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**No Fee Required Gov't Code § 6103**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES**

Geary J. Johnson,  
  
Petitioner,

vs.

Los Angeles Housing Department,  
  
Respondent.

Hi Point 1522 LLC,

Real Part In Interest.

**CASE NO. 23STCP00644**  
Honorable James C. Chalfant

**RESPONDENT LOS ANGELES HOUSING  
DEPARTMENT'S OPPOSITION TRIAL  
BRIEF; MEMORANDUM OF POINTS AND  
AUTHORITIES**

(Filed and served concurrently with Request For  
Judicial Notice and Exhibits 1 to 3, Declaration  
Breithaupt; Proposed Order; Joint Administrative  
Record to follow)

Trial Date: June 25, 2024  
Time: 1:30 p.m.  
Dept.: 85

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

**NOTICE IS HEREBY GIVEN THAT** on June 25, 2024 at 1:30 p.m., or as soon as  
thereafter the matter may be heard in Department 85 of the above-entitled Court, located at the  
Stanley Mosk Courthouse, 111 N. Hill Street, Los Angeles, CA 90012, Respondent Los  
Angeles Housing Department ("LAHD") will and hereby does move the Court under Rule

1 3.1306(c) of the California Rules of Court and Evidence Code § 451(a), § 452 (c), (d), (g) and  
2 (h), and § 453(a)-(b), to deny Petitioner Geary J. Johnson's Petition for Writ of Mandate alleged  
3 under CCP § 1094.5 and CCP § 1085 and all civil claims against Respondent Los  
4 Angeles Housing Department ("LAHD") on the following grounds:

- 5 1. RES JUDICATA AND COLLATERAL ESTOPPEL BAR THIS WRIT.
- 6 2. NO FUNDAMENTAL VESTED RIGHT HAS BEEN ALLEGED.
- 7 3. RAC REGULATIONS ARE LAWFUL AND WERE LAWFULLY  
8 APPLIED.
- 9 4. PETITIONER'S CCP § 1085 TRADITIONAL WRIT IS UNFOUNDED.
- 10 5. PETITIONER'S CCP § 1094.5 WRIT IS UNFOUNDED.
- 11 6. LAHD HAS AUTHORITY TO ADJUDICATE TAHO COMPLAINTS.
- 12 7. STATUTE OF LIMITATIONS BAR ON ALL CLAIMS.
- 13 8. THE TORT CLAIM IS UNTIMELY AND NOT COLORABLE.

14 Under California Rule of Court 3.1306, the Joint Administrative Record ("AR") bearing  
15 Bate Stamp No. 1 to 2278 will be filed regarding Petitioner's Writs concerning his Fourth RSO  
16 Reduction in Housing Service Complaint No. CE273371 filed against the Real Party in Interest  
17 and resulting the challenged Los Angeles Housing Department's July 6, 2023 LAHD Notice of  
18 Case Closure (AR 722-723). The AR contains the Petitioner's Supplemental Documents (AR  
19 2168-2278) that were submitted with leave of Court. For judicial economy, the following AR  
20 overview is provided for ease of access:

- 21 1. The Joint Administrative Record applicable to the instant writ challenges verified  
22 by LAHD Custodian of Records Joann Chen (AR, last page).
- 23 2. Excerpts from the City's Rent Stabilization Ordinance ("RSO") (Los Angeles  
24 Municipal Code ["LAMC"] § 151.01 *et seq.*) (AR 703-716).
- 25 3. LAHD Rent Adjustment Commission Regulations ["RAC"] 410.00 to 415.03  
26 entitled Reduction in Housing Services (AR 717-720).
- 27 4. Petitioner's Writ (AR 1-207) and Supplemental Writ (AR 223-674) and his  
28 Exhibits 1 to 121 identified in an Exhibit List at AR 254-261.
5. City's Answer (AR 208-222) and Supplemental Answer (AR 673-700).
6. Petitioner's Prior RSO Reduction in Housing Service Complaint No. 208135  
against RPI at AR 1052 -1559.

1           7.     Petitioner's Prior RSO Reduction in Housing Service Complaint No. 203006  
2                 against RPI at AR1560-1915.

3           8.     Petitioner's Prior RSO Reduction in Housing Service Complaint No. 212259  
4                 against RPI at AR1917-2166.

5           Respondent's Writ Opposition Trial Brief is based on this Notice of Writ Opposition  
6           Trial Brief, the attached Memorandum of Points and Authorities, the pleadings and papers on  
7           file with the Court, the Joint Administrative Record, the City's Request for Judicial Notice and  
8           Exhibits 1 to 3 served and filed herewith, and on any oral argument as may be presented during  
9           the trial in this matter.

10          Dated: April 25, 2024

              HYDEE FELDSTEIN SOTO, City Attorney  
              VALERIE L. FLORES, Chief City Attorney  
              JOHN W. HEATH, Chief Asst. City Attorney  
              MEI MEI CHENG, Managing Assistant City Attorney  
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13                                 *Deborah Breithaupt*  
14          By:                 \_\_\_\_\_  
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17                                 DEPARTMENT

