §§ 8.22.020, 8.22.030.

Jurisdiction, was a condition precedent to the Oakland Residential Rent Adjustment Program having authority to hear the case, and a condition precedent to the RAP hearing officer making any official record, findings, or decision regarding rent of a unit in a TCAC Regulated project, and a condition precedent to the enforcement of any decision or judgment proposed by the RAP. This condition was not met in either of these two cases subject to this appeal —T15-0635 and T15-0636. The Hearing Officer had no jurisdiction to make any determination, award, or other judgment about or relating to the rent. Whether a RAP notice was or had ever been served—or any matter in relation to the regulation of the rent for units in a TCAC Regulated project—is similarly void by preemption or for lack of jurisdiction.

In *Village Trailer Park v. Santa Monica Rent Control Bd.*, the court addressed a similar but critically distinct issue from that presented in this appeal. In *Village*, the court examined whether a State law, the Mobilehome Residency Law, preempted the local rent control regulations. The court, noting "[t]he MRL does not prohibit local regulation of rents in mobilehome parks," found the MRL merely "delineate[d] the limited circumstances under which a mobilehome rental agreement is exempt from local **rent control** measures." *Village Trailer Park v. Santa Monica Rent Control Bd.*, 124 Cal. Rptr. 2d 857, 862 (2002) (*citing:* Civ.Code, § 798.17.) Unlike the cases now before this Appellate Division, where the exemption of "*units* that have *rents* that are controlled, regulated, or subsidized by a governmental *unit*, agency, or authority" is specifically stated within Oakland's own rent ordinance, *Village* had no specific exemption. *Id.*

Village is further distinguishable in that the *Village* Court noted "**Village** does not point to any aspect in which the **Rent Control** Law "'duplicates, contradicts, or enters an area fully occupied' by the MRL." *Id.* (*citing: Sherwin-Williams v. City of Los Angeles, supra,* 4 Cal.4th at p. 897.) Unlike *Village,* these case deal with an undeniable State law preemption of Oakland's local Rent Adjustment Program's regulation of rent for units of a TCAC-regulated project. TCAC is a state organization, in concert with the Federal Department of Housing and Urban Development (HUD) that controls and regulates the tenants' rent for units of these projects. Each year the State of California Tax Credit Allocation Committee (TCAC), a division of the State Treasurer's Office, regulates, among myriad things, maximum rents. *Cf.,* http://www.treasurer.ca.gov/ctcac/2016/supplemental.asp. As noted, *supra*, a when a local ordinance or other local legislation "duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication[,]" "a conflict exists." *Id.,* (*citing: Sherwin-Williams v. City of Los Angeles, supra,* 4 Cal.4th at p. 897.) Moreover, "[w]hen a conflict arises between state and local laws, state law preempts the local legislation. *Id.*

Furthermore, the existence of the TCAC regulatory agreement, and the fact of TCAC's regulation of the TCAC Project known as The Claridge Hotel, was known to all parties—Hearing Officer Cohen, Mr. Mason, and Mr. Anderson— at or before the time of the original hearing. As noted in the Hearing Officer's decision (Exhibit A), the Hearing Officer acknowledges receipt of the TCAC Regulatory Agreement for the Claridge Hotel in the third case (T15-0618) that was joined with these two and all parties were allowed to make a summation in the case, in which TCAC jurisdiction of the building was again asserted. The Hearing Decision is silent as to any direct denial of TCAC regulation by either tenant. However, in light of the fact the Hearing Officer chose to proceed with the hearing and attempts to enter judgment against

the landlord, it is clear she proceeded under the assumption the tenants were asserting they were not under TCAC jurisdiction. This assertion is utterly baseless; both tenants have personal knowledge The Claridge Hotel, the building in which they live, is under TCAC regulation as evidenced by their signed TCAC certifications attached as Exhibits B and C. Both tenants signed these certifications under penalty of perjury. Moreover, the completion of these documents is not a simple, inconsequential task: rather one that requires considerable documentation and cooperation from the tenants.

2. The decision is inconsistent with decisions issued by other hearing officers.

The Claridge Hotel is known to the Hearing Officer in these cases, and to the Oakland Rent Board. Multiple tenants have erroneously filed Tenant Petitions with the Oakland Rent Adjustment Program resulting in multiple cases such as this one. At considerable expense, we continue to provide the RAP with The Claridge Hotel's TCAC Regulatory Agreement, and non-confidential information we are able to disclose, to prove, time and again, that the building is a TCAC-Regulated project and units are exempt from the RAP procedure because they are regulated by State and Federal agencies and law. To wit: RAP cases T15-0618, T15-0176, T15-0563, T14-0493, and T14-0278 are just a few of the cases we have had where the hearing officers correctly accepted the proof of TCAC regulation and dismissed the petitions.

Of note, case T15-0618 was combined, heard and included in the Hearing Decision with the two cases that are the subject of this appeal. The same Hearing Officer, at the same hearing, found that tenant to be exempt. *See,* Hearing Decision pg. 5. The sole reason the two tenants subject to this appeal were determined to be under the jurisdiction of the Hearing Officer, and the RAP, was directly due to an abuse of discretion by the Hearing Office in her decision to refuse to examine the foundational jurisdictional evidence of TCAC governance, and thereby cause the RAP to act in direct violation of the preemption clause, Article XI, Section 7, of the California Constitution, on the sole justification that the Owner Response Packet was submitted late. These cases now before the panel must be reversed and dismissed for lack of jurisdiction.

3. The decision raises a new policy issue.

In practical effect, the Hearing Officer's decisions resulted in the RAP refusing to follow constitutional law by rationalizing it was within the Hearing Officer's authority and discretion to seize jurisdiction from the State and modify or regulate rents outside of the RAP's jurisdiction—*rents* that are *controlled, regulated*, or subsidized by a governmental *unit, agency*, or *authority*—due purely to the Landlord's alleged violation of a procedural requirement contained within the exact rent control ordinance that is constitutionally unenforceable: As noted, *supra,* to the extent a local law conflicts with state laws, state law preempts the local legislation. *See, Village Trailer Park, supra,* 124 Cal. Rptr. 2d at 862.

Imagine if this same tactic was used by local legislation to subvert other constitutional provisions: *in arguendo*, would it be right for a local rent control ordinance to violate the Equal Protection clause by asserting jurisdiction over state and federal law it has no right to supersede if the ordinance were seeking to enforce a politically unpopular goal? For instance, would it be acceptable for a Hearing Officer, due solely to a late filing requirement prescribed by a local ordinance—as was the case in these matters now on appeal—to decide it is allowable within the ordinance to discriminate against tenants based on race, gender, ethnicity, or other intolerable vehicles of discrimination, thereby awarding the discriminating party a victory simply because the local ordinance stated it was okay and a party missed a

deadline to prove the ordinance was void? I think not. The Equal protection clause controls, and the local ordinance has no effect. The same logic applied to Federal pre-emption of state legislation upholding segregation in past decades.

More recently, what about a local ordinance attempting to preclude transgender individuals from using the bathroom or locker-room of which they identify? As I am sure this panel is well aware, this example, unfortunately, is not hypothetical. To take it one step further, what about a local ordinance requiring a transgender to meet an arbitrary deadline and provide proof they are transgender in a hearing before they are afforded the protections of the applicable clauses of the constitution? Further still, what if they fail to meet the filing deadline? Does the local ordinance trump constitutional rights and they simply lose and face financial penalties? Again, I think not. No matter how a local agency tries to enforce a local ordinance, if it contradicts state law, or especially constitutional provisions, State law and Federal law preempts the conflicting local ordinance.

As a policy, we concede procedural requirements have their place and a method of examining whether a claimed exemption is valid is necessary to prevent abuse. However, abuse can be perpetrated by both parties. Just as someone could falsely claim an exemption, the continued procedural and documentation and filing and service requirements of meeting RAP's prescribed filings and hearings, even when faced with multiple petitions from the same tenants over the same asked-and-answered facts, have consumed and continue to consume valuable human and economic resources. This is a loss to society as a whole, and not only private resources, but taxpayer resources also are wasted as a result. This may be simply considered part of doing business to an extent. But, when an ordinance lacks jurisdiction, the proof that a local regulatory agency or program has no jurisdiction cannot be selectively ignored as it was in these cases, due to a timely filing requirement contained in the same ordinance, which lacks jurisdiction and is unenforceable. Willful and wasteful abuse of procedure by government officials leads also to public cynicism and distrust for the way government sometimes abuses its authority. The State agency—TCAC—has its own requirements which consume human and economic resources as well. Imposing unnecessary and arbitrary requirements demonstrates the power government has, but also leads eventually to a breakdown in civil society. To blatantly ignore foundational jurisdictional evidence and elect to consume the time and resources of a party you have no legal hold over is nothing more than a clear display of political correctness and an attempt to pressure landlords to a political end that is the flavor of the moment. To continue to require procedural filings with the looming threat of defending and dealing with a decision against the non-responsive party in cases of repeated filings by the same tenants over asked and answered issues is similarly tantamount to harassment. If jurisdiction is not present, the agency or program asserting jurisdiction must recognize it no longer has authority and in the interests of justice, terminate proceedings immediately.

4. The decision is not supported by substantial evidence, and,

5. I was denied a sufficient opportunity to present my claim and respond.

As noted *supra,* this is not a case where the Hearing Officer elected to enforce a statute and refused to consider additional substantive evidence that was not timely filed after establishing jurisdiction to hear the case. Here, the Hearing Officer knowingly chose to ignore procedural law and ignore foundational jurisdictional evidence that would have precluded her from hearing or ruling on the case (This is why

legal filings and opinions establish jurisdiction as a foundational step.) Rather, the Hearing Officer elected instead to subvert the supremacy clause of the California constitution and seize jurisdiction where she, acting as the agent of the RAP, volitionally and knowingly elected to proceed with no lawful jurisdiction and was acting in direct contradiction to established state law.

The Hearing Officer directly states as much in the Hearing Decision: "Because of the failure to file timely responses, the owner was precluded from introducing evidence at the Hearing as it relates to Anderson and Mason, although he was permitted to cross-examine the tenants and present a summation." Hearing Decision, pg. 6. There is really only one interpretation of this: The Hearing Officer is explicitly stating she knowingly chose to ignore the procedural evidence necessary to establish the foundational requirement of jurisdiction. To be clear, the Hearing Office continues to justify the unlawful seizure of jurisdiction from the State, admitting knowledge of the TCAC agreement, stating "[t]he fact that these cases were consolidated for the convenience and [*sic*] that the TCAC Regulatory Agreement was in evidence as to Mr. Ross' claim, does not prevent this result." Hearing Decision, pg. 6 FN 15. The Hearing Officer proceeded to continue admonishing the landlord for their late filings stating: "The owner is required to follow the proper procedures with respect to each *Tenant Petition* filed [...] In the cases of Mason and Anderson, the owner did not produce a timely response; and as such, cannot establish that the units in question are rent regulated." *Id.* (*Emphasis in original.*)

The hearing officer rationalized her exercise of discretion on the basis that the Landlord's explanation for failure to timely make the filings did not meet her concept of an emergency or good cause. However, at this time, from approximately December 2015 to January 2016:

- While Mr. Lagomarsino testified "no" when asked by the Hearing Officer if there was any "emergency," there was a substantial burden: Fritz—the Landlord's prior employee, who was solely in charge of all RAP proceedings at the time of the missed deadlines—was frequently out of the office due to illness and travel throughout November and December of 2015;
- Fritz' departure from Landlord's operations in January 2016, resulted in a significant staffing vacancy;
- The myriad operational impacts massive staffing transitions have, including the training and staffing issues the departure of a key employee have, and the attendant issues with onboarding new staff pose very real and very significant operational hurdles.

While we concede these staffing issues are potentially part of every business's operations, the human component of staffing is an unavoidable and unpredictable variable in every organization and should be accorded some deference, particularly due to HR rules and the inability to completely anticipate the exercise of free choice in at-will employment environments. Unlike large government organizations or corporations, small local businesses cannot always maintain complete redundancy in all aspects of operations and survive financially. Regardless, the Hearing Officer unfairly ruled that Landlord's proffered explanation for the late filings of the Owner Response Packets failed to amount to good cause. Hearing Decision pg. 6.

However, as mentioned, these two cases were heard concurrently with T15-0618, a case in which the same Hearing Officer, and in the same written Hearing Decision, acknowledged the jurisdictional issue, properly found that tenant exempt from RAP jurisdiction and dismissed the case. Please take special note: The same Claridge Hotel TCAC Regulatory Agreement was referenced in the Hearing Decision by

the same Hearing Officer, and additional copies were supplied for the other case numbers prior to the drafting of the Hearing Decision. The **only** difference cited by the Hearing Officer was the untimely nature of the Landlord's filing of the Owner Response Packet. As soon as Landlord learned that the documents were In other words, as noted in detail *supra,* the foundational, procedural, and constitutional matter of jurisdiction was ignored. To wit: The Hearing Officer acknowledged knowledge of the Claridge Hotel's TCAC Regulatory Agreement on page 5 of the decision.

Copies of Claridge Hotel's TCAC Regulatory Agreement were also introduced at the time of the hearing. Yet, the same Hearing Officer proceeds, in the subsequent paragraph in the Hearing Decision, to state that, while additional copies of the Claridge Hotel's TCAC Regulatory Agreement were provided, and individual Owner Response Packets were also filed, two Owner Response Packets were late and filed after the first day of the hearing. *Id.,* pg. 6. The Hearing Decision then proceeds to explain the Hearing Officer's election to not consider the foundational, procedural-law issue of jurisdiction because no Owner Response Packet was filed by the RAP imposed deadline of January 12, 2016 in these two cases, stating: "Due to the failure of the owner to file a timely response to the Anderson and Mason petitions, the issue of whether or not their units are exempt from the RAP cannot be considered." *Id.* Due to the fact the supremacy clause requires that state regulations of rent for units in TCAC Regulated Projects preempt any local RAP regulation. As noted, *supra,* "If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void." *Sherwin-Williams Co.,* 4 Cal.4th at 897. Since the RAP regulations are void, the failure of meeting a RAP imposed deadline cannot cure the fact that the RAP regulation still has no jurisdiction and is void for attempting to preempt state law in violation of common law and the California Constitution. No procedural requirement of a local ordinance can cure a conflict between a local regulation and a state regulation. As discussed in depth, *supra*, the state regulation, in every case of contradiction, preempts local regulation, and the local law is void.

The abuse of discretion and motivation exhibited in choosing to ignore foundational jurisdictional requirements is further brought into question when one looks at:

- The RAP's own policy of unilaterally joining cases;
- The RAP's election to join and hear the two cases that are subject to this appeal with the third (T15-0618), find no jurisdiction in one and elect to use any excuse to ignore the foundational jurisdiction issue in regard to the other two, whether legally valid or not, and issue a decision contrary to the first;
- The Hearing Officer's own acknowledgement of the presence of Claridge Hotel's TCAC Regulatory Agreement in the joined hearing and the subsequent selective disregard of the procedural issue of proper jurisdiction;
- The list of other cases from the Claridge Hotel property, provided *supra,* showing the property is a TCAC Project and the units are regulated by the California Tax Credit Allocation Committee, and thus RAP jurisdiction is preempted;
- And the Hearing Officer's clearly worded statement in the Hearing Decision that the election to refuse to acknowledge the jurisdictional deficiency was purely a result of the late filing of the Owner Response Packets —a move that appears arbitrary and punitive in intent.

7. Other; Decision based upon factually incorrect testimony by incorrect or misinformed employees from past cases.

As an additional matter, it is necessary to point out to numerous factual inaccuracies within the Hearing Decision.

1. Foremost, the statement that the TCAC Regulatory "agreement requires that they only rent to tenants whose income is 40% of less of than [sic] the median Alameda County income" in the Hearing Decision is wrong. (Hearing Decision, pg. 4.), (*cf.* TCAC Regulatory Agreement # CA-93-101, pg. 3.) Moreover, the proportion requirements in the Claridge Hotel's TCAC Regulatory Agreement are minimum requirements. The Claridge can and does, at our discretion, offer more or all of the units at this or greater tranches controlled by the TCAC Regulatory Agreement with the building and the Internal Revenue Code.
2. Secondly, the TCAC Regulatory Agreement is with the Claridge Hotel, not the individual tenants. The Claridge Hotel, the building, is a project under TCAC Regulations. To characterize a unit as "a non-*TCAC* unit" is misleading. *See,* Hearing Decision, pg. 4, (emphasis in original.) Regulatory procedure requires TCAC certifications to be done on all tenants. The Hearing Officer cites a RAP case from 2014, case T-14-0244 in footnote 8 on page 4, in which Mr. Fritz Jacobs is quoted by the Hearing Officer as testifying "her unit was designated a non-TCAC unit." *Id.* pg. 4 FN 8. This case is often cited by this and other hearing officers. We cannot verify that this statement was actually made, but in any case, it is not accurate, and saying so is a mistake and mischaracterization; saying it does not make it true. This case occurred very shortly after we purchased the building. Mr. Jacobs, as well as the entire staff, were forced to learn an extremely complicated Federal and State regulatory scheme and volumes of procedures very quickly and come up to speed to take over operations with many questions still lingering. Misunderstandings and misstatements of requirements have occurred in a couple of RAP hearings in which a complicated system was interpreted or explained incorrectly by an employee or ours that was new to and untrained in the Tax Credit Allocation Committee regulations. We were learning as quickly as possible.
The Fact remains, however, that Claridge Hotel is a TCAC Project. The Claridge hotel, as a property, is a TCAC project regulated by TCAC. TCAC regulations require, among myriad other things, that proportions (Set and regulated by TCAC) of units in the project comply with various rent restrictions and set maximum rents (Set and Regulated by TCAC). This is a clear State level governmental agency regulation of rent per state and federal law. Ms. Gaines' represented a unique case of a highly manipulative and combative tenant. Despite any erroneous statements by uninformed employees new to the nuances, Mr. Gaines unit was in the Claridge Hotel and governed by TCAC regulation. She was a tenant before we acquired the hotel, and as stated in her RAP hearing, regulated under TCAC per the prior owners. Any staff, including Fritz, erred in believing or stating otherwise. However, the fact of the matter is any failure on Fritz' part or anyone else's does not remove a tenant of the Claridge Hotel from falling under TCAC's regulation. Any potential error, delinquency, or deficiency in documentation is a matter governed by the TCAC Regulatory Agreement between TCAC and The Claridge Hotel. TCAC, within its regulation of the Claridge Hotel Project, has its own procedures for any issues arising within projects under its regulations. <u>An instance of error or non-compliance, therefore, is not suddenly a RAP matter; rather it is still a TCAC matter, and falls under the superseding state</u>

TCAC regulation of the issue. For instance, some tenants refuse to cooperate with Claridge Hotel management, and even TCAC, requests. However, the tenant's refusal to continually cooperate does not affect the Claridge Hotel's agreement with or regulation by TCAC any more than a tenant's petition to RAP places the rental unit under RAP jurisdiction–The building is under a TCAC Regulatory Agreement, period: Rent for any and all units is regulated by state law via TCAC, which supersedes local RAP regulation. Thus, to be clear, the characterization of any unit as a "non-*TCAC*" unit is a semantic error made during a steep learning curve of a very complex regulatory scheme. Any jurisdiction asserted by the RAP was the result of mistaken information. Any jurisdiction that may be argued was consented to by any agent of the landlord is in error, is legally void. Please note that this writing formally constitutes notice that any assumed RAP jurisdiction is hereby officially denied and withdrawn.

3. Thirdly, contrary to the Hearing Officer's footnote 8, wherein she quotes Mr. Jacobs as implying units with a bathroom are "non-TCAC units," whether or not a unit has, or ever has had a bathroom is completely irrelevant. *Id.* Both units with and without bathrooms are part of the building and fall under the Claridge Hotel TCAC Regulatory Agreement. We are not sure exactly where that sentiment originated, whether it was a mistake in understanding by Fritz, another employee or possibly an assertion by a tenant; but it has no legal significance and does not remove a tenant from TCAC regulation under the Claridge Hotel's TCAC Regulatory Agreement.
4. Fourth, the Hearing Officer incorrectly states in paragraph 3 on page 4 that "The building has 204 units." *Id.* at 4. Here again, poor eyesight, faulty information, or simply an employee's careless error appears to have become "fact" over time as people transfer data from one response to another in an effort for efficiency. The fact of the matter is, however, that the building physically does **not** have 204 units as stated on page 4 of the Hearing Decision. Whether this was from a simple data error or a misunderstanding, it appears it has been continually copied from case to case and decision to decision. Regardless of where the error originated, it is an error and nothing more.

To be clear and establish an official record, the only units in the property located at 634 15th St. in Oakland, California, that fall outside of TCAC regulation are Commercial space and the Residential Manager Units. This is clearly evident in the Claridge Hotel's TCAC Regulatory Agreement referred to by the Hearing Officer throughout the Hearing Decision.

Exhibit A

CITY OF OAKLAND

250 FRANK OGAWA PLAZA, SUITE 5313, OAKLAND, CA 94612

Department of Housing and Community Development
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3254

HEARING DECISION

CASE NUMBERS: T15-0618, Ross v. Claridge Hotel
T15-0635, Anderson v. Claridge Hotel
T15-0636, Mason v. Claridge Hotel

PROPERTY ADDRESS: 634 15th Street, #301, #405 and #619, Oakland, CA

DATES OF HEARING: February 16, 2016, and March 18, 2016

DATE OF DECISION: May 3, 2016

APPEARANCES: James Mason, Tenant (Apt 619)
Victor Anderson, Tenant (Apt 405)
Frank Ross, Tenant (Apt 301)
David Lagomarsino, Owner Representative
Kevin Kumana, Owner Representative (2/16 only)
Nick DuBois, Owner Representative (2/16 only)

SUMMARY OF DECISION

Victor Anderson's petition is granted. James Mason's petition is granted in part. Frank Ross' petition is dismissed.

INTRODUCTION

Tenant Frank Ross filed a petition on November 20, 2015, which alleges that a rent increase from $550 to $750, effective February 1, 2016, exceeds the CPI and is unjustified; that no written notice of the Rent Program (*RAP Notice)* was given to him together with the rent increase; that at present there exists a health, safety, fire or building code violation in the building; that the contested rent increase is the second rent increase in a 12 month period; and, that his housing services have decreased.

Mr. Ross also claimed that a prior rent increase, effective July 1, 2015, which increased his rent from $520 to $550 per month, exceeds the CPI and was unjustified.

The owner filed a timely response to Frank Ross' petition, claiming that the unit is exempt from the RAP because the rent for the unit is controlled, regulated or subsidized by a governmental unit, agency or authority other than the City of Oakland Rent Adjustment Ordinance. The Owner attached to its Owner Response a copy of the *Regulatory Agreement* it has with the State of California *Tax Credit Allocation Committee (TCAC).*

Tenant Victor Anderson filed a petition on November 25, 2015, which alleges that a rent increase from $500 to $575, effective January 1, 2016, exceeds the CPI and is unjustified; that no *RAP Notice* was given to him together with the rent increase; that the contested rent increase is the second rent increase in a 12 month period; and, that he wished to contest an exemption from the Rent Adjustment Ordinance.

