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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

HANK DAYANI as Trustee for H.H.D. FAMILY TRUST,

Plaintiff,

v.

CITY OF BEVERLY HILLS; and DOES 1-10, inclusive,

Defendant.

Case No. BC670810

Assigned to Hon. Marc Marmaro-Dept. 37

PLAINTIFF'S *EX PARTE* APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION RE: ENJOINMENT OF RENT REGISTRY, OR IN THE ALTERNATIVE, KEEPING INFORMATION IN RENT REGISTRY CONFIDENTIAL; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATIONS OF HANK DAYANI AND RUSSELL SELMONT IN SUPPORT THEREOF

Date: September 15, 2017
Time: 8:30 a.m.
Dept: 82

EX PARTE APPLICATION

TO ALL PARTIES HEREIN AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on September 15, 2017, at 8:30 a.m. in Department 82 of the above-captioned court located at 111 North Hill Street, Los Angeles, California, 90012, Plaintiff will and hereby does apply to this Court, *ex parte,* for a Temporary Restraining Order ("TRO") pursuant to California Code of Civil Procedure, sections 526 and 527 and California Rules of Court, Rule 3.1150, directing Defendant, and any persons or entities acting in concert with it, to immediately and forthwith, pending a hearing on a Preliminary Injunction, cease and desist, and refrain from:

1. Requiring Plaintiff to fill out and submit to Defendant the rent registration form requested by Defendant as part of its new Rent Stabilization Ordinance No. 17-O-2729 ("RSO"); and

2. Attempting to fine or otherwise penalize Plaintiff for not completing the rent registration process as set forth in the RSO; or in the alternative

3. Making available to the public, and not treating as confidential, any and all information provided by Plaintiff to Defendant as part of the rent registration as set forth in the RSO.

PLEASE TAKE FURTHER NOTICE that Plaintiff will and hereby does apply to this Court pursuant to California Code of Civil Procedure sections 526 and 527 and California Rules of Court, rule 3.1150, for an Order to Show Cause why a preliminary injunction should not be issued during the pendency of this litigation ("OSC") prohibiting Defendant, and any persons or entities acting in concert with it, from:

1. Requiring Plaintiff to fill out and submit the rent registration form requested by Defendant as part of its new Rent Stabilization Ordinance No. 17-O-2729 ("RSO"); and

2. Attempting to fine or otherwise penalize Plaintiff for not completing the rent registration process as set forth in the RSO; or in the alternative

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3. Making available to the public, or not treating as confidential, any and all information provided by Plaintiff to Defendant as part of the rent registration as set forth in the RSO.

This Application is made on the grounds that the RSO both establishes a system of controls on the price at which residential rental units may be offered for rent or lease and requires the registration of rents, but completely omits the establishment of a certification of rents process as is required by law pursuant to Civil Code Section 1947.8(a). The RSO was required by law to "provide for the establishment and certification of permissible rent levels for the registered rental units." The RSO on its face wholly fails to do that, so the RSO itself is void and Defendant's request that Plaintiff register its rental units cannot be enforced. Absent injunctive relief, Plaintiff will be irreparably and/or greatly harmed because he will be denied a critical process mandated and designated by the legislature to benefit landlords by providing clarity of process in rent control cities.

The rent registration information requested by Defendant should not be required because Civil Code Section 1947.7(g) only permits cities to compel information about a tenant's name during the rent registration process but Defendant has made clear it intends to request significantly more information from Plaintiff and other landlords. The rent registration form itself requests detailed information about the nature of any eviction or vacancy. Even though that form does not request the tenant's name, the city has twice affirmed its intention to audit information provided by Plaintiff and this likely will result in Defendant obtaining the tenant's name and other information as well unless the Court now provides the injunctive relief requested. Thus, Defendant has built in an improper backdoor to sneak around the prohibited requirements of Section 1947.7(g) because of its admitted goal to limit the number of appeals it has to hear in implementing its new rent control measures. Absent injunctive relief, Plaintiff will be irreparably harmed because he is in risk of violating his tenant's rights to privacy, which some tenants have already requested Plaintiff keep their identity confidential before the RSO or rent registry were ever conceived by Defendant. Worse, in violation of Section 1947.7(b), Defendant has threatened to penalize and fine Plaintiff for anything short of total compliance.