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**A. INTRODUCTION.**

Petitioner Johnson is co-tenant in a one-bedroom apartment located at 1522 Hi Point, Los Angeles CA ("Property"). AR 2, Writ ¶ 3. The Property falls under the Rent Stabilization Ordinance ("RSO") (Administrative Record ["AR"] 703-716) (Los Angeles Municipal Code ["LAMC"] § 151.01 *et seq.*) administered by the Los Angeles Housing Department ("LAHD"). RSO tenants may file housing service and maintenance complaints against their landlord with LAHD who investigates and adjudicates these matters through case closure usually without a hearing. AR 717, Rent Adjustment Commission Regulations ["RAC"] 411.01, 411.02. This Writ is a rehash of a nearly decade-long dispute between Petitioner and Real Party in Interest Hi Point ("RPI") over an inoperable intercom and lack of tandem parking which fall outside Petitioner's Lease and the services provided to him at tenancy inception. In 2015, Petitioner adjudicated Three Prior RSO Complaints against the RPI involving identical allegations about an inoperable intercom and lack of tandem parking which he now claims are continuing violations causing a reduction in housing services and unlawful rent increase. The Three Prior RSO Complaints were administratively adjudged as unfounded without a hearing, and none were judicially exhausted. Years later, the Tenant Anti-Harassment Ordinance ("TAHO") (AR 159-165) (LAMC Sec. 45.30 *et seq.*) was enacted. Petitioner filed his Fourth RSO Complaint No. CE273371 alleging the same intercom/tandem parking issues (AR 89-94) which he now claims is tenant harassment and racially discriminatory. AR 60, 71, 72, 97, 104, 116. After an investigation, the Fourth RSO Complaint was adjudged as unfounded in a Notice of Case Closure ("NCC") dated July 6, 2023 without a hearing which is under review. Petitioner alleges an as-applied facial challenge to RAC Regulation 410.03 that uses an Inception of Tenancy guidepost to evaluate Reduction in Housing Service complaints. As will be realized, this Writ and the civil claims have no place in court and involves issues that have been adversely decided against Petitioner since 2015, and otherwise lack foundation and merit.

**B. ALLEGATIONS AND JUDICIALLY NOTICEABLE FACTS.**

Petitioner's fact pattern is complex so this briefing gives a chronological statement of facts. Petitioner admits LAHD has jurisdiction over his tenant-landlord relationship. AR 3, Writ ¶ 8. Petitioner is a co-tenant of Unit 9 which is a rent stabilized apartment located 1522 Hi Point Street, Los Angeles CA owned by Real Party Interest Hi Point ("RPI"). AR Writ ¶ 1. The Writ

1 and Supplemental Writ (“SW”) are alleged under CCP §1085 and §1094.5 challenging LAHD’s  
2 July 6, 2023 Decision (AR 722-23) on Petitioner’s Fourth RSO Complaint No. CE273371  
3 against RPI alleging an inoperable intercom and lack of tandem parking as causing reduced  
4 housing services and unlawful rent increase, and alleging tenant harassment arising therefrom.  
5 AR 2-3, Writ ¶¶ 5, 6. On receipt of Complaint No. CE273371, LAHD sent Petitioner a letter  
6 asking for his lease and related documents supporting to his claims. AR 89. The Court is  
7 requested to take judicial notice under Evid. Code § 451(a), § 452 (c), (d), (g) and (h), and  
8 453(a)-(b), that Exhibit 29 attached to the Writ is Petitioner’s executed Standard Month to Month  
9 Lease dated February 16, 2010 (AR 172-178) (“Lease”) assigning him to Parking Space No. 8  
10 (AR 172, ¶ H) and that Petitioner signed Lease House Rules on the same day stating “Resident  
11 shall only use assigned parking space...” AR 178, ¶ F.1. Petitioner admits there were no lease  
12 changes for his parking. AR 1583 ¶ 3. From 2010 to 2014, Petitioner used Parking Space No. 14  
13 (tandem parking) based on an onsite manager’s oral permission. AR 284, Declaration Wilson.  
14 On April 9, 2014, Petitioner was served with a Notice of Change in Terms of Tenancy to  
15 “Vacate car park space #14. You’re allocated car park space is # 8. Tandem car spaces are  
16 available on a first come first serve basis for an additional charge of \$50 per month....” AR  
17 1780. On November 4, 2021, Petitioner signed a TENANT CONSENT TO EXTENSION OR  
18 RENEWAL OF LEASE on the same terms (AR 146) as the initial Lease.

19 After losing Three Prior RSO Complaints in 2015 (See Respondent’s Request for  
20 Judicial Notice), on October 6, 2022, Petitioner filed the instant Fourth RSO Complaint No. CE  
21 273371 (AR 89-94) against the RPI alleging the same inoperable intercom and tandem parking  
22 issues as being an unlawful reduction in housing services, unlawful rent increase, and tenant  
23 harassment (AR 323-329) in violation of the RSO and TAHO AR Writ ¶ 5. A conclusion of  
24 “intentional discrimination” is alleged. AR 2, Writ at ¶ 5. LAHD’s Rent Investigator Topchian  
25 completed a “thorough investigation” (AR 722, ¶ 2) of Complaint No. CE 273371, including  
26 review of the Three Prior RSO Complaints (AR at 721 - 2159) and AR. Topchian concluded  
27 that based on the evidence, including two percipient witness statements (AR 1635-1638), the  
28 alleged intercom was inoperable at tenancy inception and tandem parking was not a Lease term  
and that the lack of thereof did not cause reduced housing services, an unlawful rent increase, or  
tenant harassment. LAHD served a Notice of Case Closure on December 28, 2022 stating:  
“Please be informed that the documents submitted to this case did not substantiate a rent

1 increase nor a reduction of housing services have occurred. Based on the documents you  
2 submitted (sic) substantiate harassment due to your landlord not addressing repairs and the  
3 landlord interfering with your comfort, peace, and quiet enjoyment of the unit.” The RPI was  
4 sent a TAHO information letter. AR 740-741.

5 Due to grammatical errors in the December 28, 2022 NNC, on July 6, 2023 (AR 722),  
6 Topchian served Petitioner with a corrected NCC with Three Attachments A, B and C  
7 consisting of the NCC’s for his Three Prior RSO Complaints (AR 722-730). The July 6, 2023  
8 NCC became the final administrative decision. The July 6, 2023 NCC upheld the original  
9 decision of unfounded and clarified the December 28, 2023 NCC by reciting to the poorly  
10 phrased parts therein stating “Based on the documents you submitted substantiate harassment  
11 due to your landlord not addressing repairs and the landlord interfering with your comfort,  
12 peace, and quiet enjoyment of the unit. Therefore, on December 13, 2022, the LAHD sent your  
13 landlord/property management company the City Ordinance No. 187109 Tenant Anti-  
Harassment Ordinance (TAHO) informative letter...”, and clarifying (AR 722 at ¶¶ 6-8) that:

14 “The above language is incomplete and contains grammatical errors. The first sentence  
15 should have included the prepositional phrase ‘to’, between the words ‘submitted’ and  
16 ‘substantiate’. Furthermore, the sentence is an incomplete sentence because it lacks a  
17 predicate. The sentence also left out the action that was taken based on the “documents  
submitted”. Therefore, the LAHD Notice of Case Closure is amended to read as follows:

18 Based on the documents you submitted to substantiate harassment due to your landlord  
19 not addressing repairs and the landlord interfering with your comfort, peace, and quiet  
20 enjoyment of the unit, on December 13, 2022, the LAHD sent your landlord/property  
management company the City Ordinance No. 187109 Tenant Anti-Harassment  
Ordinance (TAHO) informative letter and provided you a copy via email.