Tenant James Mason filed a petition on November 30, 2015, which alleges that a current proposed rent increase exceeds the CPI and is unjustified; that at present there exists a health, safety, fire or building code violation in the unit; and that there are serious problems with his rental unit in that there are roaches, medflies, loud noises from the next room, that there is no air conditioning in the bathroom and that the bathroom looks bad.

At the first Hearing date, February 16, 2016, the Owner had not filed any response to either the tenant petition filed by Mr. Anderson or the tenant petition filed by Mr. Mason. The tenants objected to proceeding with the Hearing, without any knowledge as to the Owner's claims. The Hearing was continued in order to allow the Owner to file responses to the Tenant Petition (reserving the issue of whether or not there was "good cause" for the late filing). Additionally, the tenants were provided a copy of the *Regulatory Agreement* between the owner and the *Tax Credit Allocation Committee ("TCAC").*
Between the first and second day of Hearing, the Owner filed a late response to the Tenant Petitions of Anderson and Mason. In the Owner Responses the owner claimed that the units are exempt from the RAP because the rent for the units are controlled, regulated or subsidized by a governmental unit, agency or authority other than the City of Oakland Rent Adjustment Ordinance.

<u>THE ISSUES</u>

1. Does the Rent Adjustment Program have jurisdiction over the Petition filed by tenant Ross?
2. Did the owner have good cause for failing to file a timely response to the Tenant Petitions filed by Anderson and Mason?
3. As to Anderson and Mason, if there is no good cause for the failure to file a timely response, when, if ever, were they served with RAP Notices?
4. As to Anderson and Mason, if there is no good cause for the failure to file a timely response, are the rent increases valid?
5. As to Anderson and Mason, what is the legal rent?
6. As to Mason, have his housing services been decreased, and, if so, by what percentage of the total housing services that are provided by the owner?

7. What, if any, restitution is owed between the parties and how does that impact the rent?

EVIDENCE

Owner Responses: David Lagomarsino, the Director of Operations for SF Rent, testified that he is the representative of the owner of the Claridge Hotel, where the tenants reside. He was unable to testify exactly why the Owner Responses were late. These responses were previously handled by an employee named Fritz Jacobs, who used to work for the owner. Jacobs left the employ of the company on February 1, 2016. Jacobs was responsible for filing all Owner Responses to any Tenant Petition filed before he left the employ of the company. He was not out sick or otherwise unavailable during the time period between when the Tenant Petitions were filed and the Owner Responses were due.

Tenants' Rental History:

Mr. Ross: Frank Ross testified that he has lived at the Claridge Hotel since July of 2005 at an initial rent of $475. He was told at the time that because he did not have a bathroom in his room, his room was under Rent Control. Additionally, when he originally rented the unit, he was required to establish his income, and his ability to rent the unit was based on his ability to establish that his income did not exceed a certain threshold.

Mr. Anderson: Victor Anderson testified that he has lived at the Claridge since July of 2007. Originally he rented room 405, but moved into room 407 in August of 2014. His original rent in room 405 was $475. This continued when he moved into room 407. In February of 2015, he was given a rent increase notice, purporting to increase his rent from $475 to $500 a month, effective April 1, 2015.[1] He was served with a *RAP Notice* with this rent increase.[2] He has been paying that rent increase.

Anderson further testified that on November 1, 2015, he was served with a *60 Day Notice of Change of Monthly Rent* purporting to increase his rent from $500 to $575, effective January 1, 2016. He was not served with a *RAP Notice* with this rent increase. Anderson has continued to pay $500 per month since receiving the rent increase notice.

Mr. Mason: James Mason testified that he moved into the Claridge in March of 2009 at an initial rent of $525. In January of 2015, he was given a rent increase notice, purporting to increase his rent to $572.25. Official Notice is taken of the Rent Adjustment Program case file T15-0092, in which Mr. Mason objected to this rent increase. The *Hearing Decision* in that case determined that the rent increase was invalid and stated that the tenant's rent was $525 a month.[3] According to the Hearing Decision in that case the tenant did receive the *RAP Notice* with that rent increase.

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[1] Exhibit 2, page 2

[2] Exhibit 2, page 4

[3] The Owner appealed that *Hearing Decision*. The appeal was heard on April 20, 2016. The Owner did not show up at the *Appeal Hearing*, so the owner's appeal was dismissed.

Mason further testified that in November of 2015, he was served with a *Sixty Day Notice of Change of Monthly Rent* purporting to increase his rent from $572.25 to $650.00 a month, effective February 1, 2016.[4] Additionally, he testified that despite the fact that there was a Hearing Decision issued in T15-0092, stating that his rent was $525.00 a month, the owner was still attempting to collect back rent from him.[5]

Mason testified that he has continued to pay $525.00 a month. The owner representative did not dispute this testimony.

Tax Credit Allocation Committee: David Lagomarsino testified that SF Rents has owned the building since August of 2014. The building is covered by a *Regulatory Agreement* with the State of California *TCAC*. The *Regulatory Agreement* was admitted into evidence as Exhibit 1 as to Mr. Ross only.[6] The *Regulatory Agreement* specifies that there are 190 low-income units in the building.[7] The building has 204 units. Of the 14 units that are not part of the 190 low income units, there are three units that are considered commercial space.

Lagomarsino further testified that as of the Hearing date in February of 2016, there were approximately 60 vacancies in the building (which remained the same at the Hearing date in March 2016). The current tenants who live in the building live in units designated as *TCAC* units. The non-*TCAC* units are not rented to prospective tenants until all the *TCAC* units are rented. Additionally, the *non-TCAC* units are not specific designated units, but are the last vacant units in the building.[8]

Additionally, Lagomarsino testified that the *TCAC Regulatory Agreement* requires the owner to rent only to tenants who meet certain designated income requirements. The *Agreement* requires that they only rent to tenants whose income is 40% or less of than the median Alameda County income. The *Agreement* also sets forth the maximum allowable rent.

Decreased Housing Services: Both Mr. Ross and Mr. Mason made claims of decreased housing services. Since the RAP has no jurisdiction over Mr. Ross' claims (see below), he was not asked about his claims at the Hearing. With respect to Mr. Mason, Official Notice is taken of case T15-0092. In that case he brought the same claims of decreased services. Additionally, he testified to the following:

Cockroaches: Mr. Mason testified that he sees cockroaches on a daily basis. He further testified that the fact that at the inspection in the last case there were no cockroaches present is because they only come out at night. Every month the

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[4] Exhibit 3

[5] See Exhibit 3, page 2, which is a Statement from the Claridge Hotel for James Mason showing regular monthly charge of $572.25 in June –November of 2015.

[6] Since the Owner only filed timely responses to Mr. Ross' case, it was only allowed to produce evidence in his case. (See below.) Therefore, this Exhibit was only admitted into evidence in Mr. Ross' case.

[7] See Exhibit A to the Regulatory Agreement.

[8] Lagomarsino was asked about a tenant who had a case against the Rent Adjustment Program in 2014, where Jacobs testified that her unit was not a *TCAC* unit (See Gaines v. Kumana, T14-0244). He testified that her unit was designated as a non-*TCAC* unit when she signed her lease, because she had a bathroom.

management does some kind of pest control. He testified that he thinks he gets cockroaches even though they are spraying monthly because his room is right next to the garbage room. Mr. Ross also testified that there is monthly pest control in this building.

Flies: Mason testified that every time he goes into his unit there are little fruit flies who come into his unit.

Loud Noises: Mason testified that because his room is right next to the garbage room he hears loud noises all night. When the garbage door is open by another tenant, the garbage door swings open into his closed door. This noise wakes him up.

Condition of Bathroom: The tenant complained in his petition that there was no air conditioning in the bathroom and that it looked bad. He testified that there are three bathrooms on his floor and one is currently being remodeled. Of the bathrooms on his floor, only one has a window, the other two do not. They all have ventilation fans. Additionally, there was no air conditioning in the bathroom when he moved into the unit.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Does the RAP Have Jurisdiction Over Mr. Ross' Petition?

The Oakland Rent Ordinance[9] states:

> A. . . The following dwelling units are not Covered Units[10] for the purposes of this Chapter 8.22.030: . . . 1. Dwelling units whose rents are controlled, regulated (other than by this Chapter), or subsidized by any governmental unit, agency or authority.

The *TCAC Regulatory Agreement* which is in force at the subject building, sets forth the allowable rents the owner can charge for the subject units. Therefore, Mr. Ross' unit is exempt from the Rent Ordinance, and the Rent Adjustment Program presently has no jurisdiction over that unit. Without such jurisdiction, the Rent Adjustment Program cannot make an order setting rent for Mr. Ross' unit.[11] Therefore, Mr. Ross' petition is dismissed.

Was there good cause for the owner's failure to file a timely response to the petitions of tenants Mason and Anderson?

Tenants Mason's and Anderson's petitions were served on the owner on December 8, 2015. The Rent Adjustment Ordinance[12] requires an owner to file a response to a tenant petition within 35 days after service of a notice by the Rent Adjustment Program (RAP)

[9] O.M.C. Section 8.22.030
[10] A "Covered Unit" is a rental unit that is not exempt from the Rent Ordinance (O.M.C. Section 8.22.020).
[11] O.M.C. Section 8.22.070(F) states that a decrease in housing services in considered to be an increase in rent.
[12] O.M.C. § 8.22.090(B). The Ordinance requires that the Owner respond in 30 days. However, 5 additional days are added because the Tenant Petition is sent by mail. CCP § 1013(a).

that a tenant petition was filed. "If a tenant files a petition and if the owner wishes to contest the petition, the owner must respond . . ."[13] The owner responses were therefore due on January 12, 2016.

The owner's representative testified that through February 1, 2016, there was an employee of SF Rents, Fritz Jacobs, whose job it was to respond to tenant petitions. Jacobs was not absent from work or otherwise unable to file timely responses to these tenant petitions. The owner representative did not know why he had failed to respond, but did know that there wasn't any emergency that prevented him from responding timely. Absent an emergency of some kind, there is no good cause for failing to file a timely *Response*.

The owner did ultimately file late responses in both cases; however, these were filed after the first day of Hearing.

The owner did not have good cause for failing to file timely responses. Because of the failure to file timely responses, the owner was precluded from introducing evidence at the Hearing as it relates to Anderson and Mason, although he was permitted to cross-examine the tenants and present a summation.[14,15]

Due to the failure of the owner to file a timely response to the Anderson and Mason petitions, the issue of whether or not their units are exempt from the RAP cannot be considered.

As to tenants Anderson and Mason, when, if ever, were they served with a RAP Notice?

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy[16] and together with any notice of rent increase or change in the terms of a tenancy.[17] An owner can cure the failure to give notice at the start of the tenancy, but may not raise the rent until 6 months after the first *RAP Notice* is given.[18] The owner has the burden of proving that the *RAP Notice* was served[19].

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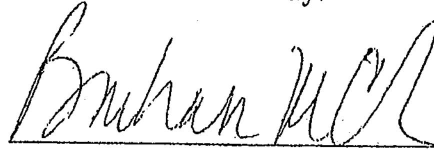
[13] O.M.C. § 8.22.070(C)
[14] *Santiago v. Vega*, Case No. T02-0404
[15] The fact that these cases were consolidated for the convenience and that the *TCAC Regulatory Agreement* was in evidence as to Mr. Ross' claim, does not prevent this result. The owner is required to follow the proper procedures with respect to each *Tenant Petition* filed. An exemption based on the fact that the unit is rent regulated by another agency, is not a permanent exemption. The owner is required to establish the exemption in every case. In the cases of Mason and Anderson, the owner did not produce a timely filed response; and as such, cannot establish that the units in question are rent regulated.
[16] O.M.C. § 8.22.060(A)
[17] O.M.C. § 8.22.070(H)(1)(A)
[18] O.M.C.§ 8.22.060 (C)
[19] Housing, Residential, Rent and Relocation Board Decision in *Thompson et al v. Peper*, T05-0317

4. **Right to Appeal**: This decision is the final decision of the Rent Adjustment Program Staff. Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.



Dated: May 3, 2016

Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number(s): T15-0618, T15-0635, T15-0636

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached **Hearing Decision** by placing a true copy of it in a sealed envelope in City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

James Mason
634 15th Street, #619
Oakland, CA 94612

Victor Anderson
PO Box 32106
Oakland, CA 94604

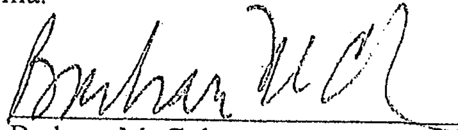
Frank Ross
634 15th Street, #301
Oakland, CA 94612

David Lagomarsino
SF Rents
1201 Fulton Street
San Francisco, CA 94117

Claridge Hotel, LLC
1201 Fulton Street
San Francisco, CA 94117

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 3, 2016, in Oakland, California.



Barbara M. Cohen
Oakland Rent Adjustment Program

Exhibit B

TENANT INCOME CERTIFICATION

☐ Initial Certification ☑ Recertification ☐ Other ____________

Effective Date: 07-01-2014
Move-In Date: 07-05-2007
(MM-DD-YYYY)

PART I - DEVELOPMENT DATA

Property Name: Claridge Hotel County: Alameda TCAC# CA- Unknown BIN #: CA-93-101

Address: 634 15th Street; Oakland, CA 94612 Unit Number: 407 # Bedrooms: 0 Square Footage: 0

PART II. HOUSEHOLD COMPOSITION

☐ Vacant (Check if unit was vacant on December 31 of the Effective Date Year)

HH Mbr #	Last Name	First Name	Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	F/T Student (Y or N)	Last 4 digits of Social Security #
1	Anderson	Victor		HEAD	10/29/1946	N	3116
2							
3							
4							
5							
6							
7							

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
1	0.00	12,648.00	0.00	0.00
TOTALS	$ 0.00	$ 12,648.00	$ 0.00	$ 0.00

Add totals from (A) through (D), above TOTAL INCOME (E): $ 12,648.00

PART IV. INCOME FROM ASSETS

Hshld Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
		TOTALS:	$ 0.00	$ 0.00

Enter Column (H) Total If over $5000 $ 0.00 X Passbook Rate 2.00% = (J) Imputed Income $ 0.00

Enter the greater of the total of column I, or J: imputed income TOTAL INCOME FROM ASSETS (K) $ 0.00

(L) Total Annual Household Income from all Sources [Add (E) + (K)] $ 12,648.00

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Victor C. Anderson Aug 25, 2014

Signature (Date) Signature (Date)

Signature (Date) Signature (Date)

True and Correct as of:
Date________

Exhibit C

TENANT INCOME CERTIFICATION

☐ Initial Certification ☑ Recertification ☐ Other ______

Effective Date: 03-01-2014
Move-In Date: 03-06-2009
(MM-DD-YYYY)

PART I - DEVELOPMENT DATA

Property Name: Claridee Hotel County: Alameda TCAC# CA- Unknown BIN #: CA-93-101

Address: 634 15th Street; Oakland, CA 94612 Unit Number: 619 # Bedrooms: 0 Square Footage: 0

PART II. HOUSEHOLD COMPOSITION

☐ Vacant (Check if unit was vacant on December 31 of the Effective Date Year)

HH Mbr #	Last Name	First Name	Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	F/T Student (Y or N)	Last 4 digits of Social Security #
1	Mason	James		HEAD	03/16/1965	N	4069
2							
3							
4							
5							
6							
7							

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr#	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
1	0.00	10,528.80	0.00	0.00
TOTALS	$ 0.00	$ 10,528.80	$ 0.00	$ 0.00

Add totals from (A) through (D), above TOTAL INCOME (E): $ 10,528.80

PART IV. INCOME FROM ASSETS

Hshld Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
		TOTALS:	$ 0.00	$ 0.00

Enter Column (H) Total If over $5000 $ 0.00 X Passbook Rate 2.00% = (J) Imputed Income $ 0.00

Enter the greater of the total of column I, or J: imputed income TOTAL INCOME FROM ASSETS (K) $ 0.00

(L) Total Annual Household Income from all Sources [Add (E) + (K)] $ 10,528.80

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

James Mason (signature) 6/1/14

Signature (Date) Signature (Date)

Signature (Date) Signature (Date)

True and Correct as of:
Date______

MASON

City of Oakland **Residential Rent Adjustment Program** 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721	2016 MAY 23 PM 3:14 **APPEAL**

Appellant's Name Claridge Hotel, LLC	**Landlord** ☒ **Tenant** ☐
Property Address (Include Unit Number) 634 15th St., Unit 619 Oakland, CA 94612	
Appellant's Mailing Address (For receipt of notices) 1201 Fulton St. San Francisco, CA 94117	**Case Number** T15-0636 **Date of Decision appealed** 5/3/2016
Name of Representative (if any) David Lagomarsino or Kevin Kumana	**Representative's Mailing Address (For notices)** 1201 Fulton St. San Francisco, CA 94117

I appeal the decision issued in the case and on the date written above on the following grounds:
(Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

1. ☒ **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.** *You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.*

2. ☒ **The decision is inconsistent with decisions issued by other hearing officers.** *You must identify the prior inconsistent decision and explain how the decision is inconsistent.*

3. ☒ **The decision raises a new policy issue that has not been decided by the Board.** *You must provide a detailed statement of the issue and why the issue should be decided in your favor.*

4. ☒ **The decision is not supported by substantial evidence.** *You must explain why the decision is not supported by substantial evidence found in the case record. The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.*

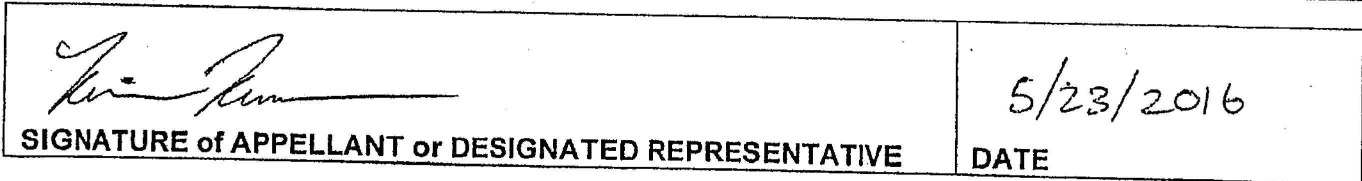
5. ☒ **I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.** *You must explain how you were denied a sufficient opportunity and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.*

6. ☐ **The decision denies me a fair return on my investment.** *You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.*

7. ☒ Other. *You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached* [19]. *Please number attached pages consecutively.*

<u>8. You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.</u> I declare under penalty of perjury under the laws of the State of California that on May 23, 2016, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	James Mason
Address	634 15th St., Unit 619
City, State Zip	Oakland, CA 94612
Name	
Address	
City, State Zip	



SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	5/23/2016 **DATE**

IMPORTANT INFORMATION:
This appeal must be <u>received</u> by the Rent Adjustment Program, 250 Frank Ogawa Plaza, Suite 5313, Oakland, California 94612, not later than 5:00 P.M. on the 20th calendar day after the date the decision was mailed to you as shown on the proof of service attached to the decision. If the last day to file is a weekend or holiday, the time to file the document is extended to the next business day.

- Appeals filed late without good cause will be dismissed.
- You <u>must</u> provide all of the information required or your appeal cannot be processed and may be dismissed.
- Anything to be considered by the Board must be received by the Rent Adjustment Program by 3:00 p.m. on the 8th day before the appeal hearing.
- The Board will not consider new claims. All claims, except as to jurisdiction, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You <u>must</u> sign and date this form or your appeal will not be processed.

1. The decision is inconsistent with OMC Chapter 8.22, Rent board Regulations, California Law, the California Constitution, and Federal law.

The decision of the RAP Hearing in cases T15-0635 and T15-0636 must be reversed and these cases dismissed. The Oakland Rent Adjustment Program, and the Rent Control Ordinance, have no jurisdiction over properties where rent is regulated by the California Tax Credit Allocation Committee (TCAC) that are the subject of this appeal because both are residential units where rent is subsidized by a federal or state agency or the rent for those units is controlled by state and/or federal law. Residential units where rent is subsidized by a federal or state agency are exempt from Oakland's Residential Rent Adjustment Program. *See,* Oakland Municipal Code, §§ 8.22.020, 8.22.030. Moreover, irrespective of Oakland's Rent Ordinance's stated exemption of those units, any local regulation of the rent of those units is preempted by State law. "If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void." *Sherwin-Williams Co. v. City of Los Angeles,* 4 Cal.4th 893, 897 (1993), (*citing: Candid Enterprises, Inc. v. Grossmont Union High School Dist.* 39 Cal.3d 878, 885 (1985.))

Whether the RAP, inclusive of their agents and hearing officers, are precluded from exercising discretion to make any determination or ruling regarding rents of the two tenants that are the matter of this appeal is dependent, as a condition precedent, on those tenants falling under the jurisdiction of the RAP and Oakland Rent Control Ordinance. The RAP is part of Oakland's Municipal Code, and therefore, it is local legislation. *See,* OMC § 8.22.030. Local legislation cannot undermine state law: "A conflict exists if the local legislation 'duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.'" *Sherwin-Williams Co. v. City of Los Angeles, 4 Cal.4th 893, 897 (1993) (citing, Candid Enterprises, Inc. v. Grossmont Union High School Dist., supra*, 39 Cal.3d 878, 885 (1985)). Moreover, "[w]hen a conflict arises between state and local laws, state law preempts the local legislation." *Village Trailer Park v. Santa Monica Rent Control Bd.*, 124 Cal. Rptr. 2d 857, 861 (2002.) The RAP Hearing Officer was supplied with the Claridge Hotel's TCAC Regulatory Agreement for the project building located at 634 15th St., Oakland, California.

In the cases at hand, the rent for units in a TCAC Regulated Project, The Claridge Hotel in this appeal, are directly regulated by TCAC, a state agency, and controlled by Federal and State law. Every year:

> [T]he U.S. Department of Housing and Urban Development (HUD) published the 2016 Income Limits applicable to low income housing funded with Low Income Housing Tax Credits (LIHTC) and projects financed with tax-exempt housing bonds, both are referred to by HUD as Multifamily Tax Subsidy Projects (MTSPs). TCAC utilizes the information published by HUD to calculate maximum rents and income limits for California LIHTC projects. *2016 Rent and Income Limits Policy Memo,* available online at*: http://www.treasurer.ca.gov/ctcac/2016/supplemental.asp (Emphasis added.)*

Further, any local ordinance, including the RAP, attempting to set, modify or control the rent of a unit in a TCAC project is "contradictory" to State law. As the court in *Sherwin-Williams Co.*, noted, "local legislation is 'contradictory' to general law when it is inimical thereto. *See, Ex parte Daniels,* 183 Cal. 636, 641-648 (1920) [finding "contradiction" where local legislation purported to fix a lower maximum speed limit for motor vehicles than that which general law fixed].)" *Sherwin-Williams Co.,* 4 Cal.4th, at 897 (1993.) Thus, the RAP, as it pertains to residential units in a TCAC project, is a conflicting local regulation to state law, and thus preempted by the state Law.

In other words, Article XI, § 7 of the California constitution effectively precludes application of Oakland's local rent control laws to "units that have rents that are controlled [or] regulated [by] a governmental unit, agency, or authority," which is likely why those units are specifically exempted from the ordinance in the very text of the ordinance. *See,* Oakland Municipal Code, §§ 8.22.020, 8.22.030.

