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9 a California General Partnership

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO/OAKLAND DIVISION

12	Rancho de Calistoga, a California General Partnership,)	Case No. C 11-05015 JSW
13)	
14	Petitioner,)	FIRST AMENDED PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS
15	vs.)	
16	The City of Calistoga, the City of Calistoga Hearing Officer, W. Scott Snowden,)	
17)	
18	Respondents,)	
19)	
20	The Tenants Residing at Rancho de Calistoga Mobilehome Park,)	
21)	
22	Real Parties In Interest.)	

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1 JURISDICTION AND VENUE

2 1. This complaint is filed and these proceedings are instituted against the above-
3 named Respondents pursuant to 28 U.S.C. Sections 1331 and 1343(a)(3), for claims arising
4 under the Fifth and Fourteenth Amendments to the Constitution of the United States of
5 America and the Civil Rights Act of 1871 (42 U.S.C. Section 1983).

6 2. The Respondent City of Calistoga is located within the Northern District of
7 California. Venue is proper in this District under 28 U.S.C. Section 1391(b).

8 INTRA-DISTRICT ASSIGNMENT

9 3. The events giving rise to this claim occurred in the County of Napa, where
10 Respondent City of Calistoga is located. This action may be assigned to either the San
11 Francisco Division or the Oakland Division of the United States District Court for the
12 Northern District of California pursuant to Civil Local Rule 3-2.

13 GENERAL ALLEGATIONS AND PARTIES

14 4. Rancho de Calistoga, a California General Partnership, dba Rancho de
15 Calistoga Mobilehome Park, referred to herein as “the Petitioner,” hereby petitions this court
16 for a writ of administrative mandamus directed to the Respondents, and by this Petition
17 represents as follows:

18 5. The Petitioner owns and operates Rancho de Calistoga Mobilehome Park, a
19 184 space mobilehome park located in the City of Calistoga, County of Napa. The Petitioner
20 therefore has a beneficial interest in these proceedings.

21 6. The Respondents, the City of Calistoga and the City of Calistoga’s Hearing
22 Officer, W. Scott Snowden, have been and are charged with administering the provisions of
23 the City of Calistoga’s rent stabilization laws.

24 7. Respondent W. Scott Snowden is named in his capacity as Hearing Officer for
25 the City of Calistoga. Respondent W. Scott Snowden, in his capacity as Hearing Officer for
26 the City of Calistoga, is a proper party to these proceedings. The Petitioner has named
27 Respondent W. Scott Snowden, in his official capacity, to avoid any contention that he is also
28 a necessary and indispensable party, as was contended by the City of Oceanside in TG

1 Oceanside, LP v. City of Oceanside, 156 Cal. App. 4th 1355, 1364-1365 (2007). The
2 Petitioner does not seek damages, attorneys fees or costs from Respondent W. Scott
3 Snowden. The Petitioner seeks an order commanding Respondents W. Scott Snowden to
4 modify the decision in the underlying administrative proceedings and to allow rents to be
5 increased at Rancho de Calistoga Mobilehome Park, as set forth herein.

6 8. At all times relevant in this Petition, Real Parties in Interest have been, or
7 were, tenants at Rancho de Calistoga Mobilehome Park. The Petitioner hereby requests a writ
8 of administrative mandate ordering Respondents to allow the Petitioner to charge Real Parties
9 in Interest rents of \$625 per month, retroactive to November 1, 2010. Real Parties in Interest
10 thus have a financial interest that is affected by these proceedings. However, under the
11 California Court of Appeal's decision in Pinnacle Holdings, Inc. v. Simon, et. al., 31 Cal.
12 App. 4th 1430 (1995), the Real Parties in Interest are not necessary or indispensable parties
13 to this lawsuit, because they have no power to rule on rent adjustment applications filed under
14 the City of Calistoga's rent control ordinance. Pinnacle Holdings, Inc. v. Simon, et. al., supra,
15 31 Cal. App. 4th 1430, 1436-1437. Nevertheless, the Petitioner will notify one or more of the
16 Real Parties in Interest and/or their attorney of record of this Petition, so they may intervene
17 if they so choose.

18 9. The Real Parties in Interest are Francine Ryan, Carl Verrips, Anne Verrips,
19 Claude Smith, Joann Maher Smith, Gary Gibbs, Ann Gibbs, Deborah Tuttle, Catherine
20 Singels, Mary Grissette, Arunas Kucinkas, Ona Kucinkas, Bertram Callen, Eduardo
21 Salcedo, Ernest Cuneo, Betty Cuneo, Catherine Williams, Mary Kay Macy, Linda Kohn,
22 Noreen Mullaney, George Yost, Wilma Yost, Bernice Hammond, William Green, Elaine
23 Green, Raymond Cassani, William Cornett, Bonnie Cornett, Judith Friedman, Herb Holt,
24 Ruby Holt, James Hester, Mary Ellen Hester, Flo Robinson, George Pellegrini, Phyllis
25 Pellegrini, Drew Sparks, Jean Dehlinger, Minnie Hunt, Anne Strain, Ralph Van Camp, Julie
26 Lynn Lenhart, Stella Altrocchi, Finley Christian, Virginia Christian, Joseph Sagun, James
27 Remigio, Bonnie Remigio, Dennis M. Bragg, Frances Elliot, Robert Vanderford, Dolly