If this Court is not inclined to enjoin Defendant from forcing Plaintiff to comply with the rent registration form, Plaintiff alternatively requests that this Court issue an order requiring Defendant to keep the rent information provided by Plaintiff to Defendant confidential. Defendant admittedly wants this information to ensure that it can enforce the primary terms of the RSO. There is no benefit to Defendant by having the prices every landlord charges to each tenant made public. However, Plaintiff would be irreparably and/or greatly harmed if this information becomes publically available because all prospective tenants would know what rent control tenants were paying and would use this information to artificially lower the market rate for the unit. The goal of the Costa-Hawkins Act was to give landlords power to rent any vacant unit at market rates and the publication of the rent registry is inimical to these legislatively established goals.

As demonstrated in the attached declaration of Plaintiff, exceptional circumstances and proper grounds exist for granting the requested relief without allowing Defendant have time to first respond to a statutorily noticed motion. Defendant has requested that Plaintiff complete the rent registration form by September 22, 2017 or be subject to fines of as much as $500 per unit. The requested TRO needs to issue and be put in place so Plaintiff is protected until the parties have time to provide further briefing and argument at the hearing on the preliminary injunction.

Plaintiff's counsel provided *ex parte* notice of the instant application to Defendant's counsel, Laurence Wiener, by telephone, on Wednesday September 13, 2017 and then again later that day by email. Mr. Wiener indicated that he opposed Plaintiff's request to enjoin the rent registry. He also indicated that he did not have any policy problem with Defendant keeping the tenant information confidential, only that he was not sure if he could do so without court order. There has been no previous application by Plaintiff for any similar relief.

This *ex parte* Application is based upon this Notice of *Ex Parte* Application, the attached Memorandum of Points and Authorities, the Declarations of Hank Dayani and Russell Selmont attached hereto, and such other evidence and arguments and this Court may consider at the hearing of this Application.

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DATED: September 15, 2017

ERVIN COHEN & JESSUP LLP

By: _____

Russell M. Selmont
Attorneys for Plaintiff, HANK DAYANI as Trustee For H.H.D. FAMILY TRUST

ERVIN COHEN & JESSUP LLP

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I. INTRODUCTION

On April 14, 2017, Defendant City of Beverly Hills ("Defendant"), through its city council, passed rent stabilization ordinance No. 17-O-2729 (the "RSO"). As set forth in the Amended Complaint[1], the RSO significantly impacted landlords' abilities to market and rent their vacant units in a manner that impinged their federal and state constitutional rights, as well as limiting the yearly amount by which a landlord could increase rent for existing tenants. For purposes of this instant *ex parte* application, however, only one discrete issue is before the Court: Defendant's insistence that Plaintiff provide detailed rent registration information about his tenants by September 22, 2017 or else face the threat of significant fines and other punishment. As set forth below, because the RSO itself and the manner in which Defendant has sought to implement it do not comply with certain statutory requirements, this Court should enjoin Defendant from forcing Plaintiff to comply with the registration itself or fining, sanctioning or otherwise penalizing Plaintiff for the noncompliance.

The first problem facing Defendant is that the RSO is void as drafted because it fails to include legislatively proscribed protections for landlords as set forth in the Petris Act, Civil Code Section 1947.8(a). The Petris Act specifically requires any ordinance that (1)"establishes a system of controls on the price at which residential rental units may be offered for rent or lease" and (2) "requires the registration of rents" must also "provide for the establishment and certification of permissible rent levels for the registered rental units." Here, the plain language of the RSO makes irrefutably clear that it imposes price controls and requires rent registration. However, it is wholly silent as to the certification process. Previous cases have held that the mere failure of an ordinance to address procedures for appealing disputes about rent certification ran afoul of the Petris Act. Thus, the total failure of Defendant to provide for any manner of certification makes it sufficiently likely that Plaintiff will succeed on the merits of its claim to have this Court enter an order

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[1] A copy of the Amended Complaint, filed on September 14, 2017, is attached as Exhibit B to the Selmont Declaration.

declaring the RSO void[2]. Furthermore, Plaintiff has also demonstrated the threat of irreparable harm by virtue of being denied the process for determining permissible maximum rent levels, thereby subjecting him to the fines and other sanctions set forth in the RSO.