21 This letter is a supplemental information to clarify Case CE 273372, detailing the  
22 previous cases filed by you that addressed the issues presented in Case CE 273371.”

23 The July 6, 2023 NCC states “In Case CE 273371, you filed a complaint alleging illegal  
24 rent increase, reduction of services, and harassment. These complaints were raised in previous  
25 cases, CE 208134, Case No. CE 203006, and Case No. CE 212259. The cases were adjudicated  
26 administratively... A thorough investigation was conducted and no violations of an illegal rent  
increase and reduction of services were found.

- 27 (1) Illegal Rent Increase: The Notice of Change of Terms of Tenancy dated April  
28 21, 2015 revealed that the increase in rent was within the guidelines of the  
Rent Stabilization Ordinance (RSO). The rent increase was within the annual

allowable rent increase percentage of 5% (3% annual increase + 2% additional for utilities paid). No violation was cited for an illegal rent increase. (Attachment A)

(2) Reduction of Service: The ownership/management's refusal to provide you with Parking Space #14 did not violate the RSO. The rental agreement dated February 16, 2010 reflected Parking Space #8 as the parking space provided to you. The enforcement of your parking in Space #8 instead of Space #14 did not constitute a reduction in service under the RSO to warrant a rent reduction. (Attachment B)

(3) Reduction of Service: The non-operable intercom was not a service available to you at the inception of your tenancy. In order for you to be eligible for a reduction in rent for a service lost, you must demonstrate that it was a service included in the rental agreement or a service provided to you at move-in (RAC 410.03). The rental agreement did not include any terms or language referencing an intercom for the unit. It was established that the intercom was not operable when you moved in supported by evidence from ownership/management establishing that the intercom was inoperable since 2006, five years prior to your move in date. Thus, reduction in rent was not applicable. (Attachment A)." AR 722, ¶¶ 1-5.

**Writ:** Based on the December 28, 2022 NCC (AR 730) for RSO Complaint No. CE273371, Petitioner filed his Writ (erroneously) alleging that LAHD found the RPI's actions were harassment. AR 3, Writ ¶ 6. Petitioner alleges LAHD did not base its decision on the whole record (AR 4, Writ ¶ 12); abused its discretion as the inoperable intercom is a maintenance and race discrimination issued (AR 4, Writ ¶ 13; AR 6-7, ¶ 23); and committed a *Topanga* violation (AR 6-7, Writ ¶ 23). LAHD subsequently served its July 6, 2023 NCC to correct the grammatical mistakes in the earlier NCC and provided a more thorough explanation of the grounds for the decision. The Court gave Petitioner leave to file a Supplemental Writ ("SW") (AR 223-672) and ordered the submission of any further evidence Petitioner desired to be considered which Petitioner did (AR 2167-2278).

**Supplemental Writ ("SW"):** The SW cites to the July 6, 2023 NCC. AR 227 at ¶ 1; AR 233, ¶¶ 26-27; AR 235-6, ¶ 36. The SW challenges RAC Regulation 410.03 (AR 717) as arbitrary and capricious in denying Petitioner housing services that are interpreted according to the Lease agreement and services available at tenancy inception. AR 234 at ¶ 28. Petitioner newly alleges not being given a cell phone and internet to operate his repaired intercom. AR 225:10-13; AR 238:15-27; AR 227, ¶ 3; AR 1054. The SW alleges LAHD has a pattern and



1 practice of denying him the right to a fair hearing (SW 224:19; AR 236 at ¶ 37) and exercised a  
2 prejudicial abuse of discretion due to: (1) not having a public hearing (AR 233:1-3); (2)  
3 ignoring the Apartment Certificate of Occupancy (AR 224:17-20); (3) insufficient weight  
4 afforded to the declarations of Petitioner and his roommate re: using a tandem space (AR 229 at  
5 ¶ 8-9) with oral permission of a manager; (4) insufficient evidence for LAHD's conclusion that  
6 the intercom was inoperable at tenancy inception despite two percipient witness statements; (5)  
7 that Petitioner is entitled to intercom repairs (AR 229 at ¶10) as a maintenance issue even  
8 though he admits the repairs were done by asking for free cell phone/internet; and (5) stray  
9 comments of a ruling in his favor (AR 230 at ¶ 12) in contradiction of a final judgment in LASC  
10 Small Claims Case 21STC04574 (AR 322-366) in favor of RPI. *See* RJN Ex. 1, Small Claims  
11 Judgment. The SW alleges LAHD lacks jurisdiction to enforce its TAHO Ordinance. AR  
12 224:7-27; 226:1-3; 228:17-20. Damages are alleged. AR 227:19-27; 228:1-2. Petitioner's  
13 Government Tort Claim alleges losing a Publisher's Clearing House ("PCH") "potential price  
14 award" (AR 501) because "...The intercom does not work so I am precluded from being  
15 notified of such prize" (AR 35, 167, last ¶) which contradicts AR 167 stating the chance to win  
16 the prize required "... to claim your entry... go to www.pch.com/FINAL and to enter your  
17 activation code FC198 by the deadline".