Jurisdiction, was a condition precedent to the Oakland Residential Rent Adjustment Program having authority to hear the case, and a condition precedent to the RAP hearing officer making any official record, findings, or decision regarding rent of a unit in a TCAC Regulated project, and a condition precedent to the enforcement of any decision or judgment proposed by the RAP. This condition was not met in either of these two cases subject to this appeal —T15-0635 and T15-0636. The Hearing Officer had no jurisdiction to make any determination, award, or other judgment about or relating to the rent. Whether a RAP notice was or had ever been served—or any matter in relation to the regulation of the rent for units in a TCAC Regulated project—is similarly void by preemption or for lack of jurisdiction.

In *Village Trailer Park v. Santa Monica Rent Control Bd.*, the court addressed a similar but critically distinct issue from that presented in this appeal. In *Village*, the court examined whether a State law, the Mobilehome Residency Law, preempted the local rent control regulations. The court, noting "[t]he MRL does not prohibit local regulation of rents in mobilehome parks," found the MRL merely "delineate[d] the limited circumstances under which a mobilehome rental agreement is exempt from local **rent control** measures." *Village Trailer Park v. Santa Monica Rent Control Bd.*, 124 Cal. Rptr. 2d 857, 862 (2002) (*citing:* Civ.Code, § 798.17.) Unlike the cases now before this Appellate Division, where the exemption of "*units* that have *rents* that are controlled, regulated, or subsidized by a governmental *unit*, agency, or authority" is specifically stated within Oakland's own rent ordinance, *Village* had no specific exemption. *Id.*

Village is further distinguishable in that the *Village* Court noted "**Village** does not point to any aspect in which the **Rent Control** Law "'duplicates, contradicts, or enters an area fully occupied' by the MRL." *Id.* (*citing: Sherwin-Williams v. City of Los Angeles, supra,* 4 Cal.4th at p. 897.) Unlike *Village,* these case deal with an undeniable State law preemption of Oakland's local Rent Adjustment Program's regulation of rent for units of a TCAC-regulated project. TCAC is a state organization, in concert with the Federal Department of Housing and Urban Development (HUD) that controls and regulates the tenants' rent for units of these projects. Each year the State of California Tax Credit Allocation Committee (TCAC), a division of the State Treasurer's Office, regulates, among myriad things, maximum rents. *Cf.,* http://www.treasurer.ca.gov/ctcac/2016/supplemental.asp. As noted, *supra,* a when a local ordinance or other local legislation "duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication[,]" "a conflict exists." *Id., (citing: Sherwin-Williams v. City of Los Angeles, supra,* 4 Cal.4th at p. 897.) Moreover, "[w]hen a conflict arises between state and local laws, state law preempts the local legislation. *Id.*

Furthermore, the existence of the TCAC regulatory agreement, and the fact of TCAC's regulation of the TCAC Project known as The Claridge Hotel, was known to all parties—Hearing Officer Cohen, Mr. Mason, and Mr. Anderson— at or before the time of the original hearing. As noted in the Hearing Officer's decision (Exhibit A), the Hearing Officer acknowledges receipt of the TCAC Regulatory Agreement for the Claridge Hotel in the third case (T15-0618) that was joined with these two and all parties were allowed to make a summation in the case, in which TCAC jurisdiction of the building was again asserted. The Hearing Decision is silent as to any direct denial of TCAC regulation by either tenant. However, in light of the fact the Hearing Officer chose to proceed with the hearing and attempts to enter judgment against

the landlord, it is clear she proceeded under the assumption the tenants were asserting they were not under TCAC jurisdiction. This assertion is utterly baseless; both tenants have personal knowledge The Claridge Hotel, the building in which they live, is under TCAC regulation as evidenced by their signed TCAC certifications attached as Exhibits B and C. Both tenants signed these certifications under penalty of perjury. Moreover, the completion of these documents is not a simple, inconsequential task: rather one that requires considerable documentation and cooperation from the tenants.

2. The decision is inconsistent with decisions issued by other hearing officers.

The Claridge Hotel is known to the Hearing Officer in these cases, and to the Oakland Rent Board. Multiple tenants have erroneously filed Tenant Petitions with the Oakland Rent Adjustment Program resulting in multiple cases such as this one. At considerable expense, we continue to provide the RAP with The Claridge Hotel's TCAC Regulatory Agreement, and non-confidential information we are able to disclose, to prove, time and again, that the building is a TCAC-Regulated project and units are exempt from the RAP procedure because they are regulated by State and Federal agencies and law. To wit: RAP cases T15-0618, T15-0176, T15-0563, T14-0493, and T14-0278 are just a few of the cases we have had where the hearing officers correctly accepted the proof of TCAC regulation and dismissed the petitions.

Of note, case T15-0618 was combined, heard and included in the Hearing Decision with the two cases that are the subject of this appeal. The same Hearing Officer, at the same hearing, found that tenant to be exempt. *See,* Hearing Decision pg. 5. The sole reason the two tenants subject to this appeal were determined to be under the jurisdiction of the Hearing Officer, and the RAP, was directly due to an abuse of discretion by the Hearing Office in her decision to refuse to examine the foundational jurisdictional evidence of TCAC governance, and thereby cause the RAP to act in direct violation of the preemption clause, Article XI, Section 7, of the California Constitution, on the sole justification that the Owner Response Packet was submitted late. These cases now before the panel must be reversed and dismissed for lack of jurisdiction.

3. The decision raises a new policy issue.

In practical effect, the Hearing Officer's decisions resulted in the RAP refusing to follow constitutional law by rationalizing it was within the Hearing Officer's authority and discretion to seize jurisdiction from the State and modify or regulate rents outside of the RAP's jurisdiction—*rents* that are *controlled, regulated*, or subsidized by a governmental *unit*, *agency*, or *authority*—due purely to the Landlord's alleged violation of a procedural requirement contained within the exact rent control ordinance that is constitutionally unenforceable: As noted, *supra,* to the extent a local law conflicts with state laws, state law preempts the local legislation. *See, Village Trailer Park, supra,* 124 Cal. Rptr. 2d at 862.

Imagine if this same tactic was used by local legislation to subvert other constitutional provisions: *in arguendo*, would it be right for a local rent control ordinance to violate the Equal Protection clause by asserting jurisdiction over state and federal law it has no right to supersede if the ordinance were seeking to enforce a politically unpopular goal? For instance, would it be acceptable for a Hearing Officer, due solely to a late filing requirement prescribed by a local ordinance—as was the case in these matters now on appeal—to decide it is allowable within the ordinance to discriminate against tenants based on race, gender, ethnicity, or other intolerable vehicles of discrimination, thereby awarding the discriminating party a victory simply because the local ordinance stated it was okay and a party missed a

deadline to prove the ordinance was void? I think not. The Equal protection clause controls, and the local ordinance has no effect. The same logic applied to Federal pre-emption of state legislation upholding segregation in past decades.

More recently, what about a local ordinance attempting to preclude transgender individuals from using the bathroom or locker-room of which they identify? As I am sure this panel is well aware, this example, unfortunately, is not hypothetical. To take it one step further, what about a local ordinance requiring a transgender to meet an arbitrary deadline and provide proof they are transgender in a hearing before they are afforded the protections of the applicable clauses of the constitution? Further still, what if they fail to meet the filing deadline? Does the local ordinance trump constitutional rights and they simply lose and face financial penalties? Again, I think not. No matter how a local agency tries to enforce a local ordinance, if it contradicts state law, or especially constitutional provisions, State law and Federal law preempts the conflicting local ordinance.

As a policy, we concede procedural requirements have their place and a method of examining whether a claimed exemption is valid is necessary to prevent abuse. However, abuse can be perpetrated by both parties. Just as someone could falsely claim an exemption, the continued procedural and documentation and filing and service requirements of meeting RAP's prescribed filings and hearings, even when faced with multiple petitions from the same tenants over the same asked-and-answered facts, have consumed and continue to consume valuable human and economic resources. This is a loss to society as a whole, and not only private resources, but taxpayer resources also are wasted as a result. This may be simply considered part of doing business to an extent. But, when an ordinance lacks jurisdiction, the proof that a local regulatory agency or program has no jurisdiction cannot be selectively ignored as it was in these cases, due to a timely filing requirement contained in the same ordinance, which lacks jurisdiction and is unenforceable. Willful and wasteful abuse of procedure by government officials leads also to public cynicism and distrust for the way government sometimes abuses its authority. The State agency—TCAC—has its own requirements which consume human and economic resources as well. Imposing unnecessary and arbitrary requirements demonstrates the power government has, but also leads eventually to a breakdown in civil society. To blatantly ignore foundational jurisdictional evidence and elect to consume the time and resources of a party you have no legal hold over is nothing more than a clear display of political correctness and an attempt to pressure landlords to a political end that is the flavor of the moment. To continue to require procedural filings with the looming threat of defending and dealing with a decision against the non-responsive party in cases of repeated filings by the same tenants over asked and answered issues is similarly tantamount to harassment. If jurisdiction is not present, the agency or program asserting jurisdiction must recognize it no longer has authority and in the interests of justice, terminate proceedings immediately.

4. The decision is not supported by substantial evidence, and,

5. I was denied a sufficient opportunity to present my claim and respond.

As noted *supra*, this is not a case where the Hearing Officer elected to enforce a statute and refused to consider additional substantive evidence that was not timely filed after establishing jurisdiction to hear the case. Here, the Hearing Officer knowingly chose to ignore procedural law and ignore foundational jurisdictional evidence that would have precluded her from hearing or ruling on the case (This is why

legal filings and opinions establish jurisdiction as a foundational step.) Rather, the Hearing Officer elected instead to subvert the supremacy clause of the California constitution and seize jurisdiction where she, acting as the agent of the RAP, volitionally and knowingly elected to proceed with no lawful jurisdiction and was acting in direct contradiction to established state law.

The Hearing Officer directly states as much in the Hearing Decision: "Because of the failure to file timely responses, the owner was precluded from introducing evidence at the Hearing as it relates to Anderson and Mason, although he was permitted to cross-examine the tenants and present a summation." Hearing Decision, pg. 6. There is really only one interpretation of this: The Hearing Officer is explicitly stating she knowingly chose to ignore the procedural evidence necessary to establish the foundational requirement of jurisdiction. To be clear, the Hearing Office continues to justify the unlawful seizure of jurisdiction from the State, admitting knowledge of the TCAC agreement, stating "[t]he fact that these cases were consolidated for the convenience and [*sic*] that the TCAC Regulatory Agreement was in evidence as to Mr. Ross' claim, does not prevent this result." Hearing Decision, pg. 6 FN 15. The Hearing Officer proceeded to continue admonishing the landlord for their late filings stating: "The owner is required to follow the proper procedures with respect to each *Tenant Petition* filed [...] In the cases of Mason and Anderson, the owner did not produce a timely response; and as such, cannot establish that the units in question are rent regulated." *Id.* (*Emphasis in original.*)

The hearing officer rationalized her exercise of discretion on the basis that the Landlord's explanation for failure to timely make the filings did not meet her concept of an emergency or good cause. However, at this time, from approximately December 2015 to January 2016:

- While Mr. Lagomarsino testified "no" when asked by the Hearing Officer if there was any "emergency," there was a substantial burden: Fritz—the Landlord's prior employee, who was solely in charge of all RAP proceedings at the time of the missed deadlines—was frequently out of the office due to illness and travel throughout November and December of 2015;
- Fritz' departure from Landlord's operations in January 2016, resulted in a significant staffing vacancy;
- The myriad operational impacts massive staffing transitions have, including the training and staffing issues the departure of a key employee have, and the attendant issues with onboarding new staff pose very real and very significant operational hurdles.

While we concede these staffing issues are potentially part of every business's operations, the human component of staffing is an unavoidable and unpredictable variable in every organization and should be accorded some deference, particularly due to HR rules and the inability to completely anticipate the exercise of free choice in at-will employment environments. Unlike large government organizations or corporations, small local businesses cannot always maintain complete redundancy in all aspects of operations and survive financially. Regardless, the Hearing Officer unfairly ruled that Landlord's proffered explanation for the late filings of the Owner Response Packets failed to amount to good cause. Hearing Decision pg. 6.

However, as mentioned, these two cases were heard concurrently with T15-0618, a case in which the same Hearing Officer, and in the same written Hearing Decision, acknowledged the jurisdictional issue, properly found that tenant exempt from RAP jurisdiction and dismissed the case. Please take special note: The same Claridge Hotel TCAC Regulatory Agreement was referenced in the Hearing Decision by

the same Hearing Officer, and additional copies were supplied for the other case numbers prior to the drafting of the Hearing Decision. The **only** difference cited by the Hearing Officer was the untimely nature of the Landlord's filing of the Owner Response Packet. As soon as Landlord learned that the documents were In other words, as noted in detail *supra,* the foundational, procedural, and constitutional matter of jurisdiction was ignored. To wit: The Hearing Officer acknowledged knowledge of the Claridge Hotel's TCAC Regulatory Agreement on page 5 of the decision.

Copies of Claridge Hotel's TCAC Regulatory Agreement were also introduced at the time of the hearing. Yet, the same Hearing Officer proceeds, in the subsequent paragraph in the Hearing Decision, to state that, while additional copies of the Claridge Hotel's TCAC Regulatory Agreement were provided, and individual Owner Response Packets were also filed, two Owner Response Packets were late and filed after the first day of the hearing. *Id.*, pg. 6. The Hearing Decision then proceeds to explain the Hearing Officer's election to not consider the foundational, procedural-law issue of jurisdiction because no Owner Response Packet was filed by the RAP imposed deadline of January 12, 2016 in these two cases, stating: "Due to the failure of the owner to file a timely response to the Anderson and Mason petitions, the issue of whether or not their units are exempt from the RAP cannot be considered." *Id.* Due to the fact the supremacy clause requires that state regulations of rent for units in TCAC Regulated Projects preempt any local RAP regulation. As noted, *supra,* "If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void." *Sherwin-Williams Co.,* 4 Cal.4th at 897. Since the RAP regulations are void, the failure of meeting a RAP imposed deadline cannot cure the fact that the RAP regulation still has no jurisdiction and is void for attempting to preempt state law in violation of common law and the California Constitution. No procedural requirement of a local ordinance can cure a conflict between a local regulation and a state regulation. As discussed in depth, *supra,* the state regulation, in every case of contradiction, preempts local regulation, and the local law is void.

The abuse of discretion and motivation exhibited in choosing to ignore foundational jurisdictional requirements is further brought into question when one looks at:

- The RAP's own policy of unilaterally joining cases;
- The RAP's election to join and hear the two cases that are subject to this appeal with the third (T15-0618), find no jurisdiction in one and elect to use any excuse to ignore the foundational jurisdiction issue in regard to the other two, whether legally valid or not, and issue a decision contrary to the first;
- The Hearing Officer's own acknowledgement of the presence of Claridge Hotel's TCAC Regulatory Agreement in the joined hearing and the subsequent selective disregard of the procedural issue of proper jurisdiction;
- The list of other cases from the Claridge Hotel property, provided *supra,* showing the property is a TCAC Project and the units are regulated by the California Tax Credit Allocation Committee, and thus RAP jurisdiction is preempted;
- And the Hearing Officer's clearly worded statement in the Hearing Decision that the election to refuse to acknowledge the jurisdictional deficiency was purely a result of the late filing of the Owner Response Packets —a move that appears arbitrary and punitive in intent.

7. Other; Decision based upon factually incorrect testimony by incorrect or misinformed employees from past cases.

As an additional matter, it is necessary to point out to numerous factual inaccuracies within the Hearing Decision.

1. Foremost, the statement that the TCAC Regulatory "agreement requires that they only rent to tenants whose income is 40% of less of than [sic] the median Alameda County income" in the Hearing Decision is wrong. (Hearing Decision, pg. 4.), (*cf.* TCAC Regulatory Agreement # CA-93-101, pg. 3.) Moreover, the proportion requirements in the Claridge Hotel's TCAC Regulatory Agreement are minimum requirements. The Claridge can and does, at our discretion, offer more or all of the units at this or greater tranches controlled by the TCAC Regulatory Agreement with the building and the Internal Revenue Code.
2. Secondly, the TCAC Regulatory Agreement is with the Claridge Hotel, not the individual tenants. The Claridge Hotel, the building, is a project under TCAC Regulations. To characterize a unit as "a non-*TCAC* unit" is misleading. *See,* Hearing Decision, pg. 4, (emphasis in original.) Regulatory procedure requires TCAC certifications to be done on all tenants. The Hearing Officer cites a RAP case from 2014, case T-14-0244 in footnote 8 on page 4, in which Mr. Fritz Jacobs is quoted by the Hearing Officer as testifying "her unit was designated a non-TCAC unit." *Id.* pg. 4 FN 8. This case is often cited by this and other hearing officers. We cannot verify that this statement was actually made, but in any case, it is not accurate, and saying so is a mistake and mischaracterization; saying it does not make it true. This case occurred very shortly after we purchased the building. Mr. Jacobs, as well as the entire staff, were forced to learn an extremely complicated Federal and State regulatory scheme and volumes of procedures very quickly and come up to speed to take over operations with many questions still lingering. Misunderstandings and misstatements of requirements have occurred in a couple of RAP hearings in which a complicated system was interpreted or explained incorrectly by an employee or ours that was new to and untrained in the Tax Credit Allocation Committee regulations. We were learning as quickly as possible.
   The Fact remains, however, that Claridge Hotel is a TCAC Project. The Claridge hotel, as a property, is a TCAC project regulated by TCAC. TCAC regulations require, among myriad other things, that proportions (Set and regulated by TCAC) of units in the project comply with various rent restrictions and set maximum rents (Set and Regulated by TCAC). This is a clear State level governmental agency regulation of rent per state and federal law. Ms. Gaines' represented a unique case of a highly manipulative and combative tenant. Despite any erroneous statements by uninformed employees new to the nuances, Mr. Gaines unit was in the Claridge Hotel and governed by TCAC regulation. She was a tenant before we acquired the hotel, and as stated in her RAP hearing, regulated under TCAC per the prior owners. Any staff, including Fritz, erred in believing or stating otherwise. However, the fact of the matter is any failure on Fritz' part or anyone else's does not remove a tenant of the Claridge Hotel from falling under TCAC's regulation. Any potential error, delinquency, or deficiency in documentation is a matter governed by the TCAC Regulatory Agreement between TCAC and The Claridge Hotel. TCAC, within its regulation of the Claridge Hotel Project, has its own procedures for any issues arising within projects under its regulations. <u>An instance of error or non-compliance, therefore, is not suddenly a RAP matter; rather it is still a TCAC matter, and falls under the superseding state</u>

TCAC regulation of the issue. For instance, some tenants refuse to cooperate with Claridge Hotel management, and even TCAC, requests. However, the tenant's refusal to continually cooperate does not affect the Claridge Hotel's agreement with or regulation by TCAC any more than a tenant's petition to RAP places the rental unit under RAP jurisdiction–The building is under a TCAC Regulatory Agreement, period: Rent for any and all units is regulated by state law via TCAC, which supersedes local RAP regulation. Thus, to be clear, the characterization of any unit as a "non-*TCAC*" unit is a semantic error made

Exhibit A

CITY OF OAKLAND

250 FRANK OGAWA PLAZA, SUITE 5313, OAKLAND, CA 94612

Department of Housing and Community Development
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3254

HEARING DECISION

CASE NUMBERS: T15-0618, Ross v. Claridge Hotel
T15-0635, Anderson v. Claridge Hotel
T15-0636, Mason v. Claridge Hotel

PROPERTY ADDRESS: 634 15th Street, #301, #405 and #619, Oakland, CA

DATES OF HEARING: February 16, 2016, and March 18, 2016

DATE OF DECISION: May 3, 2016

APPEARANCES: James Mason, Tenant (Apt 619)
Victor Anderson, Tenant (Apt 405)
Frank Ross, Tenant (Apt 301)
David Lagomarsino, Owner Representative
Kevin Kumana, Owner Representative (2/16 only)
Nick DuBois, Owner Representative (2/16 only)

SUMMARY OF DECISION

Victor Anderson's petition is granted. James Mason's petition is granted in part. Frank Ross' petition is dismissed.

INTRODUCTION

Tenant Frank Ross filed a petition on November 20, 2015, which alleges that a rent increase from $550 to $750, effective February 1, 2016, exceeds the CPI and is unjustified; that no written notice of the Rent Program (*RAP Notice*) was given to him together with the rent increase; that at present there exists a health, safety, fire or building code violation in the building; that the contested rent increase is the second rent increase in a 12 month period; and, that his housing services have decreased.

Mr. Ross also claimed that a prior rent increase, effective July 1, 2015, which increased his rent from $520 to $550 per month, exceeds the CPI and was unjustified.

The owner filed a timely response to Frank Ross' petition, claiming that the unit is exempt from the RAP because the rent for the unit is controlled, regulated or subsidized by a governmental unit, agency or authority other than the City of Oakland Rent Adjustment Ordinance. The Owner attached to its Owner Response a copy of the *Regulatory Agreement* it has with the State of California *Tax Credit Allocation Committee (TCAC).*

Tenant Victor Anderson filed a petition on November 25, 2015, which alleges that a rent increase from $500 to $575, effective January 1, 2016, exceeds the CPI and is unjustified; that no *RAP Notice* was given to him together with the rent increase; that the contested rent increase is the second rent increase in a 12 month period; and, that he wished to contest an exemption from the Rent Adjustment Ordinance.

Tenant James Mason filed a petition on November 30, 2015, which alleges that a current proposed rent increase exceeds the CPI and is unjustified; that at present there exists a health, safety, fire or building code violation in the unit; and that there are serious problems with his rental unit in that there are roaches, medflies, loud noises from the next room, that there is no air conditioning in the bathroom and that the bathroom looks bad.

At the first Hearing date, February 16, 2016, the Owner had not filed any response to either the tenant petition filed by Mr. Anderson or the tenant petition filed by Mr. Mason. The tenants objected to proceeding with the Hearing, without any knowledge as to the Owner's claims. The Hearing was continued in order to allow the Owner to file responses to the Tenant Petition (reserving the issue of whether or not there was "good cause" for the late filing). Additionally, the tenants were provided a copy of the *Regulatory Agreement* between the owner and the *Tax Credit Allocation Committee ("TCAC").*
Between the first and second day of Hearing, the Owner filed a late response to the Tenant Petitions of Anderson and Mason. In the Owner Responses the owner claimed that the units are exempt from the RAP because the rent for the units are controlled, regulated or subsidized by a governmental unit, agency or authority other than the City of Oakland Rent Adjustment Ordinance.

THE ISSUES

1. Does the Rent Adjustment Program have jurisdiction over the Petition filed by tenant Ross?
2. Did the owner have good cause for failing to file a timely response to the Tenant Petitions filed by Anderson and Mason?
3. As to Anderson and Mason, if there is no good cause for the failure to file a timely response, when, if ever, were they served with RAP Notices?
4. As to Anderson and Mason, if there is no good cause for the failure to file a timely response, are the rent increases valid?
5. As to Anderson and Mason, what is the legal rent?
6. As to Mason, have his housing services been decreased, and, if so, by what percentage of the total housing services that are provided by the owner?