A second issue plagues the RSO. Civil Code Section 1947.7(g) establishes that when rent control ordinances seek to impose a rent registry, the city may only compel landlords to provide the tenant's name, and nothing else, and that information must be kept confidential. Here, the rent registration form that Defendant has requested Plaintiff fill out impermissibly requires detailed information about whether any of the occupants are seniors, children or disabled, as well as asking for specific information concerning why a tenant was evicted. Furthermore, although the registration form itself does not request tenant's names, Defendant has repeatedly stated that it intends to audit the landlord's responses and obtain tenant verification for the designated purpose of reducing the number of appeals that are filed with the city. Not only is this not a legitimate government interest and a violation of Defendant's statutory obligations, but worse, it exposes Plaintiff to the significant threat he may be forced to produce tenant information that the tenant wanted kept private and thereby incur liability or face fines and punishment from Defendant for noncompliance. This threat is particularly worrisome to Plaintiff who previously had tenants make him agree to treat as confidential and not disclose their identities or any of the details about their tenancy.

The RSO also runs of afoul of Civil Code Section 1947.7(b), which states that landlords who are in *substantial compliance* with a rent registry cannot be penalized or sanctioned for non-compliance. The RSO creates an improperly higher burden by stating "registration is complete only when all required information has been provided to the city…" and provides for significant

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[2] Defendant has admitted that the RSO lacks these necessary provisions and has indicated that it intends to draft a regulation of some unspecified nature in the future to address the RSO's shortcomings but there is no indication that such regulation will be implemented in advance of the September 22, 2017 registration cut-off date imposed by Defendant nor that it will in fact be compliant with the Petris Act. (Selmont Dec., Ex. D) Furthermore, even if Defendant were to somehow quickly draft and implement a compliant regulation before September 22, 2017, only then Defendant legally demand registration and per Section 4 of the RSO itself, Plaintiff and other landlords would then have 30 days to complete the registration.

penalties for noncompliance. The FAQ accompanying the rent registration form also states "partial information constitutes and incomplete form…and can lead to substantial penalties including but not limited to a fine of $500 per unit." This flaw in the ordinance is exacerbated by the fact that the information requested by Defendant cannot be compelled by Defendant and implicates tenant's privacy interests. Plaintiff and all landlords are thrust in an untenable situation—either provide Defendant information it is not entitled to compel or face sanctions and fines. Civil Code Section 1947.7(b) specifically serves to prevent this exact Catch-22.

Alternatively, if this Court is not inclined to enjoin the rent registry, Plaintiff requests that this Court issue an order compelling Defendant to keep all information provided to Defendant confidential, including information about how much each tenant is paying for rent. Defendant purportedly needs this information to ensure compliance with the new rent ceilings set forth in the RSO. Thus, to accomplish this goal, this information need only be shared among Defendant, the landlord and the tenant residing in that unit. There is no logical need to make this information available to the general public. Conversely, Plaintiff would be irreparably harmed if existing and prospective tenants knew how much rent control tenants in the same complex were paying in the same manner any manufacturer would be harmed if customers were able to learn details on production costs and profit margins and use that leverage against them. Competitors could also use this information against Plaintiff. The goal of the Costa-Hawkins Act, Civil Code Section, 1954.50 *et. seq.* was to allow landlords to set rent levels at market rates following vacancies and forcing Plaintiff to make registration information publically available is inimical to that goal.

II. RSO BACKGROUND AND RELEVANT KEY PROVISIONS

The Beverly Hills City Council enacted the RSO in April 2017 with virtually no input from owners of rental units. After its was enacted, numerous landlords that own rental property in Beverly Hills, including Plaintiff, began protesting that Defendant failed to provide them adequate notice or opportunity to be heard and thus deprived them of their due process. On July 10, 2017, Defendant sent Plaintiff a "Notice Requiring Registration of Rental Units", which stated that Plaintiff, like all other landlords in Beverly Hills, had until August 23, 2017 to register their rental units or else faced "substantial penalties including but not limited to a fine of $500 per unit."

(Dayani Dec., ¶ 2). Due in part to the numerous complaints from landlords about the rental registration requests, Defendant pushed back the registration date until September 22, 2017.

The relevant rent registration provisions to this application are set forth in Section 4 of the RSO. (Selmont Dec., Ex. C). Under these provisions, landlords must initially register all rental units within 30 days of notice from Defendant, and then re-register after any vacancy. Notably, "registration is complete only when all required information has been provided to the city and all outstanding fees and penalties have been paid."

III. STANDARD FOR TRO

"Trial courts should evaluate two interrelated factors when deciding whether or not to issue a restraining order. The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the restraining order were denied as compared to the harm that the defendant is likely to suffer if the order were issued." *Church of Christ in Hollywood v. Superior Court* (2002) 99 Cal.App. 4th 1244, 1251. "The trial court's determination must be guided by a 'mix' of the potential-merit and the interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support a restraining order." *Id.* at 1251-1252.