1 Vanderford, John Van Reeth, Helen Van Reeth, Peggy Tolomei, Frances Snider, Maxine
2 Miller, Mary Soroksy, Maureen Mahoney, Fred Alonzo, Bradford Kekipi, Dora Devorak,
3 Marilyn Clark, Shana Woodfield, Ed Marin, Linda Marin, Thomas Andrews, James Elledge,
4 Nadine Elledge, Ann Renard, Linda Susan Sicard, Charlona Holmes, Lillian Dickinson,
5 Carlann Thierry, Jack LaPatra, Hubert Gibson, Zdenka Kirk, Lucille Jordan, Wynelle
6 Chadwick, Audrey Pope, Maria Cremin, Patricia Maddox. Ronald Paladini, Camille Hurley,
7 Garrey Harris, Pauline Harris, Ralph Tiedeman, Virginia Tiedeman, Geneva Hanson, Carol
8 Ginesi, Thomas Kincaid, Randa Durall, LaRay Sanchez, James Hanson, Sharon Hanson,
9 Orland Innis, Lori Innis, Michael Kaplan, Natalia Kaplan, Maureen Connor, Donna Gordon,
10 Barbara Geitner, Lawrence Andelman, Jean Coltrin, June Bermudez, Edith Kendall, Barbara
11 Carpenter, Janet Plant, Ann Gardner, Jennifer Nightingale, Jennifer Nightingale, Norman
12 Biss, Bill Nystrom, Pearl Nystrom, Barbara Begley, Ingeborg Penn, Devon Rice-Emre,
13 Jacqueline Baker, Judith Cornils, Jalna Watkins, Jerry Newland, Patricia Sheridan, Chris
14 Conley, Donald Sears, Marvie Sears, Ruth Adams, Anne Sullivan, Helen Johnsen, Bill Paras,
15 Marvin Braun, George Schreiner, Renate Schreiner, Steven Dickson, Joseph McCormick,
16 Rachel McCormick, Dorothy Ryder, Ken Larsen, Marlene Larsen, Don Brown, Helen Brown,
17 Dorothy Bennett, Glenn Bobst, Beverly Bobst, Wsewolod Kreiden, Hannelore Kreiden, Carol
18 Cox, Margery Herkalo, Jean Haidary, Louise Nietschy, Josef Kerceso, Zurla Troepl, Jake
19 Aman, Bruce Skogen, Clara Olah, Jeffery Martin, Karen Martin, Helen Archerd, Mary
20 McWalters, Carole Boehk, Ronald Mashburn, Esther Doty, Truman Houk, Sally Houk, Jim
21 Davis, Michael Cremin, Maria Cremin, Kathy J. Buck, Ray Kranich, Joan Kranich, Ron
22 Lynch, Mary Lynch, Mary Stuart Kellog, Robert Keating, Gail Gum, Robert Driver, Michelle
23 Mills, Charlotte Blakeney, Franklin Merha, Mary Schildknecht, Gerhard Abel, Carol
24 Danielson, Michael Mullaney, Isabelle Gane, Virgil Stefani, Lorenza Stefani, Ronna Jean,
25 Helen Furber, Gail Strube, Lovella Miller, Jeff Micheli, Seventh Day Adventist Church, Lisa
26 Phelan, Phillip Flickinger, Claire Flickinger, Larry Strakbein, Rita Gatens, Susan Hill, John
27 Chan, Lee Stader, Donald Stout, Ana Armijo, Alvin Ewert, Betty Ewert, Robert Schindler,
28

1 Shari Kadar and Barbara Austin (“The Tenants Residing at Rancho de Calistoga Mobilehome
2 Park”).

3 10. The Petitioner is unaware of the identities of Does 1 - 500, inclusive, and
4 therefore names said parties by such fictitious names. Petitioner is informed and believes and
5 on that basis alleges that each of the fictitiously named parties is responsible in some manner
6 for the occurrences herein alleged. Petitioner will amend this Petition to insert the true names
7 of the fictitiously named parties when ascertained.

8 FACTUAL ALLEGATIONS

9 11. Rancho de Calistoga is a 184 space mobilehome park located at 2412 Foothill
10 Boulevard in Calistoga, California. (“the park”). The underlying land consists of three
11 separate parcels, containing a total of approximately 26.5 acres. The park was originally
12 developed by Hal C. Aguirre and his former partner, R. C. Roberts.

13 12. Although the date and terms by which the underlying land was purchased are
14 not known, the people of the City of Calistoga approved the zoning for the park through a
15 special election on October 20, 1970. In addition, a deed for one of the parcels was recorded
16 in the name of the Roberts & Aguirre partnership on February 7, 1971.

17 13. Sometime during the mid 1970’s the Roberts & Aguirre partnership was
18 dissolved. Although the date and terms of the dissolution are not known, a deed transferring
19 one of the parcels to Hal C. Aguirre was signed on June 1, 1976 and recorded on July 28,
20 1977.

21 14. Hal C. Aguirre subsequently formed Rancho de Calistoga, a California
22 General Partnership, with the partnership interests being held primarily for his benefit and the
23 benefit of his children, Mark Aguirre, Jon Aguirre and Christine Gaddini.

24 15. Hal C. Aguirre and R.C. Roberts have since passed away and the documents
25 regarding the development of the park were apparently destroyed more than thirty years ago.
26 As a result, the dollar amount of the original investment in the park is unknown.

27 16. The construction of the first phase consisted of only 50 to 70 spaces with a
28

1 “hoped for” opening date of August 1, 1971. The entire park was scheduled to take four years
2 to fully develop. As a condition of developing the park, Roberts & Aguirre were required by
3 the City of Calistoga to incur an additional \$30,000 to expand a 15 inch sewer line outside
4 of the park.

5 17. There was no rent control in the City of Calistoga at the time the park was
6 developed. The Petitioner’s legitimate investment backed expectation was that it would be
7 entitled to set the rent at the market rate and that it would not be precluded from charging a
8 non excessive or non monopolistic rent at the park.

9 18. The Petitioner did not develop the park to be low cost or low income housing
10 and the Petitioner did not receive any benefit from the City, or any other governmental entity,
11 in exchange for an agreement to provide low cost or low income housing. The park was built
12 as an alternative form of housing for those who desired and could afford that alternative form
13 of housing.

14 19. The park was not completely filled with mobilehomes until 1978, resulting in
15 operating losses in the hundreds of thousands of dollars. Although it is not known exactly
16 how many spaces were included in each phase of the development process, the dates on the
17 mobilehomes indicate that at least 45 were installed during 1971 and 1972, 82 during 1973
18 and 1974, 21 during 1975 and 1976 and 14 during 1977 and 1978.

19 20. Although the actual cost of developing Rancho de Calistoga Mobile Home
20 Park is not known, on or about December 27, 1978 the Chateau Calistoga Mobilehome Park
21 was sold for \$2,782,613.97, or \$14,197 per space. If applied to Rancho de Calistoga, that
22 \$14,197 per space price would result in a December 27, 1978 market value of \$2,612,248.
23 (\$14,197 x 184 spaces = \$2,612,248).

24 21. In or about April of 1984, the City of Calistoga adopted Ordinance No. 400.
25 Although entitled “Mobile Home Park Rent Stabilization,” Ordinance No. 400 did not place
26 any restriction on the amount of rent that could be charged at the park. Instead, if more than
27 fifty percent of the tenants filed a petition challenging a rent increase, the Rent Review
28 Commission would be required to determine whether it was “so great as to be an

1 unreasonable increase.”

2 22. In or about 1989, the Petitioner initiated a policy of implementing “reasonable
3 rent increases” when new tenants moved into the park, but which were still below market.
4 Based on the then existing turnover rate, the Petitioner estimated it would take 10 to 15 years
5 to increase the rents to “a reasonable figure.” There is no evidence that any such rent increase
6 was determined to be “an unreasonable increase” under Ordinance No. 400.