### 17 **C. OTHER REVIEWS OF THE INTERCOM AND PARKING CLAIMS.**

18 Respondent has filed and served concurrently herewith a Request for Judicial Notice  
19 ("RJN") of five other reviews of Petitioner's identical intercom/parking issues which  
20 adjudicative facts are respectfully incorporated by reference herein. Judicial notice is requested  
21 under Evidence Code § 451(a), § 452 (c), (d), (g) and (h), and 453(a)-(b) of the following:

22 **First**, Petitioner litigated LASC Small Claims Case 21STC04574 (AR 322-366; RJN Ex. 1, pgs.  
23 1-4) against RPI alleging the same intercom/tandem parking issues with judgment for  
24 "Defendants HI POINT APTS, LLC; WALTER BARRATT ..." (RJN Ex. 1, pgs. 8-9, 13-14).

25 **Second**, judicial notice is requested that Petitioner filed an intercom/tandem parking complaint  
26 with the California Department of Fair Employment and Housing (AR 1361-1363, 1490-1500;  
27 RJN Ex. 2, pgs. 1-9) against the RPI which was a "rejected intake" (AR 1406) for insufficiency  
28 of evidence. AR 1404, last ¶. **Third**, judicial notice is requested on September 12, 2023, the  
California Civil Rights Department ("CCRD") opened Case No. 202305-20745222 and served  
it on the RPI (RJN Ex. 3, pgs.1-6) re: denial of reasonable accommodation "to repair or replace



intercom..." and "...be[ing] assigned tandem parking.." and on April 14, 2024, the CCRD issued a Notice of Case Closure as "Investigated and Dismissed – Insufficient Evidence." **Fourth**, judicial notice is requested of Petitioner's LAHD Code (Maintenance) Complaint seeking a parking lot investigation (AR 827-828; 1745) and Work Log Notes show an onsite inspection was done, the plot plan and permits were reviewed, and on August 12, 2014, a report stated the parking lot was laid out exactly as diagrammed in the plot plan and building permit. AR 1096.

#### **D. ARGUMENT**

##### **1. RES JUDICATA AND COLLATERAL ESTOPPEAL BAR THIS WRIT.**

Under California law, res judicata applies when: (1) the issues decided in a prior adjudication are identical with those presented in the later action; (2) there was a final judgment on the merits in the prior action; and (3) the party against whom res judicata is asserted was a party or was in privity with a party to the prior adjudication. *Citizens for Open Access to Sand and Tide, Inc. v. Seadrift Ass'n*, 60 Cal. App. 4th 1053, 1065 (1998). Res judicata is a complete bar to an action. Collateral estoppel affords the conclusiveness of a prior determination of a particular issue upon establishing: (1) the issue sought to be precluded from re-litigation is identical to that decided in a former proceeding; (2) the issue was actually litigated in the former proceeding; (3) the issue was necessarily decided in the former proceeding; (4) the decision in the former proceeding must be final and on the merits; and (5) the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. *v. McKenna & Cuneo*, 25 Cal. 4th 1194, 1201 fn.1 (2001).

In Respondent's RJN, the Court is asked to take judicial notice of the three attachments A, B, and C to the July 6, 2023 NCC which are the LAHD Notices of Case Closure for Petitioners Three Prior RSO Complaints against the RPI adjudicating to finality on the merits the identical inoperable intercom and lack of tandem parking claims, including: RSO Case CE 203006 with an NCC dated January 22, 2015 (AR 725); RSO Case CE208134 with an NCC dated July 28, 2015 (AR 727); and RSO Case 212259 with an NCC dated November 19, 2015.

Judicial notice is requested that after Petitioner lost his Three Prior RSO Complaints in 2015, on October 6, 2022, he vexatiously filed the instant Fourth RSO Complaint No. CE 273371 (AR 89-94) against the RPI alleging the same inoperable intercom and lack of tandem parking as being an unlawful reduction in housing services, unlawful rent increase, and tenant harassment. LAHD Investigator Topchian completed a "thorough investigation" (AR 722, ¶ 2)

1 of Complaint No. CE 273371, including reviewing the Three Prior RSO Complaints (AR at  
2 721-2159) and issued his July 3, 2023 NCC concluding, once again, that Petitioner did not  
3 sustain a reduction in housing services or tenant harassment due to his inoperable intercom and  
4 the lack of tandem parking. Res judicata should preclude Petitioner's piecemeal litigation  
5 manifested in this Writ accomplished by splitting a single cause of action and re-litigating the  
6 same cause of action on a different legal theory or for different relief, and collateral estoppel  
7 should bar Petitioner from re-litigating the intercom and parking issues which have been  
8 decided against him and are now mooted, warranting judgment for the City.

9 **2. NO FUNDAMENTAL VESTED RIGHT HAS BEEN ALLEGED.**

10 "In California, the courts must decide on a case-by-case basis whether an administrative  
11 decision ... substantially affects fundamental vested rights and thus, requires independent  
12 judgment review." *Pipkin v. Board of Supervisors*, 82 Cal. App. 3d 652, 660 (1978). In  
13 deciding what rights are fundamental, the Court must determine if the right fundamentally  
14 affects the life situation of the individual to require independent review or whether it merely  
15 impacts an area of economic privilege. *Concord Communities v. City of Concord*, 91 Cal. App.  
16 4th 1407, 1413 (2001). Courts manifest slighter sensitivity to the preserving purely economic  
17 privileges. *Bixby v. Pierno*, 4 Cal. 3d 130, 145 (1971). The term 'vested' denotes a right that is  
18 either 'already possessed' or is legitimately acquired. *JKH Enterprises, Inc. v. Dep't of Indus.*  
19 *Rels.*, 142 Cal. App. 4th 1046, 1060 (2006). This Court may refer to documents that are the  
20 source of the claimed right, and examine whether a claimed right has been legitimately acquired  
21 or is already possessed, or is a right that is merely sought. If no fundamental vested right is  
22 involved, the substantial evidence standard of review applies. *Bixby*, 4 Cal. 3d at 143-144.