IV. PLAINTIFF IS LIKELY TO PREVAIL ON THE MERITS

A. The RSO Does Not Provide For Certification of Rents

The Petris Act is codified in Sections 1947.7 and 1947.8 of the Civil Code. Civil Code Section 1947.8(a) states "[i]f an ordinance or charter controls or establishes a system of controls on the price at which residential rental units may be offered for rent or lease and requires the registration of rents, the ordinance or charter, or any regulation adopted pursuant thereto, *shall provide for the establishment and certification of permissible rent levels for the registered rental units*, and any changes thereafter to those rent levels, by the local agency, as provided in this section." (italics added).

The RSO establishes a system of controls on the price at which residential units may be offered by declaring that yearly increases in rent for rent control tenants are not to exceed 3%. (Selmont Dec., Ex. C, Section 7). The RSO also requires the registration of rents. (Selmont Dec.,

Ex. C, Section 4). Conspicuously absent from the RSO, however, is any language establishing the certification of rent levels as required under Section 1947.8(a).

In *Sego v. Santa Monica Rent Control Board* (1997) 57 Cal.App. 4th 250, a landlord challenged the defendant city's rent control board's refusal to issue a certificate of permissible rents as required under the Petris Act. In the process, the court considered certain provisions of the Santa Monica Rent Control Charter Amendment ("SMRCCA") as it applied to the Petris Act. Notably, the SMRCCA, unlike the Beverly Hills RSO at issue here, did provide "procedures for certification of permissible rents required by the Civil Code...which includes factfinding hearings."[3] *Sego* at 258. Still, the court found that "the Board's regulations do not comply with the dictates of the Petris Act. First, there is no provision for appeals as required under section 1947.8, subdivision (c). Second, the SMRCCA prohibits the issuance of a certificate in cases in which the landlord cannot declare under penalty of perjury that he or she is in compliance, contrary to the purpose of the Act." *Id.*

If the SMRCCA was found to be noncompliant with the Petris Act solely for lacking any language providing for how the certification appeal process worked, the RSO is also necessarily noncompliant. There is nothing in the ordinance nor any subsequent regulation that even provides the basic procedure for how Plaintiff can obtain a rent certification. For example, who does Plaintiff need to contact, what are the timing issues, how can he challenge a certification he disagrees with? Can tenants challenge the certification? Who decides, and on what basis, whether a certificate should issue? What is the standard and burden of proof? With the entirety of this information lacking, the only conclusion is that the RSO is void as drafted. Without the establishment of the critical rent certification procedure, Defendant should be enjoined from compelling Plaintiff or any other landlord to provide the requested rent registration or penalizing anyone for failing to so comply.

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[3] A copy of the relevant SMRCCA regulations that provides for rent certification is attached as Exhibit E to the Selmont declaration. Similarly, a copy of the West Hollywood regulation that provides for rent certification is attached as Exhibit F to the Selmont declaration. These properly drafted ordinances should help inform the Court of the type of critical language missing from the RSO.

B. Defendant's Overbroad Requests for Tenant Information at Threat of Penalty Violate Sections 1947.7(b) and (g) of the Petris Act

Civil Code Section 1947.7(g) states that in "those jurisdictions where an ordinance or charter controls, or establishes a system of controls on, the price at which residential rental units may be offered for rent or lease and requires the periodic registration of rents," a local agency "may request but shall not compel, an owner to provide any information regarding a tenant other than the tenant's name."

The sample rent registration form sent to Plaintiff by Defendant, which Plaintiff has been told must be completed online by September 22, 2017, is attached as Exhibit A to the Dayani Declaration. As an initial matter, the second page asks Plaintiff to identify whether his tenants include seniors, children or the disabled. This type of information is expressly prohibited by Section 1947.7(g). The second page also asks Plaintiff to provide information about reasons why any tenants were evicted. This too is information that Plaintiff cannot be compelled to provide and which exceeds the permissible scope of inquiry under Section 1947.7(g).

Further problematic is the fact that while the registration forms Defendant sent to Plaintiff do not ask for tenant names, Defendant's rent stabilization website states that "tenants may be asked to verify the rent amounts their landlords have reported." (Selmont Dec., Ex. G). Defendant has also repeatedly stated that tenant verification audits are necessary to reduce the number of appeals that are filed with the City. These tenant verification requests will likely result in Defendant requesting even more information about the tenants from Plaintiff and other landlords and it appears Defendant is trying to use these verifications to sneak around the provisions of 1947.7(g). Furthermore, the desire to reduce the City's workload is not a sufficient government interest that justifies its invasion into tenant's privacy rights. Consequently, Plaintiff is likely to prevail on the merits of its claim that Defendant's attempted implementation of the RSO is flawed as well.