7 23. On or about June 1, 1993, the City adopted Ordinance No. 493, which
8 amended Ordinance No. 400 “in its entirety” and replaced it with “Mobile Home Rent
9 Stabilization Provisions.” Pursuant to Section 9.12.040 of Ordinance No. 493, the Petitioner
10 was entitled to increase the rent once each year by an amount that could not exceed four
11 percent. However, the Petitioner was no longer allowed to increase the rent to “a reasonable
12 figure” when new tenants moved into the park.

13 24. After Ordinance No. 493 was adopted, the Petitioner requested the City to
14 allow the rents to be increased by \$89 per space. On or about November 8, 1995, the City’s
15 previous hearing officer concluded that the Petitioner was entitled to increase its base rent by
16 \$50 per space. In reaching her conclusion, the City’s previous hearing officer found that the
17 1993 or “base rent [did] not reflect general market conditions and, thus, does not yield a fair
18 return.”

19 25. On or about October 2, 2007, the City adopted Ordinance No. 644, once again
20 amending its rent control ordinance. Ordinance No. 644 does not limit rent increases to those
21 required to provide a fair return on the Petitioner’s historical investment. Ordinance No. 644
22 is much broader, providing that the hearing officer “shall determine whether space rent
23 increases proposed or imposed by the Petitioner are reasonable based upon the circumstances
24 and all the provisions of this ordinance.”

25 26. On October 15, 2009, an appraiser named John Neet concluded that the market
26 rental value for spaces at the park was \$625 per month, as of September 29, 2009. At that
27 time, the actual average rent at the park was only \$471.39, or \$153.61 below general market
28 conditions. At or about that time, the Petitioner decided to notice a rent increase pursuant to

1 Ordinance No. 644 and the state and federal constitutions.

2 27. One of the reasons the Petitioner decided to notice a rent increase was its belief
3 that limiting rents to less than \$625 per month at that particular point in time did not serve
4 any legitimate governmental purpose, but instead resulted in a private taking of property.
5 Another reason for the Petitioner to notice a rent increase alleging a private taking of property
6 was the fact that the documents regarding the cost of developing the park during the early
7 1970's no longer existed, so it would be very difficult to demonstrate that it was not making
8 a fair return on its investment.

9 28. The United States Constitution does not specifically provide for the right to
10 a fair return on investment. To the contrary, the right to a fair return on investment has been
11 created by the courts in order to protect individuals in the event of government price controls.
12 In contrast to the right to a fair return on investment, the United States Constitution does
13 prohibit the taking of private property, unless the taking is for a public purpose and
14 accompanied by just compensation.

15 29. Even where a rent control ordinance is constitutional on its face, a rent control
16 ordinance may be applied in a manner that violates a constitutional right. The Respondents
17 concede that an ordinance that is constitutional on its face may not be applied in a manner
18 that deprives a parkowner of its constitutional right to a fair return on investment. However,
19 the Respondents do not concede that a rent control ordinance that is constitutional on its face
20 may not be applied in a manner that results in a private taking of property. Rather, the
21 Respondents appear to contend that if a rent control ordinance does not on its face result in
22 a private taking of property, a property owner is precluded from showing that such an
23 ordinance is being applied in a manner that results in a private taking of property.

24 30. The Respondents' rent control ordinance provides a procedure for parkowners
25 to assert any right they may have to rent increases in excess of the inflationary adjustment
26 allowed each year. That procedure requires the selection of an administrative hearing officer
27 to conduct an evidentiary hearing. The Petitioner contends that it may use that administrative
28 procedure in order to demonstrate that one or more of its constitutional rights have been

1 violated by application of the ordinance, including (a) its constitutional right to a fair return
2 on investment and (b) its constitutional right not to have its property taken for a private
3 purpose. Because the limitation on taking property for a private purpose is specifically
4 included in the federal constitution, whereas the right to a fair return on investment has been
5 created by the courts, the Petitioner contends that right to be free from a private taking is
6 entitled to at least the same deference as the right to a fair return.

7 31. Historically, the purported public purpose justifying price controls, including
8 rent controls, has been to prevent excessive or above market prices, particularly where the
9 provider of a good or service has monopoly power. In this case, the Petitioner does *not* seek
10 the unfettered right to set the rent at an excessive, above market or monopolistic rate. The
11 Petitioner seeks only to set the rent at \$625 per month, which the Petitioner contends is
12 neither excessive, above market nor monopolistic. Because the Petitioner does not seek to
13 have the ordinance abolished, the Petitioner will be required to avail itself of the procedures
14 set forth in the ordinance, should it someday seek to increase the rent in excess of \$625 per
15 month. As a result, the Respondents will continue to have both the ability and the authority
16 to prevent excessive, above market or monopolistic rents, should the Petitioner request such
17 rents at some future point.

18 32. In order to demonstrate that prohibiting rents of \$625 per month at this
19 particular point in time does not promote any legitimate public purpose, but results in a purely
20 private taking of property, the Petitioner must establish that the proposed rent of \$625 per
21 month is neither excessive, above market, nor monopolistic. In order to satisfy that burden,
22 the Petitioner relied primarily on empirical studies by two witnesses. First, the Petitioner
23 relied on an appraiser named John Neet to establish that the proposed rate of \$625 was either
24 at or below market. Second, the Petitioner relied on an economist named Richard Fabrikant,
25 to establish that the proposed rate of \$625 was not monopolistic, but competitive in the
26 overall housing market.

27 **33. John Neet / the Petitioner's Appraiser:** John Neet is an MAI certified
28 appraiser who has specialized in appraising mobilehome parks since 1988. Mr. Neet was

1 asked to prepare a “market rent” survey for the park, pursuant to standards approved by the
2 Appraisal Institute.

3 34. Mr. Neet began by demonstrating that “market rent” is the most probable rent
4 that a property should bring in a competitive and open market, with the lessee and the lessor
5 each acting prudently and knowledgeably. Mr. Neet demonstrated also that market rent is
6 determined based on current rents that are either paid or asked for comparable space as of the
7 date of the appraisal.

8 35. In determining market rent, it is important to ascertain whether the lease
9 represents a freely negotiated arm’s length transaction. Rentals that do not reflect freely
10 negotiated arms’ length transactions most likely will have to be eliminated as comparables.
11 Market rent is not based on the average of all rents at a property, nor is market rent based on
12 rents that are mandated by the government.

13 36. In a competitive and open market, rents that new tenants are willing to pay to
14 lease space at a particular property generally provide the best indication of market rent. In
15 a jurisdiction that is subject to rent control, the appraiser first attempts to find examples of
16 recently negotiated rents at the subject property that were exempt from rent control under
17 state or local law.

18 37. Where it is not possible to find such examples at the subject, the appraiser
19 must attempt to find them at comparable properties within the relevant market, or within close
20 enough proximity to the relevant market to shed light on the market rent for the subject
21 property.

