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Electronically FILED by
Superior Court of California,
County of Los Angeles
7/01/2026 3:41 PM
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Counsel for Defendants (Additional Counsel on Signature Page)

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

The People of The State of California,

Plaintiff,

v.

Hamid Enayati aka Andrew Enayati aka Andy
Enayati, individually and as Trustee of the
ENA Property Trust dated April 15, 2013;
Nicole Massarat aka Nicole Enayati; Nina
Enayati; Jaleh Forouhar aka Jaleh Enayati,
individually and as Trustee of the Marital Trust
under the ENA1 Property Trust dated April 15,
2013; Nina Property Management, Inc.; The
1028, LLC; 1111 11th Street, LLC; 1837
Glendon Avenue, LLC; ENA1, LLC; ENA2,
LLC; ENA3, LLC; ENA4, LLC; ENA5, LLC;
ENA6, LLC; ENA7, LLC; ENA8, LLC;
ENA9, LLC; ENA10, LLC; AND DOES 1
THROUGH 10,

Defendants.

Case No.: 26SMCV00397

**REPLY IN SUPPORT OF DEFENDANTS'
DEMURRER TO PLAINTIFF'S COMPLAINT**

Date: July 9, 2026

Time: 8:30 a.m.

Dept.: 205; Hon. Edward B. Moreton, Jr.

Complaint Filed: January 22, 2026

INTRODUCTION

The City's opposition fails to engage Mr. Enayati's opening brief. Instead, the City mischaracterizes the law, avoids the key issues, and ignores its complaint. The City abandons its as-pled theory of harm to now focus on some unidentified long-term renters and, again, vacillates on its description of the leases at issue—now labeling them “temporary stays.” The City's most-recent description is false: Mr. Enayati offered tenants one-year leases that provided the tenant a unilateral option to terminate with 30 days' notice, consistent with California law. The City's opposition confirms the inevitable conclusion compelled by the opening brief: the Court should sustain the demurrer.

First, the City cannot avoid Costa Hawkins Act preemption by pushing a contrived construction inconsistent with the Second District's rule that that act preempts any local law that restrains, directly or indirectly, a landlord's rights to freely set the rent for his or her rental properties. Nor can the City avoid such preemption by characterizing § 6.22's impact on Mr. Enayati's protected rights as “incidental and contingent”—a characterization belied by the complaint's own recognition that Mr. Enayati may “dramatically increase” his profit by renting on a medium-term, pre-furnished basis.

Second, after cutting through the City's mistaken contention that § 6.22 is not, in reality, a zoning ordinance, the City is left with just one fallback—Mr. Enayati cannot show that his medium-term rentals qualify as a lawful preexisting use because he lacked a “removal permit.” But this overlooks that the City required such permits **only if** a landlord rented the property to a non-natural person. The City agrees that Enayati rented his properties solely to natural persons, rendering this argument irrelevant.

Third, the City props false distinctions to distract from the key issue underlying its failure to comply with the Coastal Act's permitting preconditions. Those requirements apply to any local law that extends to the coastal zone, including § 6.22. Neither the text of the Coastal Act nor the City's authorities limit such application to situations in which a government opts to enforce that law.

Fourth, the City ignores the City Charter's (“Charter”) (<https://ecode360.com/42743535#42743536>) limits on the City Council's authority. The Charter operates as the City's constitution. Its plain language delegates exclusive authority to the Rent Board over rent-related matters, which includes the provision of furniture. The City may not justify the City Council's encroachment upon such exclusive authority by selectively ignoring the Charter's use of the phrase “independent of” and proffering self-serving, non-textual characterizations of the Charter's reference to “without interference from the City Council, City Manager, and City Attorney.” Further, given the Charter's nature as the City's constitution, the City may not rewrite the City Council's authority by way of an ordinance like § 6.22. Such an interpretation would violate the Charter.

1 *Fifth*, while the City’s abandonment of its harm and fraud theories alone warrants granting the
2 demurrer, that midstream pivot generates new problems. The City cannot, on the one hand, allege that
3 the challenged conduct “substantially injured” consumers looking for long-term rentals and, on the other
4 hand, maintain that § 6.22 only works an “incidental and contingent” impact on Mr. Enayati’s right to
5 freely set rent. These showings are logically incompatible. The City must choose to allege a claim
6 preempted by the Costa Hawkins Act or fail to plead sufficient facts. Either way, the City’s claims fail.¹

7 **ARGUMENT**

8 **I. The City’s Claims Fail as a Matter of Law**

9 **a. The City Fails to Overcome Mr. Enayati’s Costa Hawkins Preemption Showing**