Exacerbating Defendant's overbroad attempts to compel disclosure of tenant information is Defendant's repeated threats of severe penalties for any noncompliance (thus making clear Defendant is in fact compelling this tenant information, not just requesting it). Section 4 of the

RSO (Selmont Dec., Ex. C) states "registration is complete *only* when all required information has been provided to the city and all outstanding fees and penalties have been paid." The FAQ accompanying the registration form also states "partial information constitutes an incomplete form and registration is not complete until all required information…is provided to the city." (Dayani Dec., Ex. B) Furthermore, Section 11 of the RSO (Selmont Dec., Ex. C) provides for penalties for failing to comply with the rent registration requests and the letter to Plaintiff accompanying the registration states that Plaintiff faces a $500 fine for each unit it fails to register.

Defendant's request for strict compliance flies in the face of Civil Code Section 1947.7(a), which states "it is the intent of the Legislature to limit the imposition of penalties and sanctions against an owner of residential rental units where that person has attempted in good faith to fully comply with the regulatory process." Section 1947.7(b) expands on that legislative intent and states that an owner in "substantial compliance…shall not be assessed a penalty or any other sanction for noncompliance."

Defendant has thus illegally created a paradigm where it can strong arm Plaintiff and other landlords to provide information it requests, but that it is not entitled to compel, by threatening severe penalties. The legislature obviously believed that cities should not be permitted to use the rent registration process to obtain tenant information in the manner Defendant has attempted, and that landlords should not be held to a strict liability standard for registration, so this Court should enjoin Defendant from compelling Plaintiff to provide this information or levying any such fines, penalties or sanctions at Plaintiff for Plaintiff's rightful refusal to provide information about past or current tenants to which they have an established right of privacy.

V. THE INTERIM-HARM ANALYSIS TILTS STRONGLY IN PLAINTIFF'S FAVOR

A. Plaintiff Faces Great or Irreparable Harm if the TRO Does Not Issue

As detailed above, the RSO suffers from two Petris Act related flaws: (1) it does not provide for rent certification; and (2) it imposes substantial fines for noncompliance even though it requests tenant information outside the statutorily permissible scope. The *Sego* court took time to explain the genesis of the Petris Act and its needs to protect landlords from exactly these issues, stating "the bill was intended to remedy two problems which occurred with great

frequency...landlords have been required to pay excessive fines for noncompliance where they have tried to comply with the ordinance but because they are not professionals in the field, they did not register correctly or did not fill in all the blanks...bill is also intended to address a complaint by landlords that proper rent levels are often difficult to establish and that any may mistake may subject the owner to severe penalties." 57 Cal.App. 4th at 257.

The California legislature has already designated specific safeguards that must be in place before a landlord is required to register his units in a rent controlled city. By allowing Defendant to force Plaintiff to register his units in response to an ordinance that is noncompliant, Plaintiff faces the real threat that those protections will never materialize.[4] Plaintiff also faces fines of up to $500 per unit in addition to other penalties for noncompliance, including losing the ability to raise rent for rent controlled units by even the reduced 3% ceiling. There is no ready remedy in place for Plaintiff to recoup those fines and worse, no simple method for reestablishing rent with a new tenant following a vacancy if Defendant prevents Plaintiff from setting the new market rent.

Plaintiff also faces irreparable harm stemming from the fact that Defendant has requested Plaintiff provide tenant information in excess of what is legally permitted and simultaneously stated that failure to provide *any* requested information constitutes punishable noncompliance. Plaintiff is thus thrust in an impossible Catch-22. Either Plaintiff refuses to comply with Defendant's request, in which case the aforementioned threats and rent increase sanctions come into play, or Plaintiff provides the tenant information and risks liability to those tenants for violating their privacy rights and providing that information. (Dayani Dec., ¶ 5). This specific concern of Plaintiff is exacerbated by the fact that Plaintiff has tenants who for a variety of reasons