7. What, if any, restitution is owed between the parties and how does that impact the rent?

EVIDENCE

Owner Responses: David Lagomarsino, the Director of Operations for SF Rent, testified that he is the representative of the owner of the Claridge Hotel, where the tenants reside. He was unable to testify exactly why the Owner Responses were late. These responses were previously handled by an employee named Fritz Jacobs, who used to work for the owner. Jacobs left the employ of the company on February 1, 2016. Jacobs was responsible for filing all Owner Responses to any Tenant Petition filed before he left the employ of the company. He was not out sick or otherwise unavailable during the time period between when the Tenant Petitions were filed and the Owner Responses were due.

Tenants' Rental History:

Mr. Ross: Frank Ross testified that he has lived at the Claridge Hotel since July of 2005 at an initial rent of $475. He was told at the time that because he did not have a bathroom in his room, his room was under Rent Control. Additionally, when he originally rented the unit, he was required to establish his income, and his ability to rent the unit was based on his ability to establish that his income did not exceed a certain threshold.

Mr. Anderson: Victor Anderson testified that he has lived at the Claridge since July of 2007. Originally he rented room 405, but moved into room 407 in August of 2014. His original rent in room 405 was $475. This continued when he moved into room 407. In February of 2015, he was given a rent increase notice, purporting to increase his rent from $475 to $500 a month, effective April 1, 2015.[1] He was served with a *RAP Notice* with this rent increase.[2] He has been paying that rent increase.

Anderson further testified that on November 1, 2015, he was served with a *60 Day Notice of Change of Monthly Rent* purporting to increase his rent from $500 to $575, effective January 1, 2016. He was not served with a *RAP Notice* with this rent increase. Anderson has continued to pay $500 per month since receiving the rent increase notice.

Mr. Mason: James Mason testified that he moved into the Claridge in March of 2009 at an initial rent of $525. In January of 2015, he was given a rent increase notice, purporting to increase his rent to $572.25. Official Notice is taken of the Rent Adjustment Program case file T15-0092, in which Mr. Mason objected to this rent increase. The *Hearing Decision* in that case determined that the rent increase was invalid and stated that the tenant's rent was $525 a month.[3] According to the Hearing Decision in that case the tenant did receive the *RAP Notice* with that rent increase.

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[1] Exhibit 2, page 2
[2] Exhibit 2, page 4
[3] The Owner appealed that *Hearing Decision*. The appeal was heard on April 20, 2016. The Owner did not show up at the *Appeal Hearing*, so the owner's appeal was dismissed.

Mason further testified that in November of 2015, he was served with a *Sixty Day Notice of Change of Monthly Rent* purporting to increase his rent from $572.25 to $650.00 a month, effective February 1, 2016.[4] Additionally, he testified that despite the fact that there was a Hearing Decision issued in T15-0092, stating that his rent was $525.00 a month, the owner was still attempting to collect back rent from him.[5]

Mason testified that he has continued to pay $525.00 a month. The owner representative did not dispute this testimony.

Tax Credit Allocation Committee: David Lagomarsino testified that SF Rents has owned the building since August of 2014. The building is covered by a *Regulatory Agreement* with the State of California *TCAC*. The *Regulatory Agreement* was admitted into evidence as Exhibit 1 as to Mr. Ross only.[6] The *Regulatory Agreement* specifies that there are 190 low-income units in the building.[7] The building has 204 units. Of the 14 units that are not part of the 190 low income units, there are three units that are considered commercial space.

Lagomarsino further testified that as of the Hearing date in February of 2016, there were approximately 60 vacancies in the building (which remained the same at the Hearing date in March 2016). The current tenants who live in the building live in units designated as *TCAC* units. The non-*TCAC* units are not rented to prospective tenants until all the *TCAC* units are rented. Additionally, the *non-TCAC* units are not specific designated units, but are the last vacant units in the building.[8]

Additionally, Lagomarsino testified that the *TCAC Regulatory Agreement* requires the owner to rent only to tenants who meet certain designated income requirements. The *Agreement* requires that they only rent to tenants whose income is 40% or less of than the median Alameda County income. The *Agreement* also sets forth the maximum allowable rent.

Decreased Housing Services: Both Mr. Ross and Mr. Mason made claims of decreased housing services. Since the RAP has no jurisdiction over Mr. Ross' claims (see below), he was not asked about his claims at the Hearing. With respect to Mr. Mason, Official Notice is taken of case T15-0092. In that case he brought the same claims of decreased services. Additionally, he testified to the following:

Cockroaches: Mr. Mason testified that he sees cockroaches on a daily basis. He further testified that the fact that at the inspection in the last case there were no cockroaches present is because they only come out at night. Every month the

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[4] Exhibit 3

[5] See Exhibit 3, page 2, which is a Statement from the Claridge Hotel for James Mason showing regular monthly charge of $572.25 in June –November of 2015.

[6] Since the Owner only filed timely responses to Mr. Ross' case, it was only allowed to produce evidence in his case. (See below.) Therefore, this Exhibit was only admitted into evidence in Mr. Ross' case.

[7] See Exhibit A to the Regulatory Agreement.

[8] Lagomarsino was asked about a tenant who had a case against the Rent Adjustment Program in 2014, where Jacobs testified that her unit was not a *TCAC* unit (See Gaines v. Kumana, T14-0244). He testified that her unit was designated as a non-*TCAC* unit when she signed her lease, because she had a bathroom.

management does some kind of pest control. He testified that he thinks he gets cockroaches even though they are spraying monthly because his room is right next to the garbage room. Mr. Ross also testified that there is monthly pest control in this building.

Flies: Mason testified that every time he goes into his unit there are little fruit flies who come into his unit.

Loud Noises: Mason testified that because his room is right next to the garbage room he hears loud noises all night. When the garbage door is open by another tenant, the garbage door swings open into his closed door. This noise wakes him up.

Condition of Bathroom: The tenant complained in his petition that there was no air conditioning in the bathroom and that it looked bad. He testified that there are three bathrooms on his floor and one is currently being remodeled. Of the bathrooms on his floor, only one has a window, the other two do not. They all have ventilation fans. Additionally, there was no air conditioning in the bathroom when he moved into the unit.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Does the RAP Have Jurisdiction Over Mr. Ross' Petition?

The Oakland Rent Ordinance[9] states:

> A. . . The following dwelling units are not Covered Units[10] for the purposes of this Chapter 8.22.030: . . . 1. Dwelling units whose rents are controlled, regulated (other than by this Chapter), or subsidized by any governmental unit, agency or authority.

The *TCAC Regulatory Agreement* which is in force at the subject building, sets forth the allowable rents the owner can charge for the subject units. Therefore, Mr. Ross' unit is exempt from the Rent Ordinance, and the Rent Adjustment Program presently has no jurisdiction over that unit. Without such jurisdiction, the Rent Adjustment Program cannot make an order setting rent for Mr. Ross' unit.[11] Therefore, Mr. Ross' petition is dismissed.

Was there good cause for the owner's failure to file a timely response to the petitions of tenants Mason and Anderson?

Tenants Mason's and Anderson's petitions were served on the owner on December 8, 2015. The Rent Adjustment Ordinance[12] requires an owner to file a response to a tenant petition within 35 days after service of a notice by the Rent Adjustment Program (RAP)

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[9] O.M.C. Section 8.22.030
[10] A "Covered Unit" is a rental unit that is not exempt from the Rent Ordinance (O.M.C. Section 8.22.020).
[11] O.M.C. Section 8.22.070(F) states that a decrease in housing services in considered to be an increase in rent.
[12] O.M.C. § 8.22.090(B). The Ordinance requires that the Owner respond in 30 days. However, 5 additional days are added because the Tenant Petition is sent by mail. CCP § 1013(a).

that a tenant petition was filed. "If a tenant files a petition and if the owner wishes to contest the petition, the owner must respond . . ."[13] The owner responses were therefore due on January 12, 2016.

The owner's representative testified that through February 1, 2016, there was an employee of SF Rents, Fritz Jacobs, whose job it was to respond to tenant petitions. Jacobs was not absent from work or otherwise unable to file timely responses to these tenant petitions. The owner representative did not know why he had failed to respond, but did know that there wasn't any emergency that prevented him from responding timely. Absent an emergency of some kind, there is no good cause for failing to file a timely *Response.*

The owner did ultimately file late responses in both cases; however, these were filed after the first day of Hearing.

The owner did not have good cause for failing to file timely responses. Because of the failure to file timely responses, the owner was precluded from introducing evidence at the Hearing as it relates to Anderson and Mason, although he was permitted to cross-examine the tenants and present a summation.[14,15]

Due to the failure of the owner to file a timely response to the Anderson and Mason petitions, the issue of whether or not their units are exempt from the RAP cannot be considered.

As to tenants Anderson and Mason, when, if ever, were they served with a RAP Notice?

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy[16] and together with any notice of rent increase or change in the terms of a tenancy.[17] An owner can cure the failure to give notice at the start of the tenancy, but may not raise the rent until 6 months after the first *RAP Notice* is given.[18] The owner has the burden of proving that the *RAP Notice* was served[19].

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[13] O.M.C. § 8.22.070(C)

[14] Santiago v. Vega, Case No. T02-0404

[15] The fact that these cases were consolidated for the convenience and that the *TCAC Regulatory Agreement* was in evidence as to Mr. Ross' claim, does not prevent this result. The owner is required to follow the proper procedures with respect to each *Tenant Petition* filed. An exemption based on the fact that the unit is rent regulated by another agency, is not a permanent exemption. The owner is required to establish the exemption in every case. In the cases of Mason and Anderson, the owner did not produce a timely filed response; and as such, cannot establish that the units in question are rent regulated.

[16] O.M.C. § 8.22.060(A)

[17] O.M.C. § 8.22.070(H)(1)(A)

[18] O.M.C.§ 8.22.060 (C)

[19] Housing, Residential, Rent and Relocation Board Decision in Thompson et al v. Peper, T05-0317

Mason credibly testified that he was first served with *RAP Notice* in early 2015, with a prior rent increase[20]. Anderson credibly testified that he was first served with a *RAP Notice* in February 2015, with a prior rent increase. Each tenant credibly testified that they were not served with a *RAP Notice* with the rent increases that were the subject of their petitions.

As to Anderson and Mason are the rent increases valid?

The contested rent increases served on Anderson and Mason are invalid for two reasons. First, neither notice was served with a *RAP Notice*. Therefore, they are invalid. Additionally, a second separate reason to invalidate the rent increases is that since the *Owner Response* was filed late and without good cause, the owner has not provided any evidence to justify the increase or to establish an exemption. For both these reasons the rent increases as to Anderson and Mason are invalid.

As to Anderson and Mason, what is the rent?

As to tenant Mason, the rent remains $525.00 a month, since the prior rent increase was deemed invalid in case T15-0092.

As to tenant Anderson, the rent remains $500 a month.

As to Mason, have his housing services been decreased, and, if so, by what percentage of the total housing services that are provided by the owner?

Tenant Mason brought forth the same claims of decreased housing services that he raised in his prior case, T 15-0092. According to his testimony, there do not seem to be significant changed conditions since that Hearing. A tenant cannot simply repeat the same claims of decreased services and expect a different result. These claims are denied.

What, if any, restitution is owed to the parties?

Since Mason and Anderson have not been paying the contested rent increases, no restitution is owed between the parties.

ORDER

1. As to tenant Frank Ross, the tenant petition is dismissed. The Rent Adjustment Program does not have jurisdiction over his claim since he lives in a unit whose rent is controlled, regulated or subsidized by a governmental agency or authority.

2. As to tenant Mason, the base rent for his unit is $525.00 a month.

3. As to tenant Anderson, the base rent for his unit is $500 a month.

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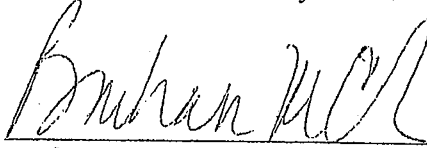
[20] Additionally, the Hearing Decision in T15-0092 determined that Mason was served with a *RAP Notice* in early 2015.

4. **Right to Appeal**: This decision is the final decision of the Rent Adjustment Program Staff. Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.



Dated: May 3, 2016

Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number(s): T15-0618, T15-0635, T15-0636

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached **Hearing Decision** by placing a true copy of it in a sealed envelope in City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

James Mason
634 15th Street, #619
Oakland, CA 94612

Victor Anderson
PO Box 32106
Oakland, CA 94604

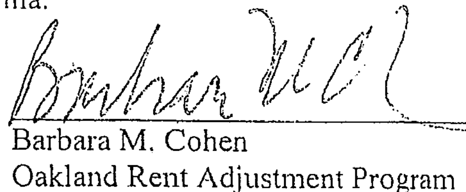
Frank Ross
634 15th Street, #301
Oakland, CA 94612

David Lagomarsino
SF Rents
1201 Fulton Street
San Francisco, CA 94117

Claridge Hotel, LLC
1201 Fulton Street
San Francisco, CA 94117

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 3, 2016, in Oakland, California.



Barbara M. Cohen
Oakland Rent Adjustment Program

Exhibit B

TENANT INCOME CERTIFICATION

☐ Initial Certification ☑ Recertification ☐ Other ____________

Effective Date: 07-01-2014
Move-In Date: 07-05-2007
(MM-DD-YYYY)

PART I - DEVELOPMENT DATA

Property Name: Claridge Hotel County: Alameda TCAC# CA- Unknown BIN #: CA-93-101

Address: 634 15th Street, Oakland, CA 94612 Unit Number: 407 # Bedrooms: 0 Square Footage: 0

PART II. HOUSEHOLD COMPOSITION

☐ Vacant (Check if unit was vacant on December 31 of the Effective Date Year)

HH Mbr#	Last Name	First Name	Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	F/T Student (Y or N)	Last 4 digits of Social Security #
1	Anderson	Victor		HEAD	10/29/1946	N	3116
2							
3							
4							
5							
6							
7							

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr#	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
1	0.00	12,648.00	0.00	0.00
TOTALS	$ 0.00	$ 12,648.00	$ 0.00	$ 0.00

Add totals from (A) through (D), above TOTAL INCOME (E): $ 12,648.00

PART IV. INCOME FROM ASSETS

Hshld Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
		TOTALS:	$ 0.00	$ 0.00

Enter Column (H) Total If over $5000 $ 0.00 X Passbook Rate 2.00% = (J) Imputed Income $ 0.00

Enter the greater of the total of column I, or J: imputed income TOTAL INCOME FROM ASSETS (K) $ 0.00

(L) Total Annual Household Income from all Sources [Add (E) + (K)] $ 12,648.00

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Victor C. Anderson Aug 25, 2014

Signature (Date) Signature (Date)

Signature (Date) Signature (Date)

True and Correct as of:
Date____________

Exhibit C

TENANT INCOME CERTIFICATION

☐ Initial Certification ☑ Recertification ☐ Other ______

Effective Date: 03-01-2014
Move-In Date: 03-06-2009
(MM-DD-YYYY)

PART I - DEVELOPMENT DATA

Property Name: Claridge Hotel County: Alameda TCAC# CA- Unknown BIN #: CA-93-101

Address: 634 15th Street; Oakland, CA 94612 Unit Number: 619 # Bedrooms: 0 Square Footage: 0

PART II. HOUSEHOLD COMPOSITION

☐ Vacant (Check if unit was vacant on December 31 of the Effective Date Year)

HH Mbr#	Last Name	First Name	Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	F/T Student (Y or N)	Last 4 digits of Social Security #
1	Mason	James		HEAD	03/16/1965	N	4069
2							
3							
4							
5							
6							
7							

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr#	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
1	0.00	10,528.80	0.00	0.00
TOTALS	$ 0.00	$ 10,528.80	$ 0.00	$ 0.00

Add totals from (A) through (D), above TOTAL INCOME (E): $ 10,528.80

PART IV. INCOME FROM ASSETS

Hshld Mbr#	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
		TOTALS:	$ 0.00	$ 0.00

Enter Column (H) Total If over $5000 $ 0.00 X Passbook Rate 2.00% = (J) Imputed Income $ 0.00

Enter the greater of the total of column I, or J: imputed income TOTAL INCOME FROM ASSETS (K) $ 0.00

(L) Total Annual Household Income from all Sources [Add (E) + (K)] $ 10,528.80

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

James Mason 6/1/14

Signature (Date) Signature (Date)

Signature (Date) Signature (Date)

True and Correct as of:
Date________

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RENT ARBITRATION PROGRAM
2017 FEB 24 PM 3:19

Rent Adjustment Appeals Board
T15-0635 *Anderson* v. *Claridge Hotel LLC*
Hearing Date: ~~March 9~~, 2017 MARCH 9, 2017

Tenant Victor Anderson's Response Brief, Motions to Dismiss Owner's Appeal, Motion for Change of Venue, Motion that Certain Persons be Disqualified from the Appeals Board, and, Points and Authorities in Support of Mr. Anderson's Motions

I. Procedural History

The history of this case and the procedures fall into four phases: (a) The event leading to the Tenant Petition, (b) the February 16, 2016 hearing; (c) the interregnum between it and the March 18, hearing, and; (d) the March 18, 2016, hearing. All references to the City of Oakland, its subdivisions, officials, elected and appointed, and, its personnel will be "*City*." As used herein, "*Owner*" refers to the corporate owner of Building, its principles, officers, employees, agents, and, contractors, since April 1, 2014.

a. The events leading to the filing of a Tenant's Petition by Victor Anderson. Tenant Petitioner Victor Anderson refers to his Tenant Petitioner in its entirely and incorporates it herein.

b. The February 16, 2016 hearing and the interregnum. Tenant Petitioner Victor Anderson refers to his letter of March 2, 2016, to Connie Taylor, with copies to Barbara Parker, City Attorney, and Michele Byrd, Director, Housing and Community Development Department, and his Statement for the March 18, 2016 Hearing, dated and submitted March 11, 2016 (hereinafter the "March 11, 2016, Statement"), in its entirety, and incorporates it by reference herein. Mr. Anderson and the other tenants were denied a fair hearing, which Mr. Anderson pointed out and objected to the proceedings, resulting in a continuance.

The inter-hearing period. During the interregnum between hearings, Tenant Petitioner Anderson requested the recusal of Barbara Cohen for good reasons stated in his March 2, 2016 letter. This request contains specific evidence of Ms. Cohen's embroilment on behalf of Owner, her abuses of discretion, and her misconduct, and should have been treated as a motion to disqualify Ms. Cohen, and, as a motion for change of venue, and responded to as such. Refusal by City to do so are abuses of discretion and willful misconduct, denying the tenants, including Mr. Anderson, an impartial tribunal, among many other violations of their rights to a fair hearing.

In his **March 11, 2016, statement**, in response to the discretionarily abusive permission for Owner to submit an Owner's Response, Mr. Anderson objected to the abuse of discretion in permitting Owner to submit an Owner's Response after the hearing had commenced; and, challenged the use of the Regulatory Agreement between the California Tax Credit Allocation Commission as a basis for granting an exemption to Oakland's rent adjustment ordinance, on several grounds discussed below. However an abuse of discretion in permitting Owner to submit an Owner's Response after the commencement of the hearing, it was even more an abuse of discretion and judicial misconduct to deny Mr. Anderson the right to respond to its many false and legally incorrect allegations.

c. The March 18, 2016 hearing. Mr. Anderson refers to the record of the hearings, maintained by the Rent Adjustment Program, and incorporates it by reference herein. Owner should realize that there were not two hearings, but one hearing, begun on February 16, 2016, and continued to March 18, 2016. At the March 16, 2016, hearing Mr. Anderson vocally raised each and every objection in his March 11, 2016, statement, which was improperly denied admission by Ms. Cohen, with a mere statement that she did not consider it "evidence." Ms. Cohen did not provide the explanation and analysis required by *Topanga Assn.*, discussed below. Ms. Cohen's decision also contains a factual error: Mr. Anderson moved from Rm. 407 to Rm. 405 in 2014, not from 405 to 407.

II Controlling Decisional Law, Constitutional provisions, Statutes, and Standards of Review

a. Mr. Anderson's and the other tenants' right to a fair hearing. In *Rojo* v. *Klijer*, 52 Cal.3d 65, 74 the California Supreme Court states:" 'It is settled that the "law" of this state includes the common law as well as the Constitution and the codes. (Code Civ. Proc., §§1895, 1899; [citation omitted] 'The code establishes the law of this state respecting the subjects to which it relates'; but this ... does not mean that there is no law with respect to such subjects except that embodied in the code .... [W]here the code is silent, the common law governs.' ; [citation omitted]" The tenants of Building in all hearings of the Rent Board are and have always been denied a fair hearing, which is California's common law version of due process. Among the many violations the tenants

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have sufferred are: 1) denial of an impartial tribunal; 2) denial of a reasonable opportunity to be heard; 3) denial of the right to cross-examine Owner; 4) denial of a meaningful opportunity to rebut Owner's evidence and testimony; 5) denial of adequate notice of issues introduced by the tribunal, on her own initiative; 6) a decision not contrary to law; 7) a written decision meeting the requirements of *Topanga Assn., supra*; 8) right to a unitary hearing so that one tenant's issues are not conflated with another's, so that the tribunal does not ascribe to one tenant facts and issues irrelevant to his case; and, 9) a written decision that does not include unindexed agency cases not introduced at the hearing or in any of the parties submissions. Being based at common law, the terms of these rights occur through case law, which will be cited at the appropriate places below.

a(1), Appeals group hearing. Mr. Anderson objects to the hearing scheduled for March 9, 2017, being a group hearing, as not being a fair hearing to any of the tenant petitioners. Grouping tenants just because they have the same landlord is like grouping car owners—one with a transmission complaint, one with steering problems, and a third with bad brakes, each owner with a different ownership history, and, different driving styles—together because they are suing the same car manufacturer. Conflating of issues, confusing facts, rebuttals, and evidence is already present in Owner's Appeal documents. Administrative convenience for the adjudicator is not adequate grounds to deny tenants a fair hearing. *Spruance* v. *Commission on Judicial Qualifications,* 13 Cal.3d 778, 801; *Cannon* v. *Commission on Judicial Qualifications*, 14 Cal.3d 707 ("It is manifest in any event that a lack in the quality of justice cannot be balanced by the fact that justice, such as it is, is administered in large quantities.); *Manufactured Home Communities, Inc.* v. *County of San Louis Obispo,* 167 Cal.App.4th 705, 715 (2008)

b. Case law, statutory laws, and constitutional provisions implicit in a rent ordinance hearing. A fair hearing requires the tribunal to inform the parties of the laws applicable to the case before her at the beginning of proceedings; this Ms. Cohen failed to do. An adjudicatory person or body is charged with knowing the statutes, constitutional provisions, and case law it is required to enforce or apply. *Ryan* v. *Commission on Judicial Performance*, 45 Cal.3d 525, 533. This is the appeal of a residential rent control hearing decision to a residential rent control appeals board of a residential rent control subdivision of a home rule city in the state of California. This appeals board is charged with knowing the case law regarding residential rent control; constitutional provisions regarding home rule, common law doctrines regarding fair hearings; the *Hubbard-Galvan* tests for state pre-emption of local ordinances; and, what does and does not constitute "general law;" fair hearing requirements for administrative adjudications, the standards of writing decisions of administrative adjudications and case law regarding all of the above. The following are controlling decisional law, constitutional provisions, statutes and standards of review regarding all of the above in California and as it applies to the City and to this appeal.

b(1). Residential Rent Control. In his constant misstating of Art. 11, §7, Owner seems to be ignorant of the basic doctrine of California home rule***: the state has no power to take over areas of regulation (eminent domain, police, sanitary regulations, etc.) that the state constitution has allocated to local entities due to the uniqueness of each locality.*** *County Mobile Home PAC* v. *County of San Diego*, 62 Cal.App.4th 727, 734 (1998)(emphasis added). **Residential rent control in California is one of those areas.** *Birkenfeld* v. *City of Berkeley*, 17 Cal.3d 129 (1976); reaffirmed in *Fisher* v. *City of Berkeley,* 37 Cal.3d 644, (1984); affirmed on other grounds, *Fisher* v. *City of Berkeley*, U. S. 475 260 (1986). These cases are recognized as controlling residential rent control in the City of Oakland by *Rental Housing Assn. of Northern Alameda County* v. *City of Oakland* (2009) 171 Cal.App.4th 741, 752.

b(1)(a). It is ***settled law*** that there is no pre-emption, state or federal, of the substantive provisions of residential rent control laws in California: *Birkenfeld, supra; Fisher, infra.* Oakland's substantive residential rent control ordinance provisions are: OMC 8.22.070A.1. (the right to have rent increases limited to once in any twelve-month period); §8.22.070A.2 (the right to have that increase limited to the Consumer Price Index (CPI); §8.22.070B.2.a (the right to notice of a rent increase 30-days before the rent increase is effective.); §8.22.110 *et seq.* (the right to a hearing to challenge the rent increase on the above substantive grounds, and, an expedited procedure to recover rent overpayments). A tenant in Oakland can bring action against a landlord ***only*** for violating the substantive provisions of the Oakland rent control ordinance, so there can never be pre-emption, thus never a lack of jurisdiction.