23 LAHD's July 6, 2023 NCC is entitled to deference as an agency decision made attendant  
24 to implementing the RSO. *Ridgecrest Charter Sch. v. Sierra Sands Unified Sch. Dist.*, 130 Cal.  
25 App. 4th 986, 1003 (2005). The Moving Papers state the bare conclusion that Petitioner's Lease  
26 is irrelevant to LAHD's adjudication of his Fourth RSO Complaint for Reduction in Housing  
27 Services. But tenancies are matters of a contract as a matter of law. Civil Code §§ 1549 *et. seq.*,  
28 1717; *Larson v. City & Cnty. of San Francisco*, 192 Cal. App. 4th 1263, 1298 (2011).  
Additionally, the applicable RAC Regulation 410.03 directs to the contrary by stating that "A  
tenant rents an apartment with the appurtenant housing services available at the time of renting  
the apartment..." Petitioner's alleged a vested fundamental right to an operable intercom fare

1 no better because this service is not stated in his Standard Month to Month Lease (AR 172-178)  
2 nor was this service available at tenancy inception based on two percipient long-term resident  
3 statements (AR 725, ¶ 2) who were afforded more weight according to LAHD Topchian's  
4 discretion. The claimed vested fundamental right to free tandem parking is folly because  
5 Petitioner's Lease assigned him to a single space in Parking Space No. 8 (AR 172, ¶ H) with no  
6 mention of another space; the Lease House Rules executed in 2010 state that "Resident shall  
7 only use assigned parking space..." (AR 178, ¶ F.1) showing Petitioner reasonably expected to  
8 only use Parking Space No. 8, which is buttressed by his admission there were no Lease  
9 changes (AR 1583 ¶ 3); and the parole evidence contradicting Petitioner's Lease re: an oral  
10 agreement allowing use of a tandem parking is inadmissible hearsay that was debunked on April  
11 9, 2014 when Petitioner was served with a Notice of Change in Terms of Tenancy to "Vacate  
12 car park space #14. You're allocated car park space is # 8. Tandem car spaces are available on  
13 a first come first serve basis for an additional charge of \$50 per month...." AR 1780. Based on  
14 the totality of the AR, and all reasonable inferences therefrom, and the applicable laws and  
15 RAC Regulation, under any standard of review, the lack of tandem parking and an operable  
16 intercom did not affect any vested or fundamental rights that Petitioner possessed or could  
17 reasonably expect, and his life station has not changed by their absence, warranting denial of the  
18 CCP § 1085 and § 1094.5 writs and all other claims.

### 19 **3. RAC REGULATIONS ARE LAWFUL & WERE LAWFULLY APPLIED.**

20 Courts interpret municipal ordinances in the same manner and pursuant to the same rules  
21 applicable to the interpretation of statutes. *People v. Venice Suites, LLC*, 71 Cal. App. 5<sup>th</sup> 715,  
22 727 (2021). Courts afford a strong presumption that legislative enactments must be upheld  
23 unless their unconstitutionality clearly, positively, and unmistakably appears. *Amaral v. Cintas*  
24 *No. 2*, 163 Cal. App. 4th 1157, 1158 (2008). City ordinances are legislative enactments adopted  
25 by the Los Angeles City Council. Judicial review of an administrative body's legislative action  
26 does not permit judicial inquiry into the wisdom or reasonableness of such actions. *Faulkner v.*  
27 *California Toll Bridge Authority*, 20 Cal. 3d 317, 329 (1953). Rather, the Court determines  
28 whether or not agency acted within the limits of its power and discretion. *Riggs v. City of*  
*Oxnard*, 154 Cal. App. 3d 526, 528 (1984). A challenger to the validity of a legislation has the  
burden of proving the regulation constitutes an arbitrary regulation of property rights. *Santa*  
*Monica Beach Ltd. v. Superior Court*, 19 Cal. 4th 952, 966 (1999).

1           Petitioner's as-applied facial challenge seeks to invalidate Rent Adjustment  
2 Commission ("RAC") Regulation 410.03 stating "A tenant rents an apartment with the  
3 appurtenant housing services available at the time of renting the apartment. Landlords who  
4 reduce housing services without a corresponding reduction in rent effectuate an increase in rent.  
5 The purpose of regulations is to guide the Los Angeles Housing ... Department in its evaluation  
6 of a corresponding reasonable reduction in rent." AR 717. The RAC is comprised of seven  
7 members specially appointed under City Charter Section 502. AR 715, LAMC § 151.03.A  
8 RAC Regulation 410.03 was legislatively adopted under LAMC Sec. 151.03.A-B (AR 715-6)  
9 by the RAC who is empowered to promulgate policies, rules and regulations to effectuate the  
10 RSO in adjudging Reduction in Housing Services Complaints - the heart of this case. AR 715,  
11 LAMC § 151.03.B. RAC Regulation 410.02 states: "The Rent Adjustment Commission ...  
12 promulgates these regulations on reduction in housing services so that a corresponding  
13 reduction in rent can be determined to avoid an increase in rent in violation of the Rent  
14 Stabilization Ordinance..." AR 717. RAC Regulation 411.01 states "When a tenant makes a  
15 complaint that there has been a reduction in housing services in violation of .... habitability...",  
16 LAHD may determine a corresponding rent reduction. AR 717. Against this backdrop, there is  
17 no doubt the RAC Regulations are legislative enactments that have a presumption of lawfulness  
18 and Petitioner's Moving Papers do not rebut this conclusion and fails to cite to anything  
19 specifically unconstitutional or clearly, positively, and unmistakably erroneous as a matter of  
20 law pertaining to the RAC Regulations, thereby warranting judgment for the City on all  
21 challenges whatsoever to the RAC Regulation 410.03.