22 38. Because of the various rent control ordinances and other restrictions in place
23 in the Napa Valley, Mr. Neet was not able to find any rental agreements in the relevant market
24 that were the result of an arm’s length transaction and a true indication of market rent.
25 However, Mr. Neet was able to find numerous recent transactions at comparable properties
26 that were subject to rent control.

27 39. Although those other parkowners were not allowed to “test the market” in
28 those transactions, they nevertheless provide a “lower limit” below which the market rent for

1 the park could not logically be set. Based on those transactions, Mr. Neet was able to
 2 determine that the market rent for spaces at the park as of January 12, 2011 was at least \$650
 3 per month. Those transactions are summarized as follows.

<u>Park</u>	<u>Transfer Rent - Low</u>	<u>Transfer Rent - High</u>
Rancho de Calistoga	\$405.49	\$572.09
Calistoga Springs	\$355.21	\$504.00
Chateau Calistoga	\$389.00	\$535.00
Rancho de Napa	\$608.00	\$608.00
Napa Valley MHP	\$450.00	\$689.00
Oaktree Vineyard	\$680.00	\$680.00
Orchard MHP	\$695.00	\$695.00
De Anza	\$660.00	\$1,100.00
Seven Flags	\$485.00	\$735.00

14 40. By using standard appraisal techniques, Mr. Neet was able to demonstrate that
 15 the market rent at Rancho de Calistoga is approximately \$650 per month and that not a single
 16 tenant is paying an above market rate. Because the Petitioner is seeking to increase the rent
 17 to only \$625 per month, the proposed rent will still be \$25 below market, resulting in a
 18 windfall to each tenant of \$300 per year.

19 41. Mr. Neet was also asked to determine the current “market value” of the park
 20 with rents at the rent controlled rate, and with rents at the \$650 market rate. Once again, Mr.
 21 Neet began by demonstrating that market value is the most probable price a property should
 22 bring in a competitive and open market, with the buyer and seller each acting prudently and
 23 knowledgeably.

24 42. Mr. Neet stated that the market value of an income producing property may
 25 be determined under the cost approach, the sales comparison approach, or the income
 26 approach. Mr. Neet did not believe there was sufficient evidence to use the cost approach,
 27 as very few mobilehome parks have been developed in California in recent years. Although
 28

1 Mr. Neet placed some reliance on the sales approach, in his opinion the income approach is
2 the most widely accepted method of valuing mobilehome parks in California.

3 43. Under the income approach, the appraiser must first estimate the actual and/or
4 projected income and expenses for the property. The net income is “capitalized,” using a
5 market derived overall rate of return, to arrive at an indicated market value for the property.
6 Reduced to its simplest terms, the appraiser divides the actual and/or projected income by the
7 overall capitalization rate derived from transactions involving similar properties.

8 44. Mr. Neet tracked overall capitalization rates in approximately 512 mobilehome
9 park sales in the western United States between 2001 and 2009. Based on that data, Mr. Neet
10 concluded that although there can be substantial variance from transaction to transaction,
11 overall capitalization rates have trended downward from approximately 9% in 2001 to
12 approximately 6% in 2009.

13 45. In order to determine the market value for Rancho de Calistoga, Mr. Neet also
14 examined the overall capitalization rates for six mobilehome parks that sold in California in
15 2009 and 2010. The overall capitalization rate for those six parks ranged from 5.86% to
16 7.03%, with an average of 6.35%. Based on all of the data he surveyed, Mr. Neet concluded
17 that 6.25% is the appropriate overall capitalization rate for determining the market value of
18 the park.

19 46. Using the actual rental income for the park under rent control, Mr. Neet
20 concluded that the current market value of Rancho de Calistoga is \$11,850,000. Using the
21 \$650 market rent derived under his market rent survey, Mr. Neet concluded that the market
22 value of Rancho de Calistoga would be \$16,580,000. Accordingly, the below market rents
23 mandated by the ordinance result in a loss in value to the Petitioner of approximately
24 \$4,730,000. ($\$16,580,000 - \$11,850,000 = \$4,730,000$).

25 47. **Richard Fabrikant, PhD / the Petitioner’s Economist:** Having established
26 that the requested rent of \$625 per month was not excessive, but was slightly below market,
27 the Petitioner was still required to show that the proposed rent was not the result of monopoly
28 power. In order to determine whether the proposed rent was competitive or monopolistic, the

1 Petitioner requested an economist named Richard Fabrikant to provide an empirical analysis
2 with respect to that issue.

3 48. Dr. Richard Fabrikant is a Fullbright Scholar with a PhD in economics. Dr.
4 Fabrikant has been studying rents in mobilehome parks since 1991. Dr. Fabrikant was asked
5 to determine if there was any evidence that the Petitioner has monopoly power in the relevant
6 housing market. Dr. Fabrikant was also asked to provide an empirical analysis as to whether
7 the September 2009 market rent of \$625 was fair or excessive.

8 49. Dr. Fabrikant began by demonstrating that all forms of housing contain a
9 “shelter” component, based on the price people are willing to pay to live in a particular type
10 of unit. Dr. Fabrikant demonstrated that some forms of housing also contain an “investment”
11 component, based on expectations regarding increases or decreases in the value of the unit
12 purchased.

13 50. An apartment provides the best evidence of the market value of the “shelter”
14 component, because it demonstrates the amount a person is willing to pay for housing
15 services, with no expectation of any return on investment. On the other end of the spectrum
16 are detached single family homes, where the occupant owns both the structure and the land
17 on which it is located. Townhouses, condominiums and mobilehomes are in between the
18 two.

19 51. The uncontradicted evidence demonstrates that the rent or “shelter component”
20 for two and three bedroom apartments within a thirty mile radius of Calistoga ranges from
21 \$1,437 to \$1,867 per month. In contrast to apartments, the “shelter component” for residency
22 in a mobilehome park includes the cost of the mobilehome, *plus* the cost of the underlying
23 space rent. In order to be competitive with a two or three bedroom apartment, the “shelter
24 component” for both the mobilehome space and the mobilehome may not exceed \$1,437 to
25 \$1,867 per month.