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[4] While Defendant has just recently admitted the need and intention to provide a regulation for an as of yet unspecified rent certification process, Defendant has neither set a specific date when this would happen and more importantly, has never provided any indication of what the certification language would look like to ensure it is in fact fully compliant with the Petris Act. (Selmont Dec., Ex. D). Furthermore, the RSO itself states Plaintiff has 30 days upon receipt of notice from Defendant that registration is required to comply. (Selmont Dec., Ex. C, Section 4). Defendant has no right to send the registration notice until it is first Petris Act compliant, so under no timetable calculation can Plaintiff be required to complete the rent registration process by September 22, 2017, when as of September 15, 2017 there are no Petris Act compliant regulations in place.

have requested Plaintiff keep their identity and all other information about their tenancy confidential. (*Id.*, ¶ 6) Previously, when Plaintiff purchased one of his rental units, he even had to sign a confidentiality agreement regarding the tenants' identities with the former owner. (*Id.*) Thus, the threat of irreparable harm to Plaintiff is very real if Defendant is not enjoined from requesting Plaintiff complete the registration form by September 22, 2017 or face fines and penalties.

Finally, as set forth in more detail in Section VI below, Plaintiff faces the irreparable harm of having the information it provides in tenant registry become a matter of public record under the California Public Record Act. Once that information is made public, it can be used against Plaintiff by his competitors and prospective tenants in various market manipulation and negotiation strategies. (Dayani Dec., ¶ 7). Unless the Court acts now, that information can never be made private again.

B. Defendant Faces No Prejudice or Imminent Danger if The TRO Issues

There is no cognizable prejudice or irreparable harm facing Defendant if it is enjoined from compelling Plaintiff and other landlords to provide the rent registration information. Since the RSO, as drafted, is void on its face, any complaints that Defendant has about its difficulty in immediately enforcing certain provisions thereof is purely of its own making. Furthermore, Defendant will not be permanently barred from enforcing these provisions, including the 3% annual rent control cap, once a proper ordinance, replete with rent certification and proper tenant request provisions, is enacted.[5]

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[5] Defendant has expressed a concern that because it passed an Emergency Ordinance similar to the RSO in January 24, 2017, and Section 1947.8(b) requires that all certifications and appeals thereof be completed within one year of adoption, it needs the registration information promptly to have everything in place by January 24, 2018. These fears are unfounded. First, there is no reason why Defendant's failure to meet the one year window of the January 2017 emergency ordinance would have any bearing on the April 2017 RSO. Second, Plaintiff is unaware of any logical arguments to support the notion that Defendant could not cure the problem if the certifications were not complete within one year (i.e., once the certifications were provided, then Defendant could enforce the RSO provisions if it believed a landlord was charging excess rent). Third, there is no statute or case law that bars Defendant from enacting an amended ordinance that meets Petris Act requirements, thus triggering a new one year window. Finally, since the RSO is void for failing to provide rent certification, the one year window to complete certification (footnote continued)

In fact, if Defendant were to forego the rent registration, it still would be able to enforce the 3% rent control cap and other provisions of the RSO. As a reminder, rent certification is not mandatory every time a city wishes to impose rent control, only when rent registration is also sought to expedite or simplify the process. Civ. Code Section 1947.8(a). However, Defendant has repeatedly stated it wants tenant information from the registry for the specific purpose of reducing the number of appeals that are filed with the City. The fear that Defendant's new ordinance may create additional time and work for city officials to implement it cannot be treated as a sufficient harm to justify the denial of the TRO.

VI. IN THE ALTERNATIVE, THIS COURT SHOULD ORDER DEFENDANT TO KEEP ALL TENANT REGISTRATION INFORMATION CONFIDENTIAL

The Costa-Hawkins Rental Housing Act ("Costa-Hawkins Act") became law in 1995 and was codified in Civil Code Section 1954.50 *et seq.* The Costa-Hawkins Act generally established vacancy decontrol for residential units and preempts local rent control by permitting landlords to set the initial and all subsequent rents for vacant units. *Bullard v. San Francisco Residential Rent Stabilization Bd.* (2003) 106 Cal.App. 4th 488, 489-491; *See also* Civ. Code Sections 1954.52-1954.53 (allowing landlords to set initial rental rates statewide, with limited exceptions). In short, the "effect of this provision was to permit landlords to impose whatever rent they choose at the commencement of a tenancy." *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App. 4th 1396, 1406.

"Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." *Apartment Ass'n of Los Angeles County, Inc. v. City of Los Angeles* (2006) 136 Cal.App. 4th119, 129. One of the tests for preemption by implication is that "the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible

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logically cannot commence until the very process for providing those certifications is first established (i.e, the clock has not even started ticking).