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b(1)(b). ***Fisher* v. *Berkeley*,** 37 Cal.3d at 653. In 1982, the U. S. Supreme Court in *Community Communications Co.* v. *City of Boulder* (1982) 455 U.S. 40, a case involving cable lines, held that a home rule municipality did not enjoy state immunity under the Sherman Antitrust Act. Alexandra Fisher, a Berkeley landlord, then sought to attack Berkeley's residential rent control ordinances on Sherman Antitrust Act grounds. The California Supreme Court, rejecting traditional analysis of the Sherman Antitrust Act, dismissed the claim with its own analysis of the Act, reaffirming *Birkenfeld* on the issue of no state pre-emption: *Fisher* 37 Cal.3d at 653, 655, ["plaintiffs [c]onced[e] ***that local rent control is not pre-empted by state law*** ..."] (emphasis added). Each and every argument Owner makes regarding state pre-emption in his 8-page screed is addressed and dismissed by the Court in *Fisher* at pp. 704-709— *each and every one!*

Alexandra Fisher appealed to the U. S. Supreme Court where a somewhat miffed U. S. Supreme Court rebuffed the California Supreme Courts' rejection of standard antitrust analyses, without setting aside California's own test, applied the standard analyses and found them sufficient to hold that local residential rent control does not violate the Sherman Act. To have federal pre-emption, there must be a federal residential rent control law superseding residential rent control in every county and city of every state in the United States. **There is no such law.** No other federal statute has been used to even attempt to pre-empt substantive provisions of residential rent control in California.

b(1)(c). ***Rental Housing Assn. of Northern Alameda County* v. *City of Oakland.*** The sole case involving the City of Oakland's residential rent control ordinance to reach the appellate level was *Rental Housing Assn., supra.* The current City Attorney, Barbara Parker, was a Deputy City Attorney and of counsel in this case. The issues were all on procedural provisions of the ordinance, but the court did state: "B. Our Analysis of the Preemption Issues is Guided Primarily by the Decisions of *Birkenfeld* and *Fisher*." Procedural issues are between Owner and the City of Oakland, not between tenants and Owner. Owner ignores completely *Birkenfeld, Fisher*, and *Rental Housing Assn.*, if he even knows about them, never mentioning them at the evidentiary hearing or in his appeal. The hearing officers of the Rent Adjustment Program also never mention *Birkenfeld, Fisher*, or *Rental Housing Assn.*, in their decisions, further abuses of discretion and willful misconduct.

b(2). Pre-emption. Owner erroneously believes that any state or federal law automatically pre-empts all ordinances. This is not true. Pre-emption is disfavored by both state and federal courts. Both the California Supreme Court and the U. S. Supreme Court have limited pre-emption to certain concepts and devised judicial tests for finding pre-emption. Owner has the burden of proving that pre-emption exists.

b(2)(a). ***California state pre-emption: Hubbard-Galvan*** tests. Pre-emption in California is controlled by *In re Hubbard*, 62 Cal.2d 119, and, *Galvan* v. *Superior Court,* 70 Cal.2d 851, both cited in *Birkenfeld, supra,* at 141, 142, 149, 163; *Fisher, supra,* at 708. It is also well-settled that state agency regulations are ***not*** general law, and cannot override a local ordinance covering an area of local jurisdiction. *In the Matter of the E. H. Means,* 31 Cal App 4th 290, 292-295; 45 *Cal. Jur. 3d* §249: WHAT IS GENERAL LAW, fn. 8 (February 2017 update). Rent control is such an area.

b(2)(b). ***Federal pre-emption.*** It is also settled California law that a federal statute is ***not*** general law and therefore cannot pre-empt a charter city ordinance. 45 *Cal. Jur. 3d* §249: WHAT IS GENERAL LAW, fn. 9 (February 2017 update). Federal pre-emption under the Supremacy Clause is controlled by a federal three-tier test similar to the *Hubbard-Galvan* tests (express pre-emption; field pre-emption; conflict pre-emption). See: *Peatros* v. *Bank of America* (2000) 22 Cal.4th 147, 169-172 (Jan 10, 2000). No substantive provision of a California residential rent control ordinance has been found to violate the Supremacy clause under these tests, nor under the Equal Protection, Due Process, or, the Takings clauses.

c. ***Abdication of the exercise of the police powers.*** The reserved powers doctrine holds that powers inherent to carrying out a government's functions—i.e. the police power, essentially the power to govern—can never be abdicated, abandoned, abnegated, surrendered, divested, delegated, abridged, bargained away, or, contracted away. *Avco Community Developers, Inc.* v. *South Coast Regional Com.* (1976) 17 Cal. 3d 785. Municipal governments cannot take any action regarding its police power which abdicates the exercise of their police powers. Most abdications that come to the courts are the result of contracts between a local government and either private sector entities, or, with other governments not sanctioned by law. (*Alameda County Land Use Assn.* v. *City of Hayward* (1995) 38 Cal. App. 4th 1716, 1724.) A contract that purports to do so is invalid as

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1 contrary to public policy as the contract amounts to a municipality's "surrender" or "abnegation" of its control of
2 a municipal function. *(County Mobilehome Positive Action Com., supra,* at 736, 738. "Moreover, contracts
3 purporting to do so are invalid and unenforceable as contrary to public policy." *Avco* at 17 Cal. 3d 800; accord:
4 *Morrison Homes Corp.* v. *City of Pleasanton* (1976) 58 Cal. App. 3d 724, 734; *Delucchi* v. *County of Santa*
5 *Cruz* (1986) 179 Cal. App. 3d 814, 823.
6 **d. Art. 11, §11(a) of the California Constitution**. What is now of the California Constitution Art. 11,
7 §11(a), was added in the 1879 constitutional revision. It was strengthened in the 1896 constitutional revision,
8 reaching its present wording with the 1914 constitutional revision, and its present numbering and position with
9 the 1970 constitutional revision.
10 "The Legislature may not delegate to a private person or body power to make, control,
11 appropriate, supervise, or interfere with county or municipal corporation improvements, money, or
12 property, or to levy taxes or assessments, or perform municipal functions."
13 The exercise of the police power by a charter city is a municipal function, essentially the power to govern.
14 e, **Evidence Code §500:** In the evidentiary hearing and in his appeal, Owner makes numerous frivolous
15 assertions of legal rights without substantiation, imputes beliefs and thoughts to Mr. Anderson without
16 substantiation, and, to Ms. Cohen, without substantiation. He has the burden of proving each and every element
17 of each and every allegation. California Evidence Code §500 provides:
18 "Except as otherwise provided by law, a party has the burden of proof as to each fact the existence
19 or nonexistence of which is essential to the claim for relief or defense that he is asserting."
20 This Owner fails to do, in all cases cited by Owner as well as the instant case.
21 **f. Administrative hearings.** This is an extremely contentious litigation between parties who are extremely
22 adversarial. Whoever loses will certainly seek judicial review under CCP §1094.5.
23 **f(1).California Code of Civil Procedure (CCP) §1094.5.**
24 " (a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative
25 order or decision made as the result of a proceeding in which by law a hearing is required to be given,
26 evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal,
27 corporation, board, or officer, the case shall be heard by the court sitting without a jury. All or part of the
28 record of the proceedings before the inferior tribunal, corporation, board, or officer may be filed with the
29 petition, may be filed with respondent's points and authorities, or may be ordered to be filed by the court. ...
30 " (b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded
31 without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial
32 abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner
33 required by law, the order or decision is not supported by the findings, or the findings are not supported by
34 the evidence."
35 OMC §8.22.110 *et seq.* (the right to a hearing to challenge rent increases, and, an expedited procedure to
36 recover rent overpayments.) meets CCP 1094.5(a). Procedural due process requires that this Appeals Board
37 address all issues, especially Mr. Anderson's motions, in writing, sufficient for all parties, the courts, and other
38 interested parties to understand the legal basis, including statutes and case law, and detailed reasoning on which
39 the Appeal Board decision is based, so that the parties can decide whether and on what basis to seek judicial
40 review, and, for explaining to the court what a decision means and how it was reached, as required by CCP
41 1094.5(b) as interpreted by the California Supreme Court in *Topanga Association for a Scenic Community* v.
42 *County of Los Angeles,* 11 Cal.3d. (1974) 506, 513-514, and fn. 16; *accord, Santa Monica Beach, Ltd.* v.
43 *Superior Court (City of Santa Monica)* 19 Cal.4th 952, 972 (1999). Mr. Anderson avers that Ms. Cohen's
44 decision does not meet these standards, and, if it did, Owner would know he has no grounds to appeal.
45 **f(2). CCP §1085.** While CCP §1094.5 is the proper method for judicial review of City's administrative
46 adjudications under its Rent Control Ordinance, the California Supreme Court has held "... mandamus pursuant
47 to section 1094.5, commonly denominated 'administrative' mandamus, is mandamus still. It is not possessed of
48 a 'separate and distinctive legal personality. It is not a remedy removed from the general law of mandamus or
49 exempted from the latter's established principles, requirements and limitations.' [Citations omitted.] The full
50 panoply of rules applicable to 'ordinary' mandamus applies to 'administrative' mandamus proceedings, except
51 when modified by statute. [Citations omitted.]" (*Woods* v. *Superior Court* 28 Cal.3d 668, 673-674). It further

stated: "that traditional mandamus is the appropriate method of review ... because of the absence of ... a record sufficient for CCP §1094.5 review." *Saleeby* v. *The State Bar Of California*, 39 Cal.3d 547, 561. Furthermore, where much of the difficulty flows from the lack of a record which reveals the basis for the administrative adjudicator's determination, a writ of mandamus pursuant to CCP 1085 should issue. *Id.* p. 562. Thus the unindexed agency decisions cited by Owner, and, others which are introduced by Ms. Cohen, not known to either party, are also subject to judicial review, under CCP §1085, even though Mr. Anderson is not a party to those cases. Such review will be sought regardless of the outcome of this appeal.

III.

Petitioner Victor Anderson hereby moves that a change of venue is required, or, that new members independent of the City of Oakland be recruited as members of the Appeals Board that hears this appeal, as the Appeals Board of the Rent Adjustment Program has an impermissible institutional interest in upholding Owner's claims even though they are contrary to law; is egregiously embroiled with the Owner of Building; and, colludes with, conspires with, collaborates with, connives with, co-ordinates with, and, co-operates with Owner to achieve an unlawful purpose using a variety of unlawful means, including unfair hearings, and cannot render a fair and impartial decision.

a. History of the Ridge Hotel / Claridge Hotel / Claridge Apartments and the City of Oakland. In October, 2010, Richard Singer, through a variety of corporate entities, acquired the building at 634-15th Street, Oakland, California (Building), an 8-story building, then called The Ridge Hotel with approximately 200 single occupancy residential rental units. Mr. Singer also owned another 7-story building, then called the Hotel Menlo (Menlo Hotel, usually referred to simply as "the Menlo") with 96 room single occupancy residential rental units. Both buildings are commonly known as Single Room Occupancy Hotels (SROs). The Menlo was built in 1914, the Ridge in 1930. Both are decrepit slums with a multitude of problems normally associated with SROs: rodents, roaches, bedbugs, black mold, leaking roofs and ceilings, bad plumbing, inoperative elevators, inoperative showers and toilets, among many more ills. The clientele of these two buildings were generally extremely marginalized persons: old, sick, often disabled, on fixed incomes, most of them government pensions or welfare; most are Black. The buildings are "white elephants," i.e., something that won't earn its keep, but cannot be disposed of.

Mr. Singer was a slumlord, and the City of Oakland (City), especially its City Attorney's office, had been after him since he acquired the Menlo. Slumlords usually have disreputable employees, and Mr. Singer had as manager of the Menlo and the Ridge an embezzler being prosecuted by the FBI for unrelated criminality. A sting was designed in which the embezzler inveigled Singer into a conspiracy to commit arson-for-insurance for the occupied Menlo. Singer was busted in January, 2011, confessed, and was sentenced to prison, beginning in August, 2011.

This left City with two of the largest SROs in the city, with over 150 residents, without management. Closing down the buildings would result in increasing City's homeless population, and leaving two properties prey to vandalism, drugs, prostitution, fires, and squatters. Both buildings went through a series of slumlord owners, all of whom skirted the landlord-tenant laws of both City and the state, at best, and flat-out violated these laws most of the time, with City turning a blind eye. The tenants of the Menlo managed to get legal representation and fought their slumlord owners, forcing City to eventually seek bankruptcy receivership for the Menlo. This has not gone well, and the remaining residents are highly dissatisfied with City's choices as trustees and managers, and City's City Attorney's office is equally dissatisfied and frustrated with the tenants for not being obeisant, compliant, and docile participants to their own debasement and continuing victimization.

b. There is an impermissible institutional interest of City to render decisions in favor of Owner. The Ridge was acquired by the present Owner, a San Francisco slumlord, in 2014, who has since changed the name of the building several times, as well as its ownership structure, while continuing the unlawful violations of the residents' rights under both municipal and state landlord-tenant laws. Not wanting to repeat the Hotel Menlo experience, City has also turned a blind eye to the plight of the residents of Building, and, has directed, ordered, instructed, trained or otherwise informed its Housing and Community Development director and staff, including the Rent Adjustment Program (RAP) manager, Connie Taylor, and her staff, which include its hearing officers and the members of this Appeals Board, to unlawfully deny to the residents of Building the equal protection of

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the Oakland Municipal Code (OMC) §§8.22.070A.1—8.22.070B.2, inclusive. City has an institutional interest to avoid a repeat of the Menlo scenario: City having to take responsibility, which might include receivership, of Building, with responsibility for a class of people for which City wishes to bear no responsibility—tenants of Building; such institutional interest constitutes impermissible bias.

c. Commitment to a certain result by an adjudicatory body, before an adjudication is held, violates due process, the requirements of a fair hearing, and. is bias, prejudice, and a conflict of interest. *Breakzone Billiards*. v. *City of Torrance*, 81 Cal. App. 4th 1206, 1236. This abuse of discretion underlies all group hearing conducted by Ms. Cohen, since the issues of each tenant would be different, and could not be ascertained beforehand. This was a tactic used by the city council in *Clark* v. *City of Hermosa Beach,* 48 Cal. App. 4th 1158 (1996), and held to be an abuse of discretion denying the Clarks a fair hearing. [Denying building permits by a simple majority of the city council to effectuate a failed zoning amendment requiring a supermajority vote. *Clark* at 1172-1173, and fns. 21, 22] See also *Gabric* v. *City of Rancho Palos Verdes* 73 Cal. App. 3d 186, 189 [City council unlawfully used its adjudicatory function to deny a building permit in anticipation of future zoning changes, a legislative function.]

d. Abdication of City's Exercise of its police powers, the conflicts of interest, and embroilment of the Rent Adjustment Program, its manager, appeals board, hearing officers, and staff: City has a permanent, widespread, well-settled practice or custom of significant duration (3 years) that constitutes a standard operating procedure of City in furtherance of City's and Owner's conspiracy, collaboration, collusion, co-ordination, connivance, and, co-operation for City to abdicate its police power over deciding which residential rental units in Building are exempt from the operation of the substantive provisions of OMC 8.22. *et seq.* cited at p. 2, lines 43-50, above, by conducting evidentiary and appeals hearings which violate tenants' common law rights to a fair hearing (right to an impartial tribunal; right to cross-examine witnesses (Owner); right to rebut Owner's statements; right to submit evidence; meaningful right to be heard; right to a decision based only on the evidence adduced at the hearing; willful refusal to follow numerous settled case law on residential rent control, on administrative adjudications, and on home rule); granting Owner and Building unlawful exemptions in violation of California Constitution Art. 11, §11(a) and its settled decisional law (*Avco, supra*, and its progeny); by unlawfully ruling that a state agency's regulations supersede a charter city's ordinances contrary to *In the Matter of the E. H. Mean*; (See also: *45 Cal. Jur. 3d* §249, What is General Law fn. 8); by refusing to follow settled decisional law on residential rent control in California (*Birkenfeld*, *supra*; *Fisher*, *supra*), made applicable to City in *Rental Housing Assn., supra*; and, refusing to follow *In re Hubbard*, *supra*, and *Galvan* v. *Superior Court, supra,* regarding state pre-emption of local ordinances.

d.1 Unindexed agency decisions. This Appeal Board has evidenced its acquiescence and unlawful ratification of the willful judicial misconduct, abuses of discretion, and the embroilment of its evidentiary hearing officers in respect to Owner and Building by its decisions in unindexed agency cases T14-3244 and T14-0348 Gaines (Rm. 236); T14-Denise Willis (Rm. 212); T14-0493 Camellia Rougeau; T15-0176 James Graves (Rm. 517); T15-0618 Frank Ross (Rm. 301), all of which *Owner cites* in his appeal at p. 3, and other cases referenced in these cases (fruit of the tree), all of which are arbitrary, capricious, contrary to settled decisional law on residential rent control, on pre-emption, and, are contrary to public policy regarding the abdication of the exercise of police powers; procedurally unfair by denying the tenants a fair hearing on several grounds; and, was not decided in the manner required by law. [Owner also falsely cites cases in which the tenant withdrew, so there was no decision.] Mr. Anderson refers to these unindexed agency decisions only to refute and rebut their use by Owner, and, to impeach City's hearing and appeal decisions contained therein which rely on other unindexed agency decisions, not introduced by either party nor raised at any hearing. Mr. Anderson avers that the use of such decisions by either the evidentiary hearing officers or this Appeals Board is an abuse of discretion, if done once, and willful misconduct if done repeatedly, as both Ms. Cohen and this Appeals Board does. (See: Govt. Code §§11425.10(a)(7); 11425.60(a) for the standard by which the Rent Adjustment Program should use unindexed agency decisions, if at all.)

This Appeals Board's findings in these cases are not supported by substantial evidence and its decisions cannot be supported by the findings. Only substantial evidence of pre-emption could support a finding of lack of jurisdiction, and this requires a California Supreme Court decision overruling *Birkenfeld* and *Fisher*. This Appeals Board refusal to follow settled law has thereby disqualified itself and all of its members as an impartial

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tribunal in any adjudication involving either Owner or Building, and it is incompetent to hear any appeal of any owner or property.

e. Abdication of the exercise of City's police power in the form of rent adjustment. Mr. Anderson refers to p. 2, line 20 through p. 5, line 7, above, and incorporates them by reference herein. Not to be informed and aware of the decisional law which the administrative adjudication officer or Appeals Board is charged with applying is abuse of discretion. To be informed and aware yet not apply the decisional law is willful judicial misconduct. *Broadman* v. *Commission on Judicial Performance*, 18 Cal.4th 1079. Together, the cases ***cited by Owner*** reflect a continuing, pervasive pattern of willful judicial misconduct by the Rent Adjustment Program, its hearing officers, and, its Appeals Board, over nearly three years and multiple cases involving Owner and Building. Mr. Anderson hereby moves, on common law fair hearing grounds, that this Appeal Board and its members disqualify and recuse themselves from hearing this appeal.

f. The Rent Adjustment Program, its Appeals Board, and evidentiary officers have denied Mr. Anderson a fair hearing by not providing impartial adjudicators. The right to a fair hearing includes the right to impartial adjudicators. (*Applebaum* v. *Board of Directors, supra*, 104 Cal. App. 3d 648, 658.)

f1. ***Lack of method for testing impartiality.*** Mr. Anderson refers to page 1, line 45 through 50. and incorporate them herein. Fairness requires a practical method of testing impartiality. For judges, this is provided in Govt. Code §§170.1-170.6. For state administrative adjudications this is provided for in Govt. Code §11512(a). City has not adopted either standard, nor created its own disqualification procedure, thus denying Mr. Anderson one of the elements of a fair hearing. Its hearing officers and this Appeals Board use this absence of a disqualification procedure to shield their previous abuses of discretion and willful misconduct, and, to cover up their intended abuses of discretion and willful misconduct in this appeal. Mr. Anderson asserts his right under common law doctrines of fair hearing requirements to move for the disqualification of the members of this Appeals Board, and of the Appeals Board itself.

f2. City is also unlawfully using its administrative adjudicatory function, RAP hearing officers, and this RAP Appeals Board, to further a legislative advocacy position /an institutional interest of City (the abdication of the exercise of its police powers), which is willful judicial misconduct since it furthers both an unlawful end, and, is an abuse of discretion even if the end was lawful.

f3. The method of granting unlawful exemptions violates, element for element, California Constitution Art. 11, §11(a); is entirely lacking in evidentiary support; is contrary to settled decisional law; and. is procedurally unfair. The methods chosen by City to deny the tenants of Building a fair hearing and the equal protection of the substantive provisions of the rent control ordinance is to unlawfully grant Owner an unlawful exemption, using OMC 8.22.030.A.1 and its implementing regulations, whenever a tenant of Building filed a Tenant Petition properly pleading a violation of one of his substantive rights under the ordinance, in what has become known as the "SRO exemption." Using the Regulatory Agreement between a state agency (California Tax Allocation Commission) and a private sector entity (Owner) to interfere with (grant an unlawful exemption) the exercise of City's police power in the form of rent control violates Art. 11, §11(a) element for element.

f4. In furtherance of its unlawful abdication of the exercise of City's police powers, this Appeals Board committed willful judicial misconduct and abuse of discretion by upholding the unlawful abuses of discretion and willful misconduct of the RAP hearing officers' refusal to followed settled decisional law, knowing that the hearing decisions were arbitrary, capricious and contrary to settled, controlling, dispositive decisional law. Current residential rent control was made possible by the California Supreme Court in the seminal case, *Birkenfeld, supra*, reaffirmed in *Fisher, supra*, and followed in *Rental Housing Assn., supra.* Hearing Officer Barbara Cohen, and her supervising hearing officer Barbara Kong-Brown, Esq., Senior Hearing Officer, have in the cases cited at p. 6, lines 34-36, above, repeatedly abused their discretion and committed willful judicial misconduct by refusing to follow settled case law (*Birkenfeld, Fisher, Rental Housing Assn.*) and, to hide their judicial misconduct, never cited any of the above cases, either in support of their decisions or to distinguish these cases, or any of *Birkenfeld's* extensive progeny. All of the above requirements and standards are absent from the decisions of this Appeals Board in the cases cited by Owner, above. Substantial evidence in any and all of those cases must include a California Supreme Court decision in which the Court

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reverses itself and overrules *Birkenfeld, Fisher, Rental Housing Assn., Hubbard-Galvan,* Art. 11, §11(a), *Avco, supra,* and their progeny.

b4. In furtherance of its unlawful abdication of the exercise of its police powers, City's Appeals Board committed abuses of discretion and willful misconduct by trying to cover up abuses of discretion and the willful misconduct of the RAP hearing officers by rendering decisions devoid of the requirements for proper judicial review under Code of Civil Procedure (CCP) §1094.5 thereby rendering this Appeals Board unqualified to hear any appeals regarding Owner or Building. The above section, III.b3, concerns the abuses of discretion and the willful misconduct of the Appeals Board *in rendering* unlawful decisions. This section covers *how those decisions are* ***covered up***. If one has not done anything wrong, one does not need to hide it. The hearing officers and the Appeals Board have crafted their decisions such that there is no substantial evidence to challenge their decisions under the substantial evidence test of CCP §1094.5(c) and the standards of *Topanga Assn., supra.* Such willful obfuscation indicates moral turpitude. As the Supreme Court in stated *Cannon* v. *Commission on Judicial Qualifications,* 14 Cal.3d 678, 695 (1975): when an adjudicator takes measures "to accomplish her objectives in a manner to insure that such conduct would be insulated from judicial review and collateral attack. It is manifest that such a planned subversion of justice and misuse of the judicial power could be undertaken only in bad faith." Ms. Cannon was removed from the bench. *Id.* at 707. This standard applies to Appeals Board decisions also.