22           Petitioner's as-applied challenge fares no better. First, there is no citation to any  
23 evidence in the AR or law showing RAC Regulation 410.03 was unlawfully or arbitrarily  
24 applied to Petitioner or was racially discriminatory. Second, by filing his RSO Complaint with  
25 the LAHD, Petitioner voluntarily relinquished any right to claim that LAHD lacks jurisdiction  
26 over any of his claims arising under City ordinances (AR 3, Writ ¶ 8). Third, LAHD  
27 Investigator Topchain completed his discretionary review of Petitioner's Fourth RSO Complaint  
28 using the duly promulgated and lawful RAC guidelines called Reduction in Housing Services  
(AR 717-720, RAC Regs. 410.00 to 415.03) which guided his review so there was no error of  
law and none has been identified. Fourth, Petitioner's avoidance of his Lease when evaluating

1 the Fourth RSO Complaint is meritless because his tenancy was undertaken pursuant the Lease  
2 and is a contract under Civil Code §§ 1549 *et. seq.* and 1717 [*Larson v. City & Cnty. of San*  
3 *Francisco*, 192 Cal. App. 4th 1263, 1298 (2011)]. Fifth, the “Inception of Tenancy” standard in  
4 RAC Regulation 410.03 [which actually states “services available at the time of renting”] has  
5 not been proven in the Moving Papers to be an arbitrary, capricious, and/or discriminatory  
6 factor that LAHD used when deciding Petitioner’s Reduction in Housing Services Complaint  
7 (SW ¶ 28). Sixth, Petitioner’s as-applied challenge is grounded on circular reasoning that is  
8 lacking in foundation as to the preliminary fact that Petitioner never had any legitimate claim of  
9 entitlement to an operable intercom or tandem parking and there is no evidence of racial  
10 differential treatment. The California Department of Fair Employment and Housing (AR 1361-  
11 1363, 1490-1500) essentially concluded the same when it issued a “rejected intake” on the same  
12 facts (AR 1406) as did the California Civil Rights Division who closed their case due to  
13 Insufficient Evidence. Seventh, asking the Court to order the RPI to draw a line down the  
14 center of Parking Space No. 8 or assigning Petitioner to a bigger parking space contradicts the  
15 Lease and LAHD completed an investigation of the Apartment and reported the parking lot was  
16 laid out exactly as diagrammed in the plot plan (AR 1096, Sept. 19, 2014 entry), plus this would  
probably amount to an excess of judicial authority.

17 The RAC clearly has the legislative authority under the RSO to promulgate RAC  
18 Regulation 410.03 to assist LAHD in adjudicating Reduction in Housing Services complaints.  
19 Because the RAC 410.03 inception of tenancy standard is merely a guidepost that is rationally  
20 related to accomplishing the RSO goals of protecting tenant and landlord rights, the Court  
21 should defer to the RAC’s interpretation of what constitutes housing services and the  
22 diminution thereof due to its considerable expertise in the residential rental housing business.  
23 By logical extension, this conclusion uphold Investigator Topchain’s use of the RAC 410.03 to  
24 analyze Petitioner Fourth RSO Complaint at issue which, in any event, shows no clearly  
25 erroneous or unauthorized interpretation of the RAC Regulations as applied to Petitioner, nor  
abuse of discretion or arbitrary LAHD’s decision-making warranting judgment for the City.

#### 26 **4. PETITIONER’S CCP § 1085 TRADITIONAL WRIT IS UNFOUNDED.**

27 An agency is presumed to have regularly performed its official duties. Evidence Code §  
28 664. Someone challenging an administrative decision has the burden of proof. *Riverside*  
*Sheriff’s Ass’n v. County of Riverside*, 106 Cal. App. 4th 1285, 1289 (2003). A CCP § 1085

1 traditional writ can effectuate legal process to compel a public entity to perform a legal and  
2 ministerial duty. *Kreeft v. City of Oakland*, 68 Cal. App. 4th 46, 53 (1998). A ministerial duty  
3 is one that a public agency, board, official or employee is required to perform. *City of Dinuba v.*  
4 *County of Tulare* (2007) 41 Cal. 4th 859. A ministerial duty does not require the exercise of  
5 judgment or discretion; it is an act that must be performed under a certain set of circumstances  
6 and in a specific manner. *Lockyer v. City and County of San Francisco*, 33 Cal. 4th 1055, 1068  
7 (2004). A CCP § 1085 writ is available only when the petitioner has no plain, speedy and  
8 adequate remedy; the respondent has a clear, present, and usually ministerial duty to perform;  
9 and the petitioner has a clear, present and beneficial right to performance of a duty. *Conlan v.*  
10 *Bonta*, 102 Cal. App. 4th 745, 748 (2002). Ordinary mandate is used to review adjudicatory  
11 decision when the agency was not required to hold an evidentiary hearing. *Bunnett v. Regents*  
12 *of University of California*, 35 Cal. App. 4th 843, 848. In reviewing decisions which affect a  
13 vested, fundamental right the trial court exercises independent judgment on the evidence. *Bixby*  
14 *v. Pierno*, 4 Cal. 3d 130, 143 (1971). In other cases, the substantial evidence test applies. *Mann*  
*v. Department of Motor Vehicles*, 76 Cal. App 4t 312, 230.

15 Petitioner's Writ regarding his Fourth RSO Complaint No. CE273371 seeks to compel a  
16 ministerial Court finding that RPI caused a reduction in housing services, unlawful rent  
17 increase, tenant harassment, and race discrimination (AR 60, 71, 72, 97, 104, 116) due to his  
18 inoperable intercom and lack of tandem parking (AR 89-94). The Fourth RSO Complaint was  
19 decided without a hearing so review under CCP § 1085 is proper to determine if LAHD  
20 (Topchain) engaged in any actions that were arbitrary, capricious or entirely lacking in  
21 evidentiary support, contrary to established public policy, procedurally unfair, or whether  
22 LAHD failed to follow the required procedures and give the notices the law requires. *Lewin v.*  
23 *St. Joseph Hospital of Orange*, 82 Cal. App. 3d 368, 387 (1978). For the reasons set forth in  
24 Section D.1 through D.3 above, which are incorporated by reference herein, Petitioner has  
25 alleged no vested fundamental right, so the substantial evidence standard of review applies. The  
26 Moving Papers do not develop any argument for relief under CCP § 1085 by citing to relevant  
statutes, case law, or the AR warranting denial of any relief. Cal. Rules of Court 3.1113(b).