26 52. Assuming mobilehome spaces are rented at the requested rate of \$625 per
27 month, a prospective tenant would need to be able to purchase a two or three bedroom
28 mobilehome at a cost ranging from \$812 to \$1,242 per month. Otherwise, the “shelter

1 component” of residing at the park would exceed the “shelter component” of residing in a two
 2 or three bedroom apartment. That \$812 to \$1,242 range is referred to as the “residual” and
 3 is derived as follows:

<u>Apartment Unit</u>	<u>Apartment Rent</u>	<u>Park Rent</u>	<u>Residual</u>
2 Bedroom 2 Bath-1,004 sq. ft	\$1,437	(\$625)	\$812
3 Bedroom 2 Bath-1,302 sq. ft.	\$1,867	(\$625)	\$1,242

7
 8 53. Depending on the interest rate and the term of the loan, “residuals” ranging
 9 from \$812 to \$1,242 per month would enable a prospective tenant to purchase a two or three
 10 bedroom mobilehome ranging in value from \$79,716 to \$160,196. As set forth in Dr.
 11 Fabrikant’s report, a twenty year loan with interest rates ranging from 7.00% to 10.80%
 12 would enable a prospective tenant to purchase a mobilehome in the following amounts:

	<u>\$812 Residual</u>	<u>\$1,242 Residual</u>
7.00% Interest:	\$104,734	\$160,196
8.00% Interest:	\$97,098	\$148,486
9.00% Interest:	\$90,250	\$138,042
10.80% Interest:	\$79,716	\$121,931

18
 19 54. For the final step of his analysis, Dr. Fabrikant looked to see whether it was
 20 possible to actually purchase two and three bedroom mobilehomes in the market place at
 21 prices ranging from \$79,716 to \$160,196 with monthly payments or “residuals” ranging from
 22 \$812 to \$1,242. In response to that inquiry, Dr. Fabrikant found that the average price of the
 23 seventeen used mobilehomes sold at Rancho de Calistoga during the preceding two years was
 24 \$62,029.41, so the “residual” is clearly sufficient to purchase a used mobilehome at the park.

25 55. More important, brand new two and three bedroom mobilehomes could be
 26 purchased at prices ranging from \$79,716 to \$160,196, with installation costs ranging from
 27 \$15,000 to \$25,000. Assuming an 8.00% interest rate and a twenty year loan, the evidence
 28

1 conclusively established that the “residuals” were sufficient to purchase such mobilehomes,
 2 even with the rent at \$625 per month and installation costs at \$211 per month. The results
 3 of Dr. Fabrikant’s analysis are summarized below:

Brand New Mobilehome	Cost	Mortgage	Installation	Residual
2 Bedroom 2 Bath-1,023 sq. ft	\$64,756	\$541.65/mo	\$211/mo	\$812
2 Bedroom 2 Bath-1,023 sq. ft	\$66,658	\$557.55/mo	\$211/mo	\$812
3 Bedroom 2 Bath-1,344 sq. ft.	\$64,310	\$537.91/mo	\$211/mo	\$1,242
3 Bedroom 2 Bath-1,288 sq. ft.	\$88,398	\$739.40/mo	\$211/mo	\$1,242

9
 10 56. If the requested rent of \$625 was the result of monopoly power it would not
 11 be possible for tenants to find alternative housing at competitive prices. Because it is possible
 12 to purchase and install a brand new two or three bedroom mobilehome with the rent at \$625
 13 per month for *less* than the rent for a two or three bedroom apartment, it is clear that the
 14 Petitioner is *not* exercising monopoly power.

15 57. Finally, it must be noted that new and used two and three bedroom
 16 mobilehomes are competitive with the rent for two and three bedroom apartments, even if the
 17 comparison is limited solely to the “shelter component.” As Dr. Fabrikant stated in his report
 18 the ownership of a mobilehome may also contain an “investment component,” even though
 19 mobilehomes are depreciating assets.

20 58. In this case, seventeen used mobilehomes with original purchase prices
 21 averaging \$24,161.06 were sold at the park during the two years prior to the hearing, with
 22 resale prices averaging \$62,029.41. Because it may be possible to sell a used mobilehome
 23 for an amount in excess of its depreciated value, this potential economic benefit demonstrates
 24 that the rental of mobilehome spaces at \$625 per month is not only competitive with
 25 alternative forms of housing in the marketplace, it is superior.

26 59. **The Proposed Ordinance:** On or about September 7, 2010, the Petitioner
 27 requested the Mayor and City Council to adopt an amendment to the ordinance that would
 28

1 require the City of Calistoga to provide a rent subsidy to each tenant at each mobilehome
2 park, without regard to need, equal to the difference between the rent control rate and the fair
3 market rate. In short, under the proposed amendment the City of Calistoga would be required
4 to provide the same type of subsidy that the Petitioner is now providing at each of the 184
5 spaces at the park.

6 60. The Mayor and City Council not only failed to adopt the proposed amendment,
7 they refused to place it on the agenda for either public comment or a vote. Although the
8 Mayor and City Council took no action on the proposed amendment, the administrator of the
9 City of Calistoga's Rent Control ordinance stated the Petitioner's proposed rent subsidy
10 program was "unreasonable." The City of Calistoga's hearing officer stated that except for
11 where there was means testing, such as under the Section 8 voucher program, he was not
12 aware of any cities that adopted such a program and that such a proposal would likely be
13 unsuccessful in his hometown of St. Helena.

14 61. The Petitioner does not contend that the City of Calistoga was required to
15 adopt or place its proposed amendment on the City Council's agenda for discussion.
16 However, the Petitioner does contend that the reaction of the Mayor, the City Council, the
17 administrator and the hearing officer to the proposed amendment provide further evidence
18 that providing a subsidy to tenants so that they receive below market rates, without regard to
19 need, does not serve a legitimate public purpose.¹

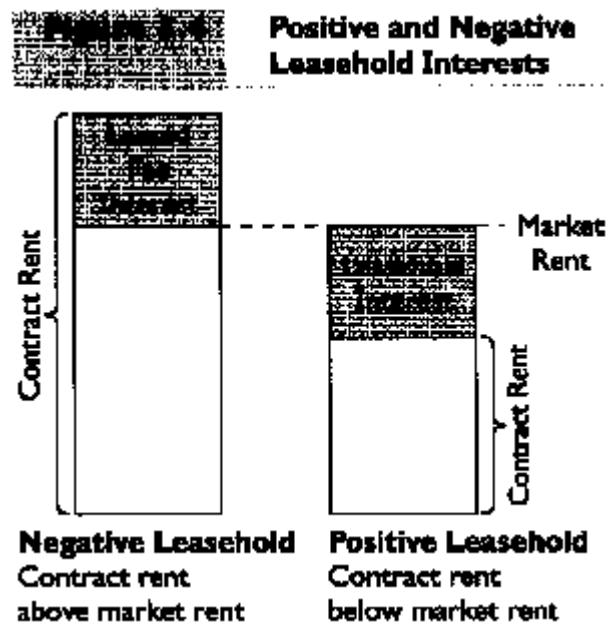
20 62. The Respondent's primary justification for limiting rent controls to
21 mobilehome parks, as opposed to other forms of housing, is that unscrupulous landlords will
22 lure unsuspecting tenants onto their properties with fair market rents. Once the unsuspecting
23 tenant has taken the bait and invested in a mobilehome, the parkowner can exploit its

24 1

25 Although the Mayor would not comment on the proposed amendments to the ordinance, he
26 attended the evidentiary hearings conducted by the hearing officer, although he was neither
27 a witness nor a party, providing further evidence that there is a political component to the
28 forced subsidization of rents at the current levels, having nothing to do with preventing
excessive or monopolistic rents.