Where no substantial evidence is presented to support the findings, there are no findings to support the decisions of lack of jurisdiction. Merely restating the language of the ordinance does not set forth findings based on evidence submitted, nor consider evidence improperly suppressed, and the analysis leading to the final decisions of either the evidentiary hearing or this Appeals Board. This practice is expressly disfavored by the California Supreme Court: "We do not approve of ... the practice of setting forth findings solely in the language of the applicable legislation." *Topanga Assn, supra,* at 517, fn. 16.

Motions to disqualify the Rent Adjustment Program's Appeal Board and its members. Where a legislative body has failed or refused to create statutory fair hearing safeguards, the common law doctrines on those safeguards are still operative. Mr. Anderson asserts his right under common law doctrines of fair hearing requirements and moves for the disqualification of the members of this Appeals Board, and of the Appeals Board itself, for the reasons stated above at p. 5, line 8 through p. 8, line 23, inclusive, and that, as made possible by Govt. Code §§11410.40, and 27725, City initiate procedures to transfer this appeal to a neutral and impartial body willing and able to apply settled decisional law, statutes, common law, and, constitutional provisions to this appeal. Those members of the Appeals Board with demonstrated embroilment, abuse of discretion, and willful judicial misconduct include: Connie Taylor, N. Frigault, E. Lai, B. Williams, and B. Scott.

The presence of Connie Taylor on the Appeals Board is particularly egregious. She, as director of the Rent Adjustment Program, has acted, in respect to Owner and Building, for approximately three years, arbitrarily, capriciously, and contrary to law. She has instructed, directed, inveigled, threatened, or otherwise informed her staff, including hearing officers and this Appeals Board, that a state agency, *i.e.* California Tax Credit Allocation Committee (CTCAC), can pre-empt the substantive provisions of Oakland's rent control ordinance (evidenced by three publications of her agency), which is contrary to decisional law (*Galvan, supra*; *Birkenfeld, supra, Fisher, supra)*; that that agency's regulations are general law, when they are not (*In the Matter of the E. H. Means, supra* (45 *Cal. Jur. 3d* §249, fns. 8 and 9); that an exemption to City's rent control ordinances can be based on the Regulatory Agreement between CTCAC and Owner, which violates California Constitution Art. 11, §11(a); that her hearing officers and this Appeals Board are to provide unfair hearings to any tenant of Building petitioning the Rent Adjustment Program based on a violation of a right guaranteed by the substantive provisions of City's rent control ordinance; that the hearing officers are to lie during hearings on behalf of Owner, manufacture evidence on behalf of Owner, introduce issues, without notice, at the hearings; introduce unindexed agency decisions unknown to tenants in support of Owner in the hearings, and in the decisions; and, take any and all steps to support an unlawful finding of "lack of jurisdiction;" that the hearing officers and this Appeal Board are to issue decisions not based upon lawful findings, declare findings not based upon substantial evidence, all in violation of Business and Professions Code §§6106, 6068(a), and Labor Code §2856; and, when informed of the misconduct of her hearing officers, Ms. Taylor not only did nothing, but continued these hearing

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officers in their positions conducting unfair hearings of tenant petitions involving Owner and Building, rendering findings not supported by substantial evidence, and decisions not supported by lawful findings, thereby ratifying Ms. Cohen's unlawful acts. All under penalty of her staff losing their jobs or having their professional careers within the Rent Adjustment Program, if not the City of Oakland, adversely affected for conducting fair hearings and rendering decisions meeting the standards of *Topanga Assn., supra,* adverse to Owner. Fear of losing employment has been found by the California Supreme Court to be bias requiring disqualification. *Hass* v. *County of San Bernardino.* 27 Cal.4th 1017, 1028—1034, 1036.

Mr. Anderson refers to p. 4, line 36-42, inclusive, above, and incorporates them herein. The decision on this motion should, at a minimum, state:

1. What constitutional law, case law, statutes, and ordinances this Appeals Board follows in rendering its decisions regarding Owner and Building, and why *Birkenfeld, supra; Fisher, supra; Rental Housing Assn., supra; In the Matter of the E. H. Mean In the Matter of the E. H. Means,* (45 *Cal. Jur. 3d* §249, fns. 8 and 9) *supra; In re Hubbard, supra; Galvan, supra*, are or are not controlling and dispositive of all issues of this appeal, and, whether this Appeals Board's refusal to follow these cases and laws does or does not disqualify this Appeal Board and its members from hearing this appeal.
2 Whether this Appeals Board's implementing a municipal policy, implicit or expressed, lawful or unlawful, through the administrative adjudicative process is not both an abuse of discretion and willful misconduct, and, whether such implementation does or does not disqualify this Appeal Board and its members from hearing this appeal.
3 Whether the Appeals Board's decisions in unindexed agency cases cited by Owner, do or do not meet the standards established in *Topanga Assn., supra.,* and therefore disqualify the Appeal Board and its members from hearing this appeal.
4. Whether the Appeals Board's decisions in unindexed agency cases cited by Owner, are or are not primers on abuse of discretion and willful misconduct of this Appeals Board and each of its members, and as such, are, or are not, grounds for a change of venue, or, staying this appeal until truly impartial hearing officers not subject to either direct or indirect control by the City of Oakland can be recruited to hear this appeal, as suggested by the California Supreme court in *Haas* v. *County of San Bernardino,* 27 Cal.4th 1017, 1036—1037 (2002).
5. What substantial lawful evidence Owner presented in the unindexed agency cases cited by Owner override *Birkenfeld, supra; Fisher, supra; Rental Housing Assn., supra; In the Matter of the E. H. Means, supra;* and, Art. 11, §11(a); to support a finding of lack of jurisdiction of the Rent Adjustment Program to adjudicate violations of the substantive provisions of its own rent adjustment program involving Owner and Building, and thus constitute willful misconduct disqualifying this Appeals Board and its members from hearing this appeal.
6. Govt. Code §11425.10(a)(7) prohibits the use of unindexed agency decisions as precedent for state administrative adjudications. This standard is not binding on a charter city, but does provide a legislatively and judicially recognized standard. Courts are not permitted to cite unpublished cases as precedent. Cal. Rules of Court §8.115. By what standard does City use unindexed agency decisions, unknown to tenants, on which to base its decisions in the cases cited by Owner in his appeal; and, why using this standard is not both an abuse of discretion, willful misconduct, and, the denial of a fair hearing to tenants, each of these disqualifying the Appeals Board and all of its members.

IV

Tenant Victor Anderson Hereby Moves To Quash Service Of Owner's Appeal and Hereby Moves to Dismiss Owner's Appeal For Failure to Comply with Regulations regarding Service of the Appeal and Perjury by Owner, and, Owner's waiver of his rights to challenge the Hearing Decision.

a. Owner has denied the jurisdiction of City and RAP over itself and Building. In so doing, it waives any right to challenge the hearing decision. At Owner's Appeal, p. 8, the last sentence of Sec. 7, ¶2, Owner states: "Please note that this writing formally constitutes notice that any assumed RAP jurisdiction is hereby officially denied and withdrawn." By this notification Owner has waived any rights he has under the Rent Adjustment Program, including the right to appeal the hearing officer's decision, not just in this case, but

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1 in all cases. Owner, for eight pages of miniscule typeface, rants like a spoiled child that he is entitled to a pre-
2 emption, which is a legal nullity under *Birkenfeld, supra*, or he will take his bat and his ball and go home! He
3 demands that Oakland's already unlawful abdication of its exercise of its police power be converted into a
4 municipal *coup d'etat* for a lawless license by Owner to "act at his discretion"—the very definition of acting
5 arbitrarily, capriciously, and contrary to law. In *Fisher*, 475 U. S. 260, 267, the U. S. Supreme Court stated:
6 "The owners of residential property in Berkeley have no more freedom to resist the city's rent controls than they
7 do to violate any other local ordinance enforced by substantial sanctions." Accord, *Interstate Marina*
8 *Development Co.* v. *County of Los Angeles*, 155 Cal.App. 3d 436, 447: "Rent control, like the imposition of a
9 new tax, is simply one of the usual hazards of the business enterprise." What applies to Berkeley and Los
10 Angeles applies to Oakland.

11 **b. Owner has willfully not complied with the RAP requirements of the Owner's Appeal in serving**
12 **Tenant Petitioner Victor Anderson and has perjured himself in stating that he has.** The Rent Adjustment
13 Program regulations regarding appeals does not specify how notice to the prevailing party in the hearing
14 decision is to be notified. Owner therefore must comply with the requirements of the Appeals form.
15 Section/Paragraph 8 of this form provides:

16 "8. You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed. I
17 declare under penalty of perjury under the laws of the State of California that on ____ 200_, *I placed a copy*
18 *of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier,*
19 *using a service at least as expeditious as first class mail, with all postage or charges fully prepaid,*
20 *addressed to each opposing party as follows:"*

21–23

Name	
Address	
City, State Zip"	

24

25 Owner did not mail the appeal to Mr. Anderson in compliance with this requirement, as he falsely claims
26 under oath. The envelope, Exhibit A (photocopy: Actual envelope will be produced at the hearing) with the
27 appeal in it was left at the threshold of Mr. Anderson's room with only his handwritten name on it. No return
28 address, no postage or postage marks, not even the address ***Owner lists*** in Paragraph 8. Tenant Petitioner Victor
29 Anderson's mailing address was given in his Tenant Petition, and to Rent Adjustment Program staff in
30 December, 2015, and at the February 16, 2016, hearing, the last two occasions to correct a typo in his address.
31 Owner was given the correct mailing address of Tenant Petitioner Anderson at the February 16, 2016, hearing.
32 Owner and the Rent Adjustment Program were both informed that Mr. Anderson does not receive mail at the
33 Claridge Hotel. The decision Owner is appealing was mailed to Mr. Anderson's legal mailing address.

34 There is no California state law regulating the service of process for administrative adjudications by a home
35 rule city. State statutes regulate service of process for state courts. (California Civil Procedure §§1160-1162
36 (Unlawful Detainer); CCP §§1010 1020 (Service of notices of motions); CCP §§418.10-418.11 (Service of
37 notices of motion to quash, motion to dismiss); CCP §§1290-1291.2 (Petitions)). Service of process for state
38 administrative hearings are governed by the Administrative Hearings Act (Govt. Code §§11425.10 *et seq.*), or,
39 by the specific statutes governing hearings of specific state agencies. Home rule local government entities are
40 free to devise their own hearing regulations, subject only to the constraints of constitutional due process and a
41 fair hearing. This the City of Oakland has done with OMC 8.22 *et seq.* and its implementing regulations.

42 The City adopts two different methods of serving the opposing party for its rent adjustment program
43 hearings, one for evidentiary hearings, the other for appeals. For the evidentiary hearings, the Rent Adjustment
44 Program assumes full responsibility for serving the non-petitioning party, and there is no service of the non-
45 petitioner's response. For appeals hearings, the appellant must serve the prevailing party in the evidentiary
46 hearing in the manner specified on the Rent Adjustment Programs appeal forms, and, in the regulations. The
47 notice requirements of the Rent Adjustment Program appeals process do not permit alternative methods of
48 service or substituted service, and even if they did, Owner falsely stated under oath that he met the requirements
49 of Section/Paragraph 8 of the Rent Adjustment Program's Owner's Appeal form when he clearly did not.

50 **The requirements of serving notice are fundamental to according procedural due process and a fair**
51 **hearing to the opposing party.** Not sending the notice required by Section/Paragraph 8 of the Appeal form in

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the manner specified is calculated by Owner to deny Tenant Petitioner Anderson notice of the Owner's Appeal, and, to provide the Appeals Board with a false address for it to send notices of the Appeal proceedings to Mr. Anderson, denying him the right to respond to Owner's Appeal and/or appear at the appeal hearing. These are fundamental to the concept of a fair hearing. *Horn* v. *County of Ventura* (1979) 24 Cal.3d 605, 612. Owner dismisses this concept in his appeal at pp. 4-6. He does not believe in fair hearings for anyone but himself, and then only if he prevails.

The procedures for serving his Appeal Owner refused to follow, then lied, under oath, that he had. Of course, as stated in IV(a), above, Owner denies the jurisdiction of RAP. No one can unilaterally renounce the applicability of the laws to himself. Owner must accept the rules, regulations, procedures, and policies of the Rent Adjustment Program and the ordinances of the City of Oakland, no matter how odious he believes them to be.

Victor C. Anderson hereby moves that Owner's Appeal be dismissed due to a) waiver of his right to an appeal by rejecting the jurisdiction of RAP hearings and this Appeals Board, and, b) refusal to comply with the requirements for service of an appeal of a RAP hearing decision, and, c) perjuring itself that it had. Mr. Anderson refers to p. 4, line 36-42, above, and incorporate them herein. At a minimum the Appeals Board's ruling on this motion must include an analysis of:

1. The statutes, ordinances, regulations, or regulatory forms involved in deciding this motion;
2. Whether Owner has waived his right to an appeal by rejecting and denying the jurisdiction of RAP, its hearing officers, and this Appeals Board and the reasons such acts are or are not a waiver.
3. Whether Owner's failure to comply with the RAP regulations regarding service of the Owner's Appeal on Victor C. Anderson are or are not grounds for dismissal of his Appeal; and the reasons;
4. Whether Owner's prevarication and perjury is or is not ground for dismissal of his Appeal, and the reasons in support of this Board's decisions on these issues.

V

Owner Fails to State a Proper Basis for Review by this Appeals Board. The only issue for appeal in *Anderson* v. *Claridge Hotel* is whether Hearing Officer Barbara Cohen acted lawfully in denying Owner an exemption on procedural grounds. Owner has the burden of proving that Hearing Officer Barbara Cohen acted contrary to law and regulations. He has failed to meet that burden.

The scope of Owner's appeal is limited to whether Ms. Cohen acted in excess of her authority. She pointedly refused to address the merits of Mr. Anderson's case, limiting her tersely worded decision only to Owner's willful refusal to comply with the procedural requirements and regulations of the Rent Adjustment Program's hearing process, as he is also refusing to do in this appeal, discussed above. Owner fails to even address the decision itself, and thus fails to meet his burden of proof. Any reasonable justification of Ms. Cohen's decision requires that her decision be upheld on appeal.

Owner ***admits*** that Ms. Cohen met this "rationality test" at Sec 5 (pp. 4-6) of his appeal where he admits he did not "file timely responses." At the March 18, 2016, continuation of the evidentiary hearing, Hearing Officer Barbara Cohen gave Owner every opportunity to explain why he did not comply with the regulatory requirements. Owner admits this at pp. 5-6 of his appeal. In fact, Ms. Cohen's giving him permission to submit his Owner's Response ***after*** the February 16, 2016, hearing, while an abuse of discretion and willful misconduct cited by Mr. Anderson in his March 2, and March 11, 2016, written request for her recusal, is evidence of her giving Owner more than sufficient opportunity to present his claims and responses, to the point of denying Mr. Anderson and his co-tenants a fair hearing. Owner, so confident that his embroiled co-conspirator would rule in his favor, as she had unlawfully done several times before, arrogantly claimed that the lawful acts and omissions of his employee Fritz Abrams, within the scope of Mr. Abrams' employment, thus legally imputed to Owner (Civil Code §2338; Labor Code §2857), should be disregarded, without giving a sound legal reason to do so, only his incessant whine about a non-existent pre-emption, and, his own mismanagement of his own business creating "massive staffing transitions." Owner accepts Mr. Abrams identical actions regarding Mr. Frank Ross, another-tenant appellant at the same group hearing, against whom Owner prevailed through abuses of discretion by Ms. Cohen. This is part of Owner's double standard—accept the actions of his employee, or of Ms. Cohen,

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1 or of RAP, when they redound to his benefit, yet denounce and reject the same identical acts and omissions
2 when they redound to his detriment.
3 In furtherance of their conspiracy, Owner constantly makes broad generalizations without any points or
4 authorities to support them in the expectation that City's corrupt hearing officers and this corrupt Appeals Board
5 will accept such false legalism as substantial evidence. The actions of the hearing officers and this Board are
6 not only abuses of discretion and willful misconduct, but acts of moral turpitude. As usual, in this section of his
7 appeal, and the preceding Section 3 (pp. 3-4) of his appeal, Owner claims rights under non-existent
8 "foundational jurisdictional evidence"—a term and concept unknown to California law, and for which Owner
9 cites no authority. Owner also claims rights under some uncited, unspecified and non-existent "established state
10 law." Having failed to state a proper cause for appeal, Owner has failed to meet his burden of proving Ms.
11 Cohen acted contrary to law or regulation.
12 Mr. Victor Anderson hereby moves that Owner's Appeal be dismissed as Owner has failed to meet his
13 burden of proving Hearing Officer Cohen acted contrary to law and regulations. Mr. Anderson refers to p. 4,
14 line 36-42, above, and incorporate them herein. At a minimum the Appeals Board's ruling on this motion must
15 include an analysis of:
16 1. Whether Owner has or has not met his burden of proving that the hearing officer acted contrary to law and
17 regulation, specifying how he has met, or not met, his burden of proof.
18 2. Whether or not it was an abuse of discretion and misconduct on Ms. Cohen's part in permitting Owner to
19 submit an Owner's Response ***after*** the hearing had commenced
20 3. Whether or not it was an abuse of discretion and misconduct on Ms. Cohen's part in not permitting Mr.
21 Anderson's written response to the improperly permitted Owners Response, thus denying Mr. Anderson's
22 right to rebut and refute Owner's numerous false allegations in the Owner's Response.
23 **VI**
24 **There is neither state nor federal pre-emption of residential rent control in California and the**
25 **California 4th Appellate District, of which the Superior Court of Alameda County is subject, has**
26 **ruled that the California Supreme Court decisions creating residential rent control, *Birkenfeld*,**
27 ***supra*, accord *Fisher*, *supra*, governs pre-emption to Oakland's rent control ordinances, *Rental***
28 ***Assn.* v. *City of Oakland, supra*.**
29 In furtherance of the conspiracy, Owner makes numerous false statements of law, uses erroneous statutory
30 construction, makes false judicial analyses, states as fact and without authority, non-existent legal principles and
31 doctrines; cites cases and laws not implicit in residential rent control; and, with the knowledge that his co-
32 conspirator the RAP, through its hearing officers and this Appeals Board would arbitrarily and capriciously
33 uphold these statements which are either contrary to law, or, legal nullities, or both, preying on the legal
34 ignorance of a victimized, marginalized class—the residents of Building—to prevent a judicial review of City's
35 adjudicatory officers' and Appeals Board's unlawful abuses of discretion and willful misconduct. Specifically:
36 **a. Pre-emption.** Tenant Petitioner Victor C. Anderson refers to p. 3, lines 27 through 43, above, and
37 incorporates them by reference herein. Owner falsely claims at p. 1 of his appeal that Oakland's rent control
38 ordinance is" pre-empted by State law." **There is no such law** (*Birkenfeld, supra; Fisher, supra*) and Owner
39 does not cite any. **Residential rent control was created in California by a Supreme Court decision,**
40 *Birkenfeld, supra*, not by the state legislature. Under *Birkenfeld, supra,* the substantive provisions of residential
41 rent control are not pre-empted, and never have been.
42 If Owner believes there is a state law pre-empting the substantive provisions of Oakland's Rent Adjustment
43 Program, he has the burden of proving it by citing that law by code and section, and, the California Supreme
44 Court decision which holds that that law, if it exists, overrules *Birkenfeld* and *Fisher*. This he has failed to do.
45 Only the courts can override *Birkenfeld*, *Fisher*, and *Rental Housing Assn.* This Appeals Board does not have
46 authority or jurisdiction to overrule two California Supreme Court decisions, and an Appellate Court decision,
47 which Owner is arguing that it do. That would be arbitrary, capricious, an abuse of discretion, willful
48 misconduct, and, contrary to law.
49 **a1. California Mobilehome Residency Law (MRL).** Owner cites the Mobilehome Residency Law for
50 support (Civil Code §§798—798.88). The MRL and its decisional law cited by Owner, are not implicated in
51 ***residential*** rent control cases. Building is *not* a mobile home park. It is an 8-story building whose cornerstone

was laid in 1930, and has, by Owner's admission, no less than 190 residential rental units. All of his argument trying to apply state pre-emption based on the MRL fails. Cases are not authority for propositions they do not consider. *Rental Housing Assn., supra,* 171 Cal.App.4th 741, 753. In fact, the MRL was enacted in 1978, two years **after** *Birkenfeld, supra.* One of the many rules of statutory construction of which Owner is ignorant is that when the state legislature addresses an issue (mobile home residency, including its rent control, Civil Code §§798.17, 798.45, 798.49) while **not** addressing a companion or related issue (residential rent control) for the past 40 years, that is evidence of a lack of desire on the part of the state legislature to even enter the field of residential rent control, thus leaving the regulation and control of residential rent control to local government.