27 The RAC is empowered to promulgate policies, rules and regulations to effectuate the  
28 RSO when LAHD adjudicates Reduction in Housing Services Complaints which is the crux of  
this case. LAHD RSO Investigator Topchian acted within his power and discretion [*Riggs v.*



1 *City of Oxnard*, 154 Cal. App. 3d 526, 528 (1984)] in interpreting and applying RAC  
2 Regulation 410.03 to Petitioner's claims as per LAMC Sec. 151.03.A-B (AR 715-6). Petitioner  
3 has not rebutted this conclusion. Petitioner's Housing Service Reduction claims were properly  
4 denied in Topchian's July 6, 2023 NCC based upon: (1) Petitioner does not have any clear,  
5 present and beneficial right to an operable intercom in his Apartment as this term is not in his  
6 Standard Month to Month Lease (AR 172-178)] and the intercom was inoperable at tenancy  
7 inception based on written declarations from other long-term residents (AR 725, ¶ 2) whose  
8 statement were afforded more weight; (2) free tandem parking contradicts the Lease assigning  
9 Petitioner to a single Parking Space No. 8 which has not been changed; (3) the Lease contains  
10 no notation of a second parking space being assigned; (4) in 2014, RPI told Petitioner to stop  
11 using Parking Space No. 14 and to return to Space No. 8; (5) Petitioner declined an invitation to  
12 pay for tandem parking; (6) the challenged July 6, 2023 NCC and Attachments A to C afforded  
13 due process notice and is *Topanga* compliant due to containing the essential facts and legal  
14 grounds upon which LAHD reached its decision to deny Petitioner's Fourth RSO Complaint  
15 and gave notice of appeal rights; (7) a Traditional Writ of Mandate does not lie to compel  
16 LAHD's exercise of discretion in a particular way nor to afford more weight to any particular  
17 piece of evidence; (8) the unfair trial claim due to a paper review without a hearing lacks legal  
18 grounding for failure to provide rebutting proof of a different standard, because Petitioner had  
19 notice and opportunity to be heard in an adversarial process wherein evidence was submitted  
20 and arguments/contentions were put forward, and the RAC Regulations do not require a hearing  
21 and charge LAHD Investigators with determining the facts, applying the RSO and RAC  
22 Regulations to those facts, and ordering relief as per the RAC Reduction in Housing Services  
23 guidelines (AR 717-720, RAC Regs. 410.00 to 415.03) and wherein the judicial powers remain  
24 in the courts [*Larson v. City & County of San Francisco* (2011) 192 Cal. App. 4<sup>th</sup> 1263, 1264],  
25 and "fair trial" does not mean Petitioner was entitled to a formal hearing [*Pomona Coll. v.*  
26 *Superior Ct.*, 45 Cal. App. 4<sup>th</sup> 1716, 1730 (1996)]; (9) Petitioner's request for an Order finding  
27 RPI has caused him compensable losses in housing services would be an excess of authority and  
28 is barred under res judicata and collateral estoppel since such determination as to the intercom  
and tandem parking have been mooted by the prior adverse decisions in the Small Claims  
Judgment and Three Prior RSO Complaints which are final and on the merits thereby making it  
futile and impossible for the Court to provide such relief; (10) the bootstrapped Tenant

1 Harassment and discrimination claims lack preliminary fact foundations; (11) the Moving  
2 Papers have no briefing or citation to law showing that RPI can be forced to maintain (RAC  
3 Regulation 411.01) housing services outside of Petitioner's lease (intercom, tandem parking)  
4 that do not impact his habitability and where Petitioner is not a real party in interest to receive  
5 these benefits. As the Moving Papers fail to detail any legal or ministerial duty that LAHD  
6 failed to perform, the CCP § 1085 should be denied.

7 **5. PETITIONER'S CCP § 1094.5 WRIT IS UNFOUNDED.**

8 A CCP § 1094.5 makes administrative mandamus available for review of any final  
9 administrative decision made as the result of a proceeding in which by law a hearing is required  
10 to be given, evidence is required to be taken, and discretion in the determination of facts is  
11 vested in the inferior tribunal, corporation, board or officer. Even though there was no hearing,  
12 the CCP § 1094.5 claim is briefed for completeness of the defense. CCP § 1094.5 structures the  
13 judicial review procedure of adjudicatory decisions rendered by administrative agencies.

14 *Topanga Assoc. for Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506, 514 (1974).

15 Under CCP § 1094.5, the Court must evaluate whether substantial evidence supports the  
16 agency's findings and whether the findings support the agency's decision. The Court begins with  
17 a presumption that the record contains evidence to sustain the agency's findings of fact. *H.N. &*  
18 *Frances C. Berger Foundation v. City of Escondido*, 127 Cal. App. 4th 1, 7 (2005). Abuse of  
19 discretion is established if the agency has not proceeded in the manner required by law, the  
20 order or decision is not supported by the findings, or the findings are not supported by the  
21 evidence. *Pomona Coll. v. Superior Ct.*, 45 Cal. App. 4th 1716, 1729–30 (1996).