1 supposedly superior bargaining position and increase the rent to above market rates. As the
 2 theory goes, the now captive tenant will have no meaningful option other than to pay the
 3 above market rent, because it is difficult or impossible to move his or her mobilehome to
 4 another location.

5 63. Even if the “potential” for the exploitation of unsuspecting tenants exists, it
 6 is not possible to actually exploit a tenant unless and until the rent is above market, with
 7 market defined as a rent that is the result of an open and competitive process, not a
 8 monopolistic one. The inability to exploit tenants if the rent is at market is not only supported
 9 by the testimony of the expert witnesses, the Appraisal Institute has recognized that if the rent
 10 is at market, neither the landlord nor the tenant receives a windfall. That fact is illustrated by
 11 Figure 5.4 at page 82 of *The Appraisal of Real Estate, 12th Edition*, and is reproduced as
 12 follows:



24 Because the Petitioner cannot exploit a tenant unless it is able to charge an excessive
 25 or above market rent, and because there is no means testing under the ordinance, there is no
 26 legitimate reason to require the Petitioner to charge rents less than \$625 per month at this
 27 particular point in time. Rather, the ordinance is being applied arbitrarily and impermissibly
 28 in order to provide each and every one of the 184 tenants with a significant monthly subsidy,

1 whether they need it or not, all at the Petitioner's expense.

2 64. The Petitioner does not contend that preventing excessive, above market,
3 exploitive or monopolistic rents are not valid public purposes and therefore does not
4 challenge any of those public purposes on their face. Rather, the Petitioner contends that at
5 this particular point in time a rent of \$625 per month is neither excessive, above market,
6 monopolistic or exploitive. Because the ordinance provides a procedure for preventing the
7 ordinance from being applied in a manner that violates a constitutional right, the Petitioner
8 contends that the Respondents may not rely on any of the above public purposes, if doing so
9 is used as a pretext to apply the ordinance in a manner that results in a purely private taking.

10 65. A challenge to an ordinance that is being applied in a manner that results in
11 the denial of the constitutional right to a fair return on investment cannot be dismissed by the
12 courts on the ground that the Petitioner is in reality challenging the wisdom of rent control,
13 or whether it is "working." That is because such a challenge seeks only to vindicate the
14 constitutional right to a fair return using the procedural mechanism contained in the ordinance,
15 not to have rent control abolished. Thus, even if a parkowner establishes that its
16 constitutional right to a fair return has been violated, the remedy is to simply increase the rent
17 to cure the constitutional violation, with the ordinance continuing to regulate rents from that
18 new increased rent level.

19 66. Similarly, a challenge to an ordinance that is being applied in a manner that
20 results in the denial of the constitutional right to be free from a purely private taking cannot
21 be dismissed by the courts on the ground that the Petitioner is in reality challenging the
22 wisdom of rent control, or whether it is "working." Again, such a challenge seeks only to
23 vindicate the constitutional right to be from a private taking, using the procedural framework
24 provided under the ordinance, not to have rent control abolished. Thus, even if a parkowner
25 establishes that the rents have been set at a level that results in a purely private taking, the
26 remedy is to increase the rent to cure the constitutional violation, with the ordinance
27 continuing to regulate rents from that increased rent level.

28 67. As alleged in detail above, the uncontradicted evidence submitted at the

1 hearing demonstrated that the Petitioner did not have monopoly power in the relevant market
2 and that the proposed rent of \$625 per month was neither excessive nor the result of
3 monopoly power. The uncontradicted evidence demonstrated also that a non regulated rent
4 is not necessarily excessive and that it is not possible for a parkowner to exercise any
5 perceived superior bargaining position or exploit a tenant unless and until the requested or
6 actual rent charged is above market.

7 68. As also alleged in detail above, the uncontradicted evidence submitted at the
8 hearing demonstrated that it is possible to purchase and install a brand new two or three
9 bedroom mobilehome at the park with the rent at \$625 for less than the rent for a two or three
10 bedroom apartment in the relevant market. The uncontradicted evidence demonstrated further
11 that ‘used’ mobilehomes could still be sold for amounts above their actual depreciated value
12 even if the rents are raised to \$625 per month.

13 69. There was no evidence that increasing the rent to \$625 per month would cause
14 the value of the tenants’ mobilehomes to fall below their original acquisition cost and/or their
15 actual depreciated value. To the contrary, the evidence demonstrated that raising the rents
16 to \$625 per month would not prevent the tenants from selling their mobilehomes for amounts
17 in excess of their original acquisition costs and/or their actual depreciated value.

18 70. There is no evidence that the Petitioner has attempted to “exploit” any alleged
19 shortage of mobilehome parks in the relevant market. To the contrary, the Petitioner is
20 seeking to charge a below market rent and has actually increased the supply of mobilehome
21 spaces in the relevant market by developing at least eight parks in Napa County, Sonoma
22 County and Marin County, including Rancho de Calistoga (184 spaces), Rancho de Napa
23 (234 spaces), Pueblo Serena (127 spaces) and Rincoln Mobilehome Park (230 spaces).

24 71. The City of Calistoga’s hearing officer issued a decision on or about July 14,
25 2011. Based on his review of the evidence and several of the factors in the ordinance, the
26 hearing officer concluded that a rent increase of \$60 per space per month was reasonable
27 under the circumstances, thereby increasing the average rent at the park to approximately
28 \$537.59 per space per month.

1 72. Based on the hearing officer's decision, the average rent at the park remains
2 at least \$112.41 per month below the non excessive, non monopolistic and non exploitive rate
3 of \$625 per month. As a result, the rents mandated by the hearing officer result not only in
4 a private taking, but a loss of income of at least \$248,201.28 per year and a loss in the market
5 value of the Petitioner's property of at least \$3,971,220.48. ($\$650 - \$537.59 = \112.41×184
6 $\text{spaces} \times 12 \text{ months} = \$248,201.28 \div 0.0625 \text{ capitalization rate} = \$3,971,220.48$).

7 73. The City of Calistoga's hearing officer did not issue findings of fact or
8 conclusions of law with respect to many of the issues raised by the Petitioner. The City of
9 Calistoga's hearing officer specifically declined to rule on most of the constitutional issues
10 raised by the Petitioner, including whether the ordinance was being applied in accordance
11 with the Petitioner's rights under the takings, due process and equal protection clauses of the
12 federal constitution. In fact, at footnote 6 of his decision the hearing officer found that "it
13 would be premature to consider an 'as applied' constitutional challenge to the ordinance as
14 such an inquiry would be best left to the courts."