a2. The California Tax Credit Allocation Commission (CTCAC). Owner claims at page 2 of his appeal that "The Hearing Decision is silent as to any direct denial of CTCAC regulation by either tenant" [Mason or Anderson]. Owner also falsely claims Mr. Anderson knew various things about CTCAC which Mr. Anderson did not know prior to the February 16, 2016, hearing. CTCAC is ***not implicit in the field of residential rent control*** as defined by *Birkenfeld, supra* at 141-142.

a2(a). In furtherance of their conspiracy, in the belief that City will always accept any bogus legal claim of Owner, at pp. 7-8, of his appeal, Owner falsely claims that CTCAC regulations control all rent control issues. As stated above, only a California state statute can supersede a charter city ordinance. It is also well-settled law that state agency regulations are ***not*** general law, and, **cannot** override a local ordinance covering an area of local jurisdiction, such as rent control. *In the Matter of the E. H. Means, supra,* (45 *Cal. Jur. 3d* §249: What is general law, fns. 8 and 9). Where there is no statutory pre-emption, there is no regulatory pre-emption. Owner "assumes a right to exemption from rent control, if not under one provision then under another. There is no such general right. ..." *DaVinci* v. *SF Residential Rent Stabilization and Arbitration Board,* 5 Cal.App.4th 24, 31 (1992).

a2(b). In furtherance of their conspiracy, in the belief that City will always accept any bogus legal claim of Owner, Owner makes numerous false allegations of legal rights it claims to have based on being a CTCAC contractor. Mr. Anderson wrote to Mark Stivers, Director, CTCAC on March 7, 2016, requesting under California Public Records Act [Govt. Code §6253(c)] listing all claims of Owner to a legal right to violate the substantive provisions of Oakland's rent control ordinance. One Robert Hedrick, Senior Attorney, State Treasurer's Office, Sacramento, California, replied on March 25, 2016, that there was no legislation or regulation supporting any of Owner's various spurious and frivolous claims. Mr. Anderson hereby avers that, in addition to the lease and its attendant documents being void by the unilateral change—twice—in a material condition of his tenancy (rent increases), which terminates any tenancy based on the lease as of April 1, 2014, that the lease and every attached or related document were procured by fraud, deceit and unlawful threats on the part of Owner, and are therefore void. Owner should realize that Mr. Anderson's filing a tenant's petition was a rejection of the rent increase and the new tenancy based thereon, a petition granted to Mr. Anderson and to which he is appealing. Regardless of the outcome of this appeal, the tenancy is now one of sufferance.

a3. California constitutional provision Art. 11, §11(a). Under California Constitution Art. 11, §11(a), no state statute can authorize a state entity to bypass the a charter city's exercise of its police powers, which includes residential rent control, by a contract between that state entity and a private sector entity, which is what Owner claims CTCAC has authority to do. Owner's Appeal at pp. 6-8. Another of the many rules of statutory construction of which Owner appears to be ignorant is that new legislation assumes the validity of all existing laws, statutory or decisional, when it is enacted, and is subject to them unless there is an **express** supersession. And state legislation ***cannot*** negate a constitutional provision. As stated at p. 3, lines-33 through 39, p. 6, lines 26-28, and p. 8, lines 40-41, above, regulations of a state agency are not general law, and cannot supersede ordinances. Nothing about CTCAC—not its enabling legislation, not its regulations, not its contracts (Regulatory Agreements), or its forms—override or vacate *Birkenfeld, supra, Fisher, supra,* and *Rental Housing Assn, supra,* and, in fact, their use are nullified and rendered void as contrary to law and public policy by California Constitution Art. 11, §11(a).

a(4. California Civil Code §1667 and §§1953(a)(2)-(4), and (b). Owner seems to be alleging that Mr. Anderson waived his rights under state law and the rent control ordinances by signing the Tenant Information form, and by implication, the lease (which was terminated on April 1, 2015, by Owner unilaterally changing a material condition of the lease (raising Mr. Anderson's rent, and in excess of the CPI—twice), and any

associated recertification documents. California Civil Code §§1953(a)(2)-(4), and (b) voids any such lease and accompanying documents for which any such claim of waiver is made. Mr. Anderson reserves all rights available to him and waives nothing, and hereby declares such leases and documents void as of April 1, 2014.

b. Exemption. Section VI(a)(2), above, covers the unavailability of CTCAC in regards to pre-emption. This section covers the unavailability of CTCAC in regards to exemptions. An exemption, sometimes known as an exception, excuses a person or entity from the operation of a law. Only the legislative body which enacts the law from which an exemption is sought can grant an exemption, and then only to its own laws. *Birkenfeld, supra,* 17 Cal.3d at p. 167. The City has done this in OMC §§8.22.30.1—8.22.30.4. Exceptions to the general rule of a law are to be strictly construed. One seeking to be excluded from a law must establish that the exception applies. *Barnes* v. *Chamberlain* 147 Cal. App. 3d 762, 767; *Action Apartment Assn., Inc.* v. *City of Santa Monica* (2007) 41 Cal.4th 1232, 1242; *Topanga Assn., supra*, at 521.) Owner does not qualify for any of the legislated exemptions, nor does he claim to qualify for them. The authorization to grant the exemption, being an exercise of the police power of a charter city, under the state constitution cannot be delegated beyond the jurisdiction of the enacting city council, so, for a charter city, to any entity other than a political subdivision of itself.

b1. California Constitution Art. 11, §11(a) bars the method used by Oakland to grant exemptions by the use of a contract between a state entity and a private entity, including IRS 501(c)(3)s, to bypass the exercise of a home rule city's ordinances. City's unlawful attempt to abdicate its exercise of its police power in the form of residential rent control using-OMC 8.22.030.A.1, requires a "governmental unit, agency or authority," which in 1980, when the ordinance was passed, meant either a public housing authority or federal Section 8. The "governmental unit" must be implicit in the field of residential rent control. City has taken a ministerial tax agency, created in 1984, intended to reduce, if not end, government involvement in low income housing and turned it on its head to be a governmental unit which ***maximizes*** governmental involvement in low income housing, using the contract (Regulatory Agreement) between CTCAC and Owner to meet the "control, regulation, subsidy" requirements in violation of Art. 11, §11(a). Furthermore, CTCAC cannot receive a delegation of authority from City to grant exemptions to Owner or any other landlord, which Owner claims it is authorized do, in contradiction of the California Department of the Treasury's legal staff's opinion, nor can either City or CTCAC delegate such authority to a private sector entity, which Owner claims CTCAC has done.

Subornation of Perjury by Hearing Officer Cohen and perjury by Owner. Mr. Anderson refers to p. 13, lines 23—29, above, and incorporates them by reference herein. Ms. Cohen examined Owner in the manner of an advocate, assuming an adversary posture antithetical to the impartial conduct of an administrative hearing. In the hearing held on March 18, 2016, Ms. Cohen suborned the perjury of Owner by asking if its Regulatory Agreement with CTCAC contained a provision exempting it from Oakland's residential rent control ordinance, to which Owner perjured himself by answering in the affirmative. This lie is refuted by the legal staff of the California Department of the Treasurer. There is no such provision in the Regulatory Agreement, the enabling legislation of CTCAC, or CTCAC regulations, and such a provision would be void pursuant to both *In the Matter of the E. H. Means, supra*; and, Art. 11, §§7, and 11(a) if it did. A rent control hearing officer, a rent control Appeals Board members, and the manager of a rent control agency, all should know this. Cohen restates this lie in each and every decision cited by Owner.

Motion to dismiss. Since all controlling decisional law establish that there is neither state or federal pre-emption of the substantive provisions of residential rent control enacted by a home rule city in California, and Owner bases his appeal on the existence of such pre-emption; and, Owner has not met his burden of proving the existence of any statute which a court, state or federal, has ruled pre-empts the substantive provisions of Oakland's residential rent control ordinance, Tenant Anderson hereby moves that Owner's Appeal be dismissed. Mr. Anderson refers to p. 4, line 36-42, above, and incorporate them herein. At a minimum the written decision should include:

1. Why *Birkenfeld, supra, Fisher, supra, Rental Housing Assn., supra*, and *In the Matter of the E. H. Means, supra*, are or are not controlling decisional law dispositive of Owner's appeal.
2. The availability or unavailability of OMC 8.22.030.A.1 as a basis for granting an exemption in light of California Constitution Art. 11, §11(a), *Avco, supra*, and its progeny of decisional law; and, *In the Matter of the E. H. Means, supra*.

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3. As "government unit" does not sufficiently provide definite standards of application to prevent arbitrary and discriminatory enforcement" (*Snatchko* 187 Cal.App.4th at p. 495), how does that term include only those governmental units implicit in the field of residential rent control, as that field is defined in *Birkenfeld, supra,* and *Fisher, supra.*

4. As "control" as defined in the ordinance does not have sufficiently definite standards of application to prevent arbitrary and discriminatory enforcement, and, such "control" can never be a contractual agreement between a California executive branch entity and a private sector entity, without violating California Constitution Art. 11, §11(a) and *In the Matter of the E. H. Means, supra*, what "control" has Owner either proven or not proven exists over the substantive provision of the rent control ordinance Mr. Anderson claims Owner violates, and, state the substantial evidence of that proof.

5. As "regulation" as defined in the ordinance does not have sufficiently definite standards of application to prevent arbitrary and discriminatory enforcement, whether Owner has proven or not proven that there exists any governmental regulation over the rent control ordinance substantive provision Owner violated, supported by a California Supreme Court decision as reversing *Birkenfeld, supra.*

6. As "subsidy" is not defined in the ordinance and does not have sufficiently definite standards of application to prevent arbitrary and discriminatory enforcement, explain whether Owner has either proven or not proven that there exists any subsidy, including the source, nature and amount of such subsidy, and, state the substantial evidence of that proof.

VIII

Owner has the burden of producing a complete certified transcript of any and all of conversations he alleges occurred during the hearings. Owner at p. 5, of his appeal, cite lines purportedly from one of the hearings, without identifying the source. Mr. Anderson does ***not*** agree with Owner that the quoted section is accurate, or accurately reflects what was said, and its import. Mr. Anderson averred in his March 2, 2016, letter requesting (motioning) for Ms. Cohen's recusal that she acted as Owner's attorney. This colloquy between Ms. Cohen and Owner is proof of that. Furthermore, it is evidence of crimes. Every question Ms. Cohen asks is her suborning perjury on Owner's part. Every answer Owner gives is perjury. Owner's responses are not supported by facts: no state agency can by regulation override or supersede a charter city ordinance. See: p. 13, lines 23-29, above. If Owner is ignorant of this legal construct, the drafters of the Department of the Treasury's regulations are not, and Ms. Cohen should also be aware of it. Perjury can never be substantial evidence.

Owner had the burden of proving the quoted material is factual by producing a certified transcript with his appeal, and, to provide both this Appeals Board and Mr. Anderson the opportunity to refute and rebut his claims; this he did not do. Mr. Anderson needs to know what preceded this isolated quote, the context in which it was made, if made, and what followed. It is not Mr. Anderson's duty nor this Appeals Board's duty, to listen to an hour and a half of CD and guess at which exchange between Hearing Officer Cohen and Owner fits the citation. Only a complete certified transcript can provide evidence in support of Owner or for Mr. Anderson to refute his allegations. Furthermore, Owner has the burden of proving that Mr. Anderson had the opportunity to cross-examine Owner fully at the hearing on any fact Owner avers. Mr. Anderson hereby moves that this portion of his appeal be stricken from the record.

IX

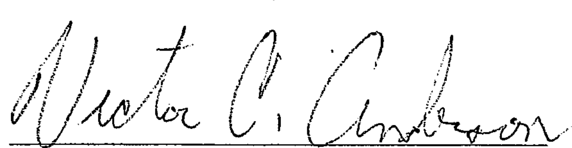
Mr. Anderson is entitled to a fair hearing at the appeals hearing. A fair hearing requires, in addition to an impartial tribunal, to the right to be heard, and to a written decision based solely on evidence adduced at the hearing and in briefs, the right to cross-examine opposing parties and witnesses. Among Ms. Cohen's many abuses of discretion and willful misconduct is that she denied tenants all of these rights. This abuse of discretion also pervades every unindexed agency decision Owner cites, at both the evidentiary and appeals stages.

Mr. Anderson has the right to cross examine Owner at both the evidentiary and appeals hearings. Where the hearing officer makes a decision based on a party's testimony, the adversary is entitled to question his opponent. (*Manufactured Home Communities* v. *County of San Luis Obispo* 167 Cal.App.4th 705, 712 (2008) (In *Manufactured Home*, it is the *landlord* whose right to cross examine tenants was violated); *Goldberg* v. *Kelly* 397 U.S. 254, 269-270 (1970); *Fremont Indemnity Co.* v. *Workers' Comp. Appeals Bd.*, 153 Cal.App.3d 965, 971 (1984)). The error is prejudicial and a new hearing would have been required if Owner had prevailed. (*Sinaiko* v. *Superior Court,* 122 Cal.App.4th 1133, 1140, 1142, 1146). Mr. Anderson denies and refutes every

word of every line of every paragraph of every page of Owner's appeal, and insists on his right to cross-examine Owner at the appeals hearing on both his appeal and any testimony or statement he makes. Limitation or restriction of Mr. Anderson's exercise of this right is also a denial of a fair hearing: "administrative efficiency at the expense of due process is not permissible. [Citations omitted.]" *Fremont Indemnity Co.* v. *Workers' Comp. Appeals Bd., supra*, 153 Cal.App.3d at pp. 971-972; *Manufactured Homes, supra*, at 715.

If Owner prevails, his only remedy is to remand the case back for rehearing, at which Mr. Anderson can present his evidence as to the absence of pre-emption per *Birkenfeld, supra*; *Fisher, supra,* and *In the Matter of the E. H. Means, supra*; the unavailability of exemption per Art. 11, §11(a), the doctrine of no abdication of municipal functions by a government entity; and, his motions for disqualifying Ms. Cohen and Ms. Barbara Kong-Brown as hearing officers; his motion for change of venue; his right to cross-examine Owner; and, a decision which complies with *Topanga Assn., supra.*

Mr. Anderson requests, pursuant to Govt. Code §§6250-6270.5 (Public Records Ac) all records of contacts of whatever nature meeting the requirements of the Govt. Code §§6250-6270.5 between City and Owner for the past five years (2012–present) be made part of the record of this hearing, as such records contain evidence of the conspiracy, collaboration, collusion, co-ordination and co-operation of City and Owner to deny tenants of Building the equal protection of City's rent adjustment ordinance. These records must include every Rent Adjustment Program case involving either Owner or Building, regardless of outcome, and even pending as of the date of the hearing.



Victor C. Anderson, Tenant Respondent
February 24, 2017

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RENT ARBITRATION PROGRAM
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EXHIBIT

Victor Anderson

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CITY OF OAKLAND
RENT ARBITRATION PROGRAM
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Recorded in Official Records, Alameda County
Patrick O'Connell, Clerk-Recorder

No Fee

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A15 16 7.00 45.00 0.00 0.00 0.00 0.00 0.00

Recording requested by and when recorded mail to:

Tax Credit Allocation Committee
915 Capitol Mall, Room 485
P.O. Box 942809
Sacramento, CA 94209-0001

Free Recording Requested
In Accordance With
Government Code 6103

Space above this line for Recorder's use

REGULATORY AGREEMENT

Federal Credits Only

This Regulatory Agreement (this "Agreement") is made between the Tax Credit Allocation Committee ("TCAC"), established under Section 50185 of the Health and Safety Code of the State of California, and 634 15th St., Oakland, CA, a California Limited Partnership ("Owner") and is dated as of January 1, 1994 (the "Effective Date"). The Owner has requested and TCAC has authorized an allocation relating to the low-income housing tax credit under the provisions of Section 42 of the Internal Revenue Code of 1986 (the "Tax Credit"). The Tax Credit relates to a multifamily rental housing project known as Claridge Hotel identified in the records of TCAC by TCAC# CA-93-101 and IRS Building Identification Number CA-93-10101 and located on the real property described in Exhibit A of this Agreement, attached hereto and incorporated herein (the "Project"). This Agreement is intended to constitute the extended low income housing commitment required by Section 42(h)(6) of the Internal Revenue Code. Accordingly, in consideration of the allocation relating to the Tax Credit by TCAC and the requirements of the Internal Revenue Code, the Owner and TCAC hereby agree as follows:

Section 1. Definitions.

a. Unless the context otherwise requires, capitalized terms used in this Agreement shall have the following meanings:

"Agreement" means this Regulatory Agreement between TCAC and the Owner.

"Applicable Fraction" means the smaller of the Unit Fraction or the Floor Space Fraction, all calculated in accordance with Section 42(c)(1) of the Code.

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"Area Median Gross Income" means the median gross income of the area in which the Project is located as determined by the Secretary for purposes of Section 42 of the Code, including adjustments for family size.

"Assumption Agreement" shall have the meaning assigned in Section 15 hereof.

"Code" means those provisions of the Internal Revenue Code of 1986, as amended, and regulations promulgated pursuant thereto.

"Compliance Period" means the period of 30 consecutive taxable years beginning with the first taxable year of the Credit Period, or such longer period as is prescribed at Appendix A.

"Credit Period" means the period of ten taxable years beginning with the taxable year the Project is placed in service or (at the election of the Owner) the succeeding taxable year, as further provided pursuant to Section 2b hereof.

"Economically Feasible" means that, in the determination of TCAC, Project revenues equal or exceed (or are reasonably expected to equal or exceed) the reasonable expenses necessary to operate and maintain the Project in habitable condition, to pay debt service and taxes, and to maintain reasonable reserves. In determining whether the Project is Economically Feasible, TCAC (a) shall not make provision for any return on investment and (b) shall exclude from calculation of "debt service" any portion of payments of principal and interest attributable to refinanced principal to the extent such refinanced principal exceeded the outstanding principal of the loan refinanced and was not used for rehabilitation of the Project.

"Effective Date" means the date first set forth hereinabove.

"Floor Space Fraction" means the fraction, the numerator of which is the total floor space of the Low-Income Units in a building and the denominator of which is the total floor space of the Units in such building.

"Gross Rent" means all amounts paid by a Tenant for rent, determined in a manner consistent with Section 42(g)(2) of the Code. If the Tenant pays utilities directly, Gross Rent shall include any utility allowance prescribed by the Secretary.

"Income" means the income of a Tenant determined in a manner consistent with the requirements of Section 142(d)(2)(B) of the Code.

"Low-Income" means, with respect to any Tenant, an income level not exceeding 50% or 60% of Area Median Gross Income, as provided in Section 4b hereof, or such alternative income level as may be set forth in Appendix A.

"Low-Income Tenant" means a Tenant who, when the Tenant originally occupied the Unit, had an Income qualifying as Low-Income. For so long as the Tenant occupies the particular Unit, the Tenant will remain a Low-Income Tenant if the Tenant's Income, upon the most recent income certification, does not exceed 140% of Low-Income.

"Low-Income Unit" means a Unit in the Project that is occupied by a Low-Income Tenant, is Rent-Restricted and meets the other requirements of Section 42 of the Code.

"Minimum Amount" means the number of Units in the Project required to be Low-Income Units, which Minimum Amount for this Project is 20% or 40% of the Units, as provided in Section 4b hereof.

"Owner" means 634 15th St., Oakland, CA, a California Limited Partnership, or successors.

"Project" means the residential rental housing project known as Claridge Hotel, TCAC# CA-93-101 and located on the real property described in Exhibit A.

"Qualified Low-Income Housing Project" means a residential rental project meeting the requirements of Section 4 hereof.

"Rent-Restricted" means, with respect to any Unit, that the Gross Rent with respect to such Unit is not more than 30% of the imputed income limitation applicable to such Unit pursuant to Section 42(g)(2)(C) of the Code, as modified by Appendix A, if applicable.

"Secretary" means the Secretary of the Treasury of the United States.

"Service" means the United States Internal Revenue Service and any successor thereto.

"Tax Credit" means the low-income housing tax credit under the provisions of Section 42 of the Code.

"TCAC" means the Tax Credit Allocation Committee and its successor.

"TCAC Compliance Monitoring Procedures" means those procedures and requirements adopted or imposed by TCAC for the purpose of discharging its responsibilities pursuant to Section 42(m)(1)(B)(iii) of the Code to monitor compliance by the Owner and the Project with the provisions of Section 42 of the Code and notify the Service of instances of noncompliance.

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"Tenant" means the individual or individuals entitled to occupy a Unit in the Project by lease or other legal relationship with the Owner.

"Unit" means any unit in the Project consisting of an accommodation containing separate and complete facilities for living, sleeping, eating, cooking, and sanitation; provided, however, that single room occupancy units used on a nontransient basis may be treated as Units.

"Unit Fraction" means the fraction, the numerator of which is the number of Low-Income Units in a building and the denominator of which is the number of Units in such building.

b. Any term or phrase which is used in this Agreement and not defined herein shall have the meaning, if any, assigned thereto in Section 42 of the Code. Any term or phrase which is defined herein shall, unless the context shall clearly indicate otherwise, be interpreted in a manner consistent with the provisions and requirements of Section 42 of the Code.

Section 2. Term.

a. This Agreement shall commence as of the Effective Date and shall terminate on the last day of the Compliance Period (the "Term").

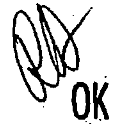
b. The Credit Period commences with [✓] the calendar year 1994 or [ ] **[the taxable year beginning ____________ __, ____, and ending ____________ __, ____]**.

c. Notwithstanding subsection a. of this Section 2, this Agreement shall terminate with respect to any building in the Project on the date such building is acquired by foreclosure or instrument in lieu of foreclosure unless the Secretary determines that such acquisition is part of an arrangement a purpose of which is to terminate such period; provided, however, that, except for eviction for good cause, the Tenant of any Low-Income Unit shall be entitled to occupy such Unit in accordance with the provisions of this Agreement for a period of three years following such termination.

Section 3. Filing. This Agreement shall be recorded as a restrictive covenant in the official records of the County of Alameda in which the Project is located.

Section 4. Qualified Low-Income Housing Project.

a. The Owner shall maintain the Project as a Qualified Low-Income Housing Project within the meaning of Section 42 of the Code at all times, commencing with the last day of the first year of the Credit Period and continuing throughout the Term of this Agreement. To this end, and without limitation, the Owner shall --



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(i) operate the Project such that at least the Minimum Amount of the Units in the Project are Low-Income Units, and

(ii) assure that Units in the Project are (A) available for use by the general public, (B) suitable for occupancy and (C) used on other than a transient basis.