22 LAHD findings in its July 6, 2023 NCC enjoy a presumption of correctness. The  
23 Moving Papers fail to rebut this presumption and offers no credible findings to contradict any of  
24 the NCC findings. *Fukuda v. City of Angels*, 20 Cal. 4th 805, 817 (1999). The July 6, 2023,  
25 NCC and AR shows that RSO Investigator Topchian did not engage in any prejudicial abuse of  
26 discretion in denying Petitioner's Fourth RSO Complaint for each of legal and factual reasons  
27 stated in Sections C and D.1 to D.4 set forth above in this Opposition Trial Brief, which are  
28 respectfully incorporated by reference herein for judicial economy. Topchain determined facts  
about Petitioner's unit, Lease terms, housing services provided at tenancy inception, reviewing  
percipient witness statements, agency conclusions about the apartment parking lot layout and  
building department approvals, and the Three Prior RSO Complaint adjudications from 2015,



1 all of which are contained in the AR and referenced in his NCC. There is no evidence that  
2 Petitioner's monthly rent was ever calculated with the intercom and tandem parking amenities  
3 in mind and there is no foundation that Petitioner is entitled to free housing services. The  
4 Moving Papers distraction from the "Inception of Tenancy" housing services standard in RAC  
5 Regulation 410.03 by arguing about bootstrapped maintenance complaints is futile because  
6 tandem parking and an operable intercom were never part of Petitioner's negotiated Lease and  
7 neither service reasonably impacted his habitability under Civil Code § 1941.1 but rather reflect  
8 mere comforts of an economic nature. On all of these grounds, the July 6, 2023 NCC is  
9 supported by substantial evidence and there is no evidence raising an inference that Investigator  
10 Topchain or the City engaged in any prejudicial abuse of discretion, race discrimination, failed  
11 to proceed in the manner required by law, undertook any action that was arbitrary, capricious, or  
12 entirely lacking in evidentiary support or was contrary to established public policy, or that  
13 LAHD failed to follow proper procedure warranting denying the CCP § 1094.5 writ.

14 **6. LAHD HAS AUTHORITY TO ADJUDICATE TAHO COMPLAINTS.**

15 The City of Los Angeles and its Los Angeles Housing Department are municipal  
16 entities. Under Article XI, section 7 of the California Constitution, the City, by and through the  
17 Los Angeles Housing Department, has been granted plenary police powers to make and enforce  
18 within its limits all local, police, sanitary, and other ordinances and regulations not in conflict  
19 with general laws. *Conejo Wellness Center, Inc. v. City of Agoura Hills*, 214 Cal. App. 4<sup>th</sup> 1552,  
20 1535 (2013). Under LAMC Section 45.38.A, the TAHO Ordinance, the RAC as constituted  
21 under the RSO (LAMC Section 151.03.A) has the authority to interpret, implement, and apply  
22 all TAHO provisions and to promulgate policies, rules, and regulations to effectuate the  
23 purposes thereof. Therefore, the bald contention that LAHD lack enforcement authority over  
24 TAHO claims is unfounded. Petitioner submitted his TAHO claim to LAHD which has also  
25 waived his right to raise jurisdictional bars which are erroneous in any case.

26 **7. STATUTE OF LIMITATIONS BAR ON ALL CLAIMS.**

27 Under CCP § 1094.6(b), a writ alleged under CCP § 1085 or § 1094.5 is due "the 90th  
28 day following the date on which the decision becomes final." Unless an aggrieved party  
challenges adverse agency findings, those findings are binding in a later civil action. Under  
Evidence Code § 452 (c), the Court may take judicial notice of official acts that may include  
records, reports and orders of administrative agencies. *Rodas v. Spiegel*, 87 Cal. App. 4<sup>th</sup> 513,

1 518 (2002). An action for injury to an individual caused by the wrongful act or neglect of  
2 another is two years under CCP § 335.1. A cause of action accrues at the time when the last  
3 element essential to the cause of action occurs. *Spear v. California State Automobile Assn.*, 2  
4 Cal. 4th 1035, 1040 (1992). Here, Petitioner was required to bring his claims against the City  
5 within two-years of accrual of his inoperable intercom and tandem parking issues that arose as  
6 early as 2014. AR 722-730. The Three Prior RSO Complaint became final administrative  
7 decisions in 2015. See AR 725, 727, 730. The Writ, having been filed on February 28, 2023  
8 (AR 1), was filed over nine (9) years late and is time barred.

9 **8. THE TORT CLAIM IS UNTIMELY & NOT COLORABLE.**

10 The California Tort Claims Act (Gov. Code §§ 810-996.6) governs actions against public  
11 entities. *County of Los Angeles v. Superior Court*, 127 Cal. App. 4th 1263, 1267 (2005). A  
12 claim relating to a cause of action for injury to person or to personal property must be presented  
13 to the public entity not later than six-months after accrual of the cause of action. Gov't Code §  
14 911.2. Petitioner filed an untimely Gov. Tort Claim against the City for damages (AR 36, ¶ 4,  
15 Damages) on February 15, 2023 as to the inoperable intercom and tandem parking issues  
16 adjudicated in his Three Prior RSO Complaints in 2015. The City served a claim denial on  
17 March 15, 2023. AR 2165-66. The Tort Claim issues based on the intercom and tandem  
18 parking were adjudged as unfounded in a Small Claims Judgment involving the same primary  
19 rights and are barred. Lastly, Petitioner's Tort Claim is barred by Gov. Code § 815, § 818.2, §  
20 818.4, § 815, § 818.8, § 820.2, § 820.4, § 820.6, § 821.2, and § 822.2.

21 **E. CONCLUSION.**

22 Based upon the foregoing, Respondent City requests that judgment be entered in favor  
23 of the City and Real Party in Interest with prejudice as to every claim for relief.

24 Dated: April 25, 2024

HYDEE FELDSTEIN SOTO, City Attorney  
DENISE C. MILLS, Chief Deputy City Attorney  
JOHN W. HEATH, Senior Assistant City Attorney  
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**PROOF OF SERVICE**

I, GABRIEL SANCHEZ, declare as follows:

At the time of service, I was over 18 years of age and not a party to this action. My business address is 200 North Spring Street, City Hall, 21<sup>st</sup> Floor, Los Angeles, CA 90012, which is in the County, City and State where this mailing occurred.

On April 25, 2024 I served the document(s) described as RESPONDENT'S OPPOSITION TRIAL BRIEF on all interested parties in this case:

Geary J. Johnson  
1522 Hi Point Street, Unit 9  
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[ X ] **By UNITED STATES MAIL:** I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

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

Dated: April 25, 2024

GABRIEL SANCHEZ  
Name of Declarant

/s/ Gabriel Sanchez  
Signature of Declarant

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PROOF OF SERVICE