15 74. Because the proposed rent of \$625 is neither excessive, monopolistic nor
16 exploitive, and because there is no means testing under the ordinance, mandating rents below
17 \$625 serves no legitimate public purpose. To the contrary, mandating rents below \$625 under
18 such circumstances results in a purely private taking of the Petitioner's property, in violation
19 of the federal constitution. In fact, as alleged above, the City of Calistoga City Council has
20 refused to even consider a public subsidy program to achieve the same results as its rent
21 control ordinance, while the administrator of the rent control ordinance has stated that such
22 a public subsidy program would be unreasonable.

23 75. In addition to the fact that the proposed rent of \$625 per month is neither
24 excessive, monopolistic nor exploitive, there is currently no shortage of mobilehomes for sale
25 in the relevant market. To the contrary, a recent survey of mobilehome sales in Napa County
26 demonstrates that during the past 24 months, title to 239 of the mobilehomes at the 3,339
27 spaces surveyed have changed hands, or 7.16%, while during that same period 17 of the 184
28 mobilehomes at Rancho de Calistoga have changed hands, or 9.24%.

1 76. Moreover, as alleged above, mobilehomes are depreciating assets, meaning
 2 that the value of the mobilehomes should decrease over time. However, the average price of
 3 the 239 mobilehomes sold in the surveyed parks in Napa County during the past two years
 4 has actually increased by **33.58%**, from \$44,166.64 to \$58,998.13, while during that same
 5 period the average price of the 17 mobilehomes sold at Rancho de Calistoga increased by
 6 **156.73%**, from \$24,161.06 to \$62,029.41, providing further evidence that the current rents
 7 are significantly below market.

8 77. Because there is no legitimate reason for mandating rents of less than \$625 per
 9 month at this particular point in time, the Petitioner must be allowed to increase the rents to
 10 the non excessive, non monopolistic and non exploitive rate of \$625 per month.

11 FIRST CAUSE OF ACTION
 12 (Administrative Mandate)

13 78. The Petitioner realleges paragraphs 1 through 77 of this Petition as if set forth
 14 fully herein.

15 79. The United States Constitution is the supreme law of the land. Public Utilities
 16 Commission of California v. United States, 355 U.S. 534, 544-545 (1958). Under the
 17 Supremacy Clause, no law may be enacted or applied in a manner that is inconsistent with
 18 the United States Constitution. As a result, the Respondents may not rely on “the police
 19 power” to deprive the Petitioner of its constitutional rights.

20 80. The Fifth Amendment to the United States Constitution enables the
 21 government to take private property, subject to two conditions. First, the taking must be for
 22 a “pubic purpose.” Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 245 (1984). [“A
 23 purely private taking could not withstand the scrutiny of the public use requirement.”]
 24 Second, if the taking is for a public purpose, it must be accompanied by the payment of just
 25 compensation. First English Evangelical Lutheran Church of Glendale v. County of Los
 26 Angeles, 482 U.S. 304, 314 (1987). [“[T]he compensation remedy is required by the
 27 Constitution”].

28 81. More than 200 years ago, the Supreme Court established the principle that the

1 Fifth Amendment cannot be used to justify “a law that takes property from A and gives it to
2 B.” Calder v. Bull, 3 Dall. 386, 388 (1798). Only seven years ago, the Supreme Court
3 confirmed that the government may not achieve that same result under the pretext of a public
4 taking. Kelo v. City of New London, 545 U.S. 469, 477-478 (2005): See also 99 Cents Only
5 Stores v. Lancaster Redevelopment Agency, 237 F. Supp. 2d 1123, 1130 at n. 2 (CD Cal.
6 2001) [A finding of “blight” 17 years ago is not sufficient under the public purpose clause to
7 sustain a finding of “blight” today]. Rent control violates the public use component of the
8 takings clause if it is applied in a manner that does not promote any legitimate public purpose,
9 but results only a transfer of the landlord’s property to the tenant.

10 82. Rent control also violates the due process, takings and/or equal protection
11 clauses of the United States Constitution if it “arbitrary, discriminatory or demonstrably
12 irrelevant to the policy the Legislature is free to adopt.” Nebbia v. People of State of New
13 York, 291 U.S. 502, 539 (1934).

14 83. Because the Petitioner cannot exploit a tenant unless it is able to charge an
15 above market rent, and because there is no means testing under the Calistoga ordinance, there
16 is no legitimate reason to require the Petitioner to charge rents of less than \$625 per month
17 at this particular point in time. Rather, the Calistoga ordinance is being applied arbitrarily
18 and impermissibly in order to provide each and every one of the 184 tenants with a monthly
19 subsidy, whether they need it or not, all at the Petitioner’s expense.

20 84. As a result of the below market rents mandated by the City of Calistoga’s
21 hearing officer, the Petitioner is losing at least \$248,201.28 per year in rental income and has
22 suffered a decrease in the value of its property of at least \$3,971,220.48. Because mandating
23 rents of less than \$625 per month at this particular point in time is not rationally related to any
24 legitimate government purpose, the Calistoga ordinance has been applied in a manner that
25 violates the takings, due process and/or equal protection clauses of the United States
26 Constitution.

27 85. The Petitioner does ***not*** seek to set rents at whatever level it chooses, as if rent
28 control did not exist. Nor does the Petitioner seek to charge above market rents, or challenge

1 the “wisdom” of enacting or continuing with rent controls in Calistoga. The Petitioner seeks
2 only the permission to charge the non excessive and non monopolistic rate of \$625 per month,
3 which the uncontradicted evidence demonstrated will not enable the Petitioner to exploit any
4 tenant.

5 86. The Petitioner does not seek to have the ordinance declared unconstitutional
6 on the ground that its mere enactment enabled the tenants to obtain a “premium” when they
7 sell their mobilehomes. To the contrary, the Petitioner has no objection to the tenants
8 profiting from the location of their mobilehomes on its property, provided the rent is set at
9 the non excessive and non monopolistic rate of \$625 per month.