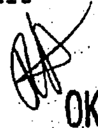
b. For purposes of this Agreement and Section 42 of the Code, the Owner has elected to comply with [ ] the "20-50 test" pursuant to which "Low-Income" is defined as 50% of Area Median Gross Income and the Minimum Amount is 20% of the Units in the Project or [√] the "40-60 test" pursuant to which "Low-Income" is defined as 60% of Area Median Gross Income and the Minimum Amount is 40% of the Units in the Project.

c. The amount of Tax Credit allocated to the Project is based on the requirement that the Applicable Fraction for buildings in the Project will be at least 100% or as specified, building-by-building, at Appendix A. The Owner's failure to ensure that each building in the Project complies with such requirement will cause TCAC to report such fact to the Service, which may result in the reduction and recapture by the Service of Tax Credit, and to take other appropriate enforcement action.

d. The Owner may not refuse to lease a Unit in the Project to a prospective Tenant who holds a voucher or certificate of eligibility for assistance pursuant to Section 8 of the United States Housing Act of 1937, as amended, because of the status of such prospective Tenant as the holder of such voucher or certificate.

e. The Project and the Owner are subject to the additional and/or modified requirements, if any, set forth at Appendix A, which requirements are incorporated herein and made a part hereof.

Section 5. Annual Determinations; Low-Income Units. Upon initial occupancy and, unless otherwise allowed under Section 42 of the Code, at least annually thereafter, the Owner shall determine and certify the Income of each Low-Income Tenant. If, upon any such annual certification, the Tenant of a Low-Income Unit who was, at the last income certification, a Low-Income Tenant, is found no longer to be a Low-Income Tenant, such Unit will continue to be treated as a Low-Income Unit until the next available Unit of comparable or smaller size in the Project (i) is rented to a person who is not a Low-Income Tenant or (ii) is rented without being Rent-Restricted. A Low-Income Unit that has been vacated will continue to be treated as a Low-Income Unit provided that (I) reasonable attempts are made to rent the Unit and (II) no other Units of comparable or smaller size in the Project are rented to persons who are not Low-Income Tenants or are rented without being Rent-Restricted. In no case will a Unit be treated as a Low-Income Unit if all the Tenants of the Unit



are students (as determined under Section 151(c)(4) of the Code), no one of whom is entitled to file a joint income tax return; provided, however, that such rule shall not apply to the types of students identified at Section 42(i)(3)(D) of the Code, or any successor to such provision, as applicable to the Project.

Section 6. Compliance Monitoring. The Owner acknowledges that TCAC is required, pursuant to Section 42(m)(1)(B)(iii) of the Code, (i) to monitor the Owner's and the Project's compliance with the requirements of Section 42 of the Code and (ii) to notify the Service of any noncompliance which is found. The Owner agrees (I) to maintain records that substantiate and document such compliance, (II) to take all actions required by TCAC pursuant to the TCAC Compliance Monitoring Procedures to assist or cooperate with TCAC in monitoring such compliance and (III) to pay the fee prescribed by TCAC with respect to such monitoring. At minimum, the Owner shall annually certify to TCAC (on such forms as are prescribed by TCAC) the number of Units in the Project which are Low-Income Units, the percentage of floor space in the Project which is allocable to Low-Income Units and that the Project continues to be a Qualified Low-Income Housing Project; provided, however, that in the first year of the Credit Period, the Owner shall certify individually with respect to each month of such year the number of Low-Income Units in the Project and the percentage of floor space devoted to such Units on the last day of the month.

Section 7. Increase in Rents for Low-Income Units/Reduction in Number of Low-Income Units. If, after the first 18 years of the Compliance Period, the Project is not Economically Feasible, the Owner shall be entitled (i) to increase the Gross Rent for each Low-Income Unit, subject to any applicable lease, to the maximum Gross Rent then permitted for such Unit pursuant to Section 42 of the Code and (ii) to apply to modify the requirements of this Agreement, as hereinafter provided, by seeking to end the "extended use period" which would apply to the Project under Section 42(h)(6)(D), absent the particular time periods established by this Agreement, in the manner, subject to the conditions and at the times provided in Section 42(h)(6)(E). Upon satisfying the conditions for termination of the "extended use period" pursuant to clause (ii) of the preceding sentence, the Owner may reduce the Applicable Fraction with respect to one or more buildings in the Project, as set forth at Section 4c or Appendix A, as applicable, by one or more Units as is necessary for the Project to become Economically Feasible, provided that the Applicable Fraction for the Project may not be reduced below the number of Low-Income Units required for the Minimum Amount. Once the Project is again Economically Feasible, the Owner shall increase the Applicable Fraction(s) and only rent the next available Units to Low-Income Tenants (such that they qualify as Low-Income Units), up to the original Applicable Fraction, while keeping the Project Economically Feasible. All determinations as to (I) whether a Project is Economically Feasible, (II) the number of Units by which the Applicable Fraction may be reduced,

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and (III) the circumstances under which any relief under this Section 7 shall be terminated or modified shall be made by TCAC, either upon request of the Owner within 30 days after the Owner has submitted all required documentation to TCAC, or upon its own initiative. The Owner shall notify TCAC or its designee if, following the appropriate determination(s) by TCAC, the Owner intends to increase rents or reduce the Applicable Fraction pursuant to this section, which notification shall be made no less than 30 days prior to the date the Owner plans to take such action. The Owner may not evict Low-Income Tenants except for good cause. The termination of the "extended use period" as contemplated by this Section 7 does not alter the Term of this Agreement, nor does it modify any of the terms hereof except as specifically provided in this Section. If the Compliance Period shall be longer than 30 years and if the Project is found not to be Economically Feasible after the end of the 30th year of the Compliance Period, the Owner shall not be required to seek to terminate the "extended use period" under Section 42 of the Code, as provided for at clause (ii) of the first sentence of this Section, in order to make modifications to Project rents or the Applicable Fraction in accordance with this Section.

Section 8. Notification of Noncompliance. The Owner agrees to notify TCAC or its designee if there is a determination by the Service that the Project is not a "qualified low-income housing project" within the meaning of Section 42(g) of the Code. Notification to TCAC will be made within ten business days of receipt of any such determination.

Section 9. Security for Performance. The Owner hereby assigns its interest in the rents from the Project to TCAC as security for the performance of the Owner's obligations under this Agreement. However, until and unless the Owner defaults in its obligations under this Agreement, the Owner is entitled to collect, retain and apply such rents.

Section 10. Remedies. In the event the Owner defaults in its obligations under this Agreement and such default is not cured within a reasonable time period, the remedies of TCAC and the Tenants shall include, but are not limited to, the following:

a. collecting all rents with respect to the Project and applying them (i) to meet the ongoing costs of operating the Project, (ii) to pay debt service, (iii) to reimburse any Low-Income Tenants who may have been charged a Gross Rent above the applicable Rent-Restricted level or (iv) to assure the long-term, Low-Income use of the Project consistent with the requirements of Section 42 of the Code and this Agreement;

b. taking possession of the Project and operating the Project in accordance with the requirements of this Agreement, including the collection and application of rents in accordance with subsection a of this Section 10, until the Owner

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demonstrates that it will operate the Project in accordance with this Agreement;

c. applying to any court for specific performance of any of the obligations herein set forth;

d. securing the appointment of a receiver to operate the Project in a manner consistent with this Agreement, including subsections a and b of this Section 10;

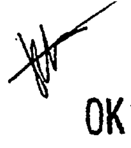
e. suit against the Owner for damages or for the disgorgement of rents collected in excess of those which would have been received had the Owner complied with the requirements of this Agreement; and

f. such other relief as may be appropriate.

Section 11. Enforceability. This Agreement may be enforced by TCAC or its designee. In addition, the Agreement shall be deemed a contract enforceable by and shall inure to the benefit of one or more Tenants or persons meeting the Low-Income restriction, whether past, present, or prospective Tenants, as third-party beneficiaries hereof. TCAC, its designee, and/or any Tenant or other third-party beneficiary shall be entitled to reasonable attorneys' fees and other legal costs in any judicial or administrative action in which such party shall prevail.

Section 12. No Conflicting Agreements. The Owner warrants that it is not bound by and will not execute any other agreement with provisions that bind it to violate the provisions of this Agreement; provided, however, that with the approval of TCAC, this Agreement may be subordinated, if required, to any lien or encumbrance of any banks or other institutional lenders to the Project; provided, further, that the terms of any such subordination shall provide that the requirement of Section 2c hereof, with respect to the continuation of occupancy and rent restrictions for three years following certain terminations of this Agreement, shall remain in effect.

Section 13. Successors Bound. This Agreement and the covenants and conditions contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Owner and its successors and assigns and all subsequent owners of the Project or any interest therein, and TCAC and its successors and assigns, for the Term of this Agreement, without regard to whether any such parties shall have executed an Assumption Agreement with respect hereto. Upon termination of this Agreement, the covenants and conditions contained herein shall expire, except that the requirement of Section 2c hereof, with respect to the continuation of occupancy and rent restrictions for three years following certain terminations of this Agreement, shall remain in effect.



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Section 14. Amendments; Waivers. Except as otherwise provided in this Agreement, this Agreement may not be amended, changed, modified, altered or terminated except by written instrument executed and acknowledged by each of the parties hereto or their successors and duly recorded in the official records of the county in which this Agreement is recorded. Any waiver of any provision of this Agreement shall not be deemed to be an amendment hereof.

Section 15. Assignment by Owner. The Owner may not sell or otherwise dispose of any portion of any building in the Project unless it disposes of the entire building to the same person. Upon sale or transfer of the Project, the Owner shall be relieved of all obligations under the Agreement and the transferee shall succeed to and be bound by all of the Owner's rights and obligations. Prior to any transfer of the Project, the Owner shall notify TCAC and provide the name(s) and address(es) of the prospective successor owner and operator. The Owner shall require, as a condition precedent to any sale, transfer or exchange or any other disposition of the Project prior to termination of this Agreement, that the purchaser or successor assume, in writing, in an Assumption Agreement acceptable to TCAC, the Owner's obligations hereunder and under Section 42 of the Code and applicable regulations, which Assumption Agreement shall be delivered to TCAC in executed, recordable form prior to any such sale, transfer or exchange. The Owner agrees that any sale, transfer or exchange of the Project without execution of an Assumption Agreement or otherwise in contravention of the provisions of this Section 15 shall be voidable at the discretion of TCAC. Changes in the constituents of the Owner shall not constitute a default under this Agreement. Owner acknowledges that the sale, transfer or exchange of the Project, or any interest in the Project or the Owner, consistent with the requirements of this Agreement, does not relieve the Owner or any of its constituents from any obligations which it may have under Section 42 of the Code, including those with respect to recapture of Tax Credit or any alternative thereto.

Section 16. Notices. All notices, certificates or other communications shall be sufficiently given and shall be deemed received on the second day following the date on which the same have been mailed by certified mail, postage prepaid, or sent by other method which produces evidence of delivery thereof, addressed as follows:

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To the TCAC:

Tax Credit Allocation Committee
915 Capitol Mall, Room 485
P.O. Box 942809
Sacramento, CA 94209-0001

To the Owner:

634 15th St., Oakland, CA,
a California Limited Partnership
3871 Piedmont Ave
Oakland, CA 94611

TCAC and the Owner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 17. Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective duly authorized representatives, as of the day and year first written above.

TAX CREDIT ALLOCATION COMMITTEE

By________________________
Executive Director

634 15TH ST., OAKLAND, CA,
A CALIFORNIA LIMITED PARTNERSHIP

By Talcott Properties Inc. Its General Partner
(Owner)

By Roger Pres.
(Please type or print name)
Roger Huddlestone.

The undersigned, owners of the property described on Exhibit A hereto, hereby consent to recordation of this Regulatory Agreement against such property, and agree that such property shall be bound by the provisions thereof.

634 15TH ST., OAKLAND, CA,
A CALIFORNIA LIMITED PARTNERSHIP

By________________________

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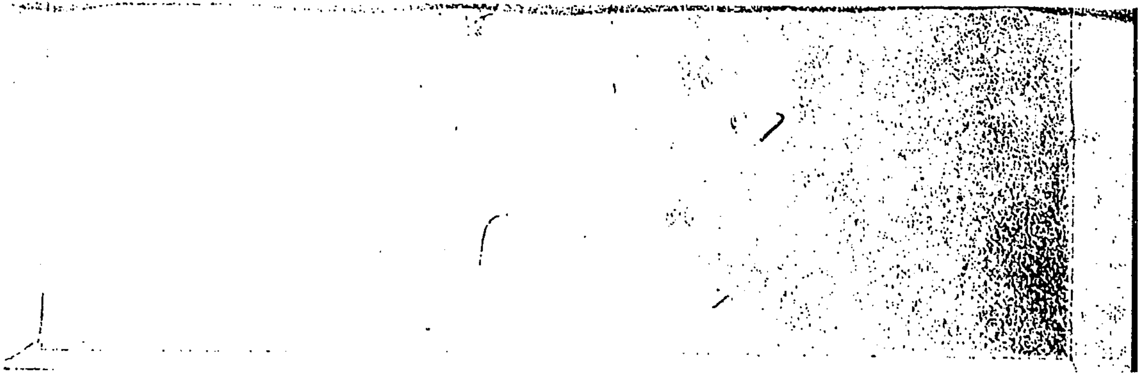


95183836

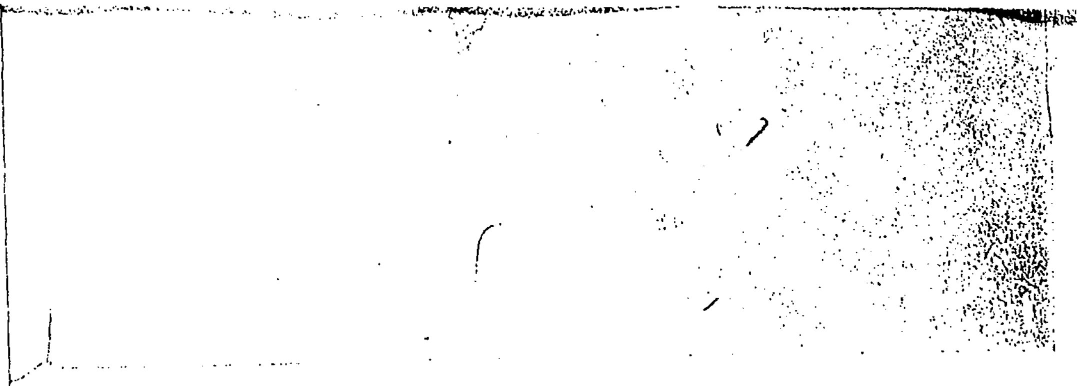
ACKNOWLEDGEMENT

STATE OF CALIFORNIA }
} ss
COUNTY OF Sacramento }

On August 1, 1995, before me, Mary Low, Notary Public, personally appeared Donald P. Maddy, Executive Director of the California Tax Credit Allocation Committee, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Notary Public



ACKNOWLEDGEMENT

STATE OF CALIFORNIA)

COUNTY OF Alameda)

On this 21st day of September in the year 1994, before me, E. B. Chambers, personally appeared Roger Huddlestone

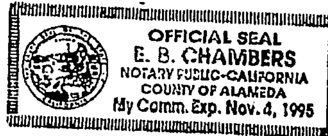
~~personally known to~~ me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Given under my hand and official seal this 21st day of Sept, 1994.

[SEAL]

Notary Public

My Commission Expires:
11-4-95


OFFICIAL SEAL
E. B. CHAMBERS
NOTARY PUBLIC-CALIFORNIA
COUNTY OF ALAMEDA
My Comm. Exp. Nov. 4, 1995

APPENDIX A TO REGULATORY AGREEMENT

ADDITIONAL USE RESTRICTIONS

(All items checked apply.)

[√] **Lowest Incomes Targeted**

At least 40 Units in the Project must be occupied by Tenants at or below 50% of Area Median Gross Income and Rent-Restricted in accordance with such income level.

[√] **Longer Compliance Period**

The Compliance Period shall be a period of 55 consecutive taxable years commencing with the first year of the Credit Period.

[ ] **Senior Projects**

[ ] Throughout the Compliance Period, unless otherwise permitted by TCAC, at least ___ Units must be restricted to households in which one family member is (a) 62 years of age or older or (b) disabled or handicapped.

[ ] Throughout the Compliance Period, unless otherwise permitted by TCAC, in addition to Units set-aside for Tenants at or below 50% of Area Median Gross Income as provided elsewhere in this Appendix A or in the Agreement, an additional ___ Units must be occupied by Tenants at or below 50% of Area Median Gross Income and Rent-Restricted in accordance with such income level.

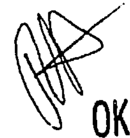
[√] **SRO or Special Needs Projects**

[√] Throughout the Compliance Period, unless otherwise permitted by TCAC, [ ] all Units must be set-aside for Tenants at or below 40% of Area Median Gross Income OR [√] Units must be occupied by Tenants such that the average income of Tenants is at or below 40% of Area Median Gross Income, and in either event, such Units shall be Rent-Restricted in accordance with such income level.

[√] **Physical Facility Features**

Throughout the Compliance Period, unless otherwise permitted by TCAC, the Project shall provide the following facilities:

- Community Meal Room with Kitchen
- Equipped Laundry Room
- Furnished Community Room
- Furnished Lounge
- Roof Deck
- Security System



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[ ] **Minimum Applicable Fraction by Building**

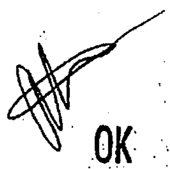
Building Id. ______________ Minimum Applicable Fraction ____%

Building Id. ______________ Minimum Applicable Fraction ____%

Building Id. ______________ Minimum Applicable Fraction ____%

[ ] **Agency Designated to Enforce**

At any time during the Compliance Period, the Committee may designate an agency of local government to enforce the terms of this Agreement. The Committee designates the following agency of local government for such purpose: N/A.



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95183836

EXHIBIT A
to Regulatory Agreement

Description of the real property
on which the Project is located

Location:

634 15th St
Oakland, CA 94612

Legal
Description:

Project
Size
Description:

1 Building;
190 Low-Income Units; 2 Manager's Units
190 SRO; 1 1-Bedroom; 1 2-Bedroom

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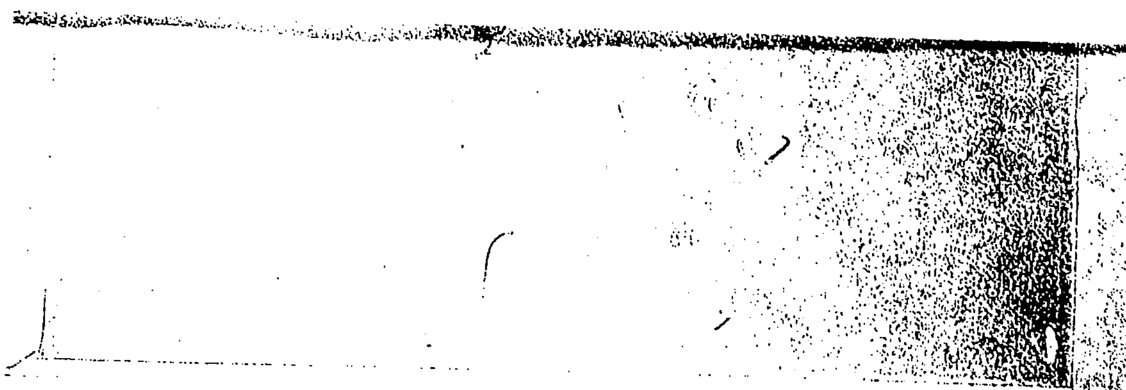


EXHIBIT

REAL PROPERTY in the City of Oakland, County of Alameda, State of California, described as follows:

PARCEL ONE:

Beginning at a point on the northern line of 15th Street, distant thereon westerly 140 feet from the intersection thereof, with the western line of Jefferson Street, as said streets are shown on the Map herein referred to; running thence westerly, along said line of 15th Street, 40 feet; thence at right angles northerly 103 feet and 9 inches; thence at right angles easterly 40 feet; thence at right angles southerly 103 feet and 9 inches to the point of beginning.

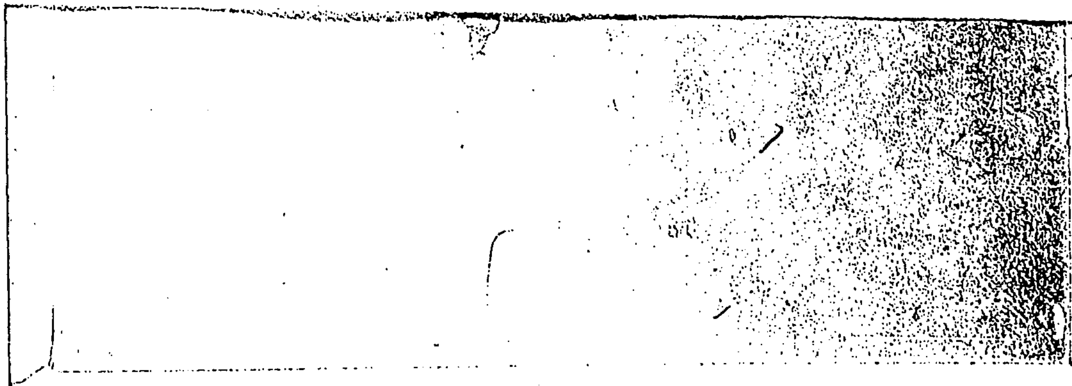
Being Lot 10 in Block 266, as said lot and block are shown on the "Map of the Casserly Tract on Fourteenth Street, Oakland," filed July 23, 1869 in book 6 of the Maps, page 10, in the office of the County Recorder of Alameda County.

PARCEL TWO:

Beginning at the intersection of the northern line of 15th Street with the eastern line of Grove Street; running thence easterly, along said line of 15th Street, 120 feet; thence at right angles northerly 103 feet and 9 inches; thence at right angles westerly 40 feet; thence at right angles southerly 28 feet and 9 inches; thence at right angles westerly 80 feet to the eastern line of Grove Street; and thence southerly, along said last named line, 75 feet to the point of beginning.

Being a portion of Block 266, according to Boardman's Map of Oakland and Vicinity, on file in the office of the County Recorder of Alameda County.

A.P.N. 003-0071-008



CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

CASE NUMBER T15-0618

LANDLORD RESPONSE

I. FACTUAL BACKGROUND

The property was acquired by the current owner in April of 2014. The property management company EAH was responsible for management but its services were terminated as of July 31, 2014. PIP Inc. began managing the premises on August 1, 2014. The response to petition is filed by PIP Inc.

II. EXEMPTIONS (SEPARATE SHEET)

The unit is exempt from the Rent Adjustment Program because the rent for the unit is controlled, regulated (other than by the Oakland Rent Adjustment Ordinance), or subsidized by a governmental unit, agency or authority. O.M.C 8.22.030A.1. Please see attached Regulatory Agreement. Thus, the Rent Board does not have jurisdiction over the claims asserted by this tenant.

CHRONOLOGICAL CASE REPORT

Case No.:	T15-0684
Case Name:	Miller v. Rockridge Real Estate, LLC
Property Address:	1568 Madison St., #16, Oakland, CA
Parties:	Ronald Miller, Jr.(Tenant) Alan Reinke (Owner)

LANDLORD APPEAL:

Activity	Date
Tenant Petitions filed	December 23, 2015
Landlord Response filed	January 27, 2016
Hearing Decision Issued	May 20, 2016
Landlord Appeal filed	June 1, 2016