10 87. The Respondents’ actions are invalid under the takings, due process and equal
11 protection clauses of the United States Constitution in that:

12 a. Respondents committed a prejudicial abuse of discretion in that, among other
13 things:

14 i. Respondents failed and/or refused to proceed in the manner required
15 by law, in that:

16 (1) The Respondents regulated rents more than was reasonably
17 necessary to prevent excessive or unreasonable rents and failed
18 and/or refused to allow the Petitioner to increase the rent to the
19 non excessive, non coercive and non monopolistic rate of
20 \$625 per month, resulting in a private taking of the
21 Petitioner’s property;

22 (2) The Respondents did not apply the ordinance in accordance
23 with the Petitioner’s constitutional rights under the federal due
24 process clause, including its right to be free from arbitrary and
25 discriminatory rent levels and/or rents that are demonstrably
26 irrelevant to the stated purpose of the ordinance;

27 (3) The Respondents did not apply the ordinance in accordance
28 with the Petitioner’s constitutional rights under the federal

1 takings clause, as the Respondents have over regulated rents,
2 regulated rents for a non public or purely private purpose
3 and/or required the Petitioner to provide subsidies to the
4 tenants that the government itself would not or could not
5 provide;

6 (4) The primary justification for regulating mobilehome rents, as
7 opposed to other forms of housing, is that a parkowner can
8 allegedly lure a tenant to move into a park by offering non
9 excessive and non monopolistic rents, increasing the rent to an
10 excessive or monopolistic rate after the tenant moves in. To
11 the extent the Respondents rely on reasons other than this so-
12 called captive market to justify rents below \$625 per month,
13 such as the age or income of the tenants, the Petitioner alleges
14 that such reasons result in a violation of its rights under the
15 federal due process and/or equal protection clause, including
16 the right to be free from arbitrary and discriminatory rent
17 levels;

18 (5) The Respondents' hearing officer found that the federal
19 constitutional issues raised by the Petitioner could not be
20 properly raised in an administrative hearing, even though the
21 Respondents have an obligation to apply the ordinance in a
22 manner that is consistent with the Petitioner's federal
23 constitutional rights;

24 ii. The Respondents' findings are not supported by substantial evidence,
25 in that among other things:

26 (1) The Respondents' hearing officer found that there would be no
27 need for rent control if rents were set at the market rate, when
28 in fact the uncontradicted evidence demonstrated that setting

1 rents at the rate of \$625 per month would not preclude the City
2 of Calistoga from accomplishing any legitimate goal of rent
3 control, because, among other things, the \$625 rate is neither
4 excessive, monopolistic nor exploitive;

5 (2) The Respondents' hearing officer found that there would be no
6 need for rent control if rents were set at the market rate and
7 that parkowners could exploit a shortage of housing
8 opportunities in mobilehome parks, when in fact the
9 uncontradicted evidence demonstrated that the requested rent
10 of \$625 was neither excessive nor exploitative and that there
11 was no shortage of housing opportunities in mobilehome parks
12 in the relevant market;

13 (3) The Respondents' hearing officer found that the rents could be
14 reduced below \$625 per month based on the closure of the old
15 home that was built on the property prior to the development
16 of the mobilehome park, even though the uncontradicted
17 evidence demonstrated that the market rent for spaces at the
18 park was \$650 per month even after considering the closure of
19 the old home.

20 88. The Petitioner has exhausted the available administrative remedies required
21 to be pursued by it, in that the Petitioner appeared before the City of Calistoga's hearing
22 officer, but has been unable to obtain a finding allowing it to charge non excessive and non
23 monopolistic rents of \$625 per month.

24 89. The Petitioner does not have a plain, speedy and adequate remedy in the
25 ordinary course of law to enable it to charge non excessive and non monopolistic rents of
26 \$625 per month.

27 90. The actions of the Respondents, including Respondents' failure to consider
28 the evidence, to provide the Petitioner with non monopolistic and non excessive rents and/or

1 to apply the ordinance in a manner consistent with the Petitioner's constitutional rights, were
2 arbitrary, capricious and contrary to law, and were in violation of rights guaranteed to the
3 Petitioner under the state and federal constitutions and/or 42 U.S.C. Section 1983.

4 91. The Petitioner has incurred and will incur attorneys fees preparing and
5 presenting this Petition to the court. The Petitioner has in fact paid attorneys fees with respect
6 to the underlying proceedings and with respect to this Petition, for which it is entitled to be
7 reimbursed under 42 U.S.C. Section 1988.

8 92. Based on the actions of the Respondents, the Petitioner has lost hundreds of
9 thousands of dollars of rental income from the rent controlled spaces at the park.
10 Accordingly, the Petitioner seeks damages from Respondent City of Calistoga based on the
11 violation of its rights, including its rights under the state and federal constitutions, 42 U.S.C.
12 Section 1983.

13 93. ENGLAND RESERVATION: The Petitioner has specifically reserved the
14 right to seek a determination in federal court of any and all federal questions and/or claims
15 arising out of or in any way related to its rent increase application and/or the City of
16 Calistoga's mobilehome rent control ordinance, including any claims under 42 U.S.C. Section
17 1983 and/or the due process, takings and equal protection clauses of the United States
18 Constitution. See England v. Louisiana State Bd. of Medical Examiners, (1964) 375 U.S. 411
19 (1964); See also Los Altos El Granada Investors v. City of Capitola, 583 F. 3d 674 (9th Cir.
20 2009).

21 94. ORDER GRANTING MOTION TO DISMISS WITH LEAVE TO AMEND:
22 On or about June 27, 2012, the Honorable Jeffrey White granted the Respondents' motion to
23 dismiss the original petition in these proceedings, with leave to amend. The District Court
24 found that the Petitioner's facial claims were time barred and that any regulatory taking claim
25 was not ripe, because it has not exhausted its state court remedies. The District Court found
26 also that any request for a "stay" of these proceedings was premature, because the Petitioner
27 has not stated a valid private takings claim in its original petition.

28 95. The Petitioner does not challenge the District Court's findings at this time with

1 respect to the facial challenges or the regulatory taking claim. Accordingly, in the event the
2 Respondents file a second motion to dismiss, there is no need to brief any issue related to any
3 facial or regulatory taking claim, as it is the Petitioner's intention to attempt to plead a valid
4 private takings claim and then request that this matter be stayed until such time as its state
5 court remedies have been exhausted. However, the Petitioner specifically reserves any other
6 rights it may have, including any right it may have to seek reconsideration and/or appellate
7 review of any of the District Court's rulings.

8 WHEREFORE, the Petitioner prays for relief as follows:

- 9 1.) That the ordinance be declared unconstitutional as applied, as set forth above;
- 10 2.) That the Respondents' decision be modified to allow rents to be increased to
11 \$625 per space per month at each of the rent controlled spaces at the park;
- 12 3.) For reasonable attorneys fees to be paid by Respondent City of Calistoga,
13 including attorneys fees pursuant to 42 U.S.C. Section 1988;
- 14 4.) For damages according to proof;
- 15 5.) For costs of this suit;
- 16 6.) For such other and further relief as the Court deems proper and just.

17 Dated: July 25, 2012

Respectfully submitted,

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19
20 s/ Anthony C. Rodriguez
Anthony C. Rodriguez
Attorney for the Petitioner
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