10 None of the City’s proffered justifications save § 6.22 from Costa Hawkins preemption.

11 *First*, the City’s attempt to construe the Costa Hawkins Act as preempting only local laws that
12 regulate rent after a unit becomes vacant (“strict rent control”), *Oppo. at 10*, ignores that: “The Costa-
13 Hawkins Act was meant to rein in rent control by allowing landlords to raise the rents on exempt units
14 to their fair market value.” *California Apartment Ass’n. v. City of Pasadena*, 117 Cal. App. 5th 187, 236
15 (2025), *reh’g denied* (Jan. 8, 2026), *review denied* (Apr. 1, 2026). Courts in this district repeatedly hold
16 that this protection extends to any local law that in any way conditions or restrains a landlord’s right to
17 freely determine the rent for a vacant unit, not just literal caps on rent. For example, in *Palmer/Sixth*
18 *Street Properties, L.P. v. City of Los Angeles*, 175 Cal. App. 4th 1396 (2009)—ignored by the City in its
19 opposition—Los Angeles forced a developer to choose an evil: (1) comply with Los Angeles’s formal
20 rent caps or (2) pay an “in lieu” fee to enable Los Angeles to build affordable housing elsewhere. *Id. at*
21 1400. If the developer opted to pay the “in lieu” fee—which, by the City’s definition here would **not**
22 qualify as a “strict rent control” measure, *Oppo. at 10*—then the Los Angeles regulation would,
23 technically, permit the developer to set rental rates for the new unit consistent with the Costa-Hawkins
24 Act. Despite this technical alternative, the panel struck down both Los Angeles’s formal rent cap **and**
25 in-lieu payment alternative: “Because the affordable housing requirements conflict with and are inimical
26 to the Costa–Hawkins Act, it necessarily follows that the in lieu fee provision, which exists only within
27 the context of the preempted affordable housing requirements, is also preempted by the Act.” *Id. at 1411*.

28 ¹ The City’s suggestion that the opening brief “likely violate[s]” Cal. R. Ct. 2.108, *Oppo. at 1 fn. 1*, is belied by the rule: “[t]he spacing and numbering of lines on a page must be as follows: . . . (1) [t]he lines on each page must be one and one-half spaced **or** double-spaced and numbered consecutively.” (emphasis added). Mr. Enayati was entitled to use one and one-half spacing and may do so again here.

1 The panel's *City of Pasadena* decision teaches the same. It rejected a non-"strict rent control"
2 regulation requiring a landlord to pay relocation assistance for tenants displaced by rent increases. 117
3 Cal. App. 5th at 236. The panel's reasoning **explicitly acknowledges** that the Costa Hawkins Act's
4 protection extends beyond direct restrictions on a vacant unit's rent, providing that "[e]ven if imposing
5 an obligation to pay relocation assistance is **not a direct restriction** on a landlord's ability to set the rent,
6 the money a landlord must pay in relocation assistance reduces the amount of income the landlord
7 receives from the rental property." *Id.* (emphasis added).² The City's own authority, *Bullard v. San*
8 *Francisco Residential Rent Stabilization Bd.*, 106 Cal. App. 4th 488 (2003), reinforces this point. There,
9 the panel considered a local regulation that permitted landlords to reclaim a property for the landlord's
10 principal residence provided the landlord offered the displaced tenant another unit at a regulated rent. *Id.*
11 at 489-90. Again, while the regulation said **nothing** about setting rent following a vacancy, the panel
12 held that the act preempted the regulation, explaining that to find otherwise "would substantially weaken
13 the statewide vacancy decontrol contemplated by the Costa Hawkins Act." *Id.* at 491.

13 The City's remaining contentions about the Costa Hawkins Act's purpose—that it "implicitly
14 preserves 'locally mandated limits in rent increases during tenancies'" (so-called "moderate rent
15 control") and "expressly preserves 'just cause for eviction' protections that bar eviction absent specific
16 proven causes," *Oppo*. at 11, are irrelevant. Mr. Enayati does not dispute that the act contemplates limits
17 on annual rent increases for occupied properties constructed before 1995. Civ. Code § 1954.52(a). Nor
18 does he contest that the act expressly carves out local authority to regulate the basis for evictions. Civ.
19 Code § 1954.52(c), § 1954.53(e). These provisions do not address the issue here: the impact that § 6.22
20 has on Mr. Enayati's right to set rents by contracting for medium-term tenancies and pre-furnished units.

21 **Second**, the City concedes that § 6.22 restrains Mr. Enayati's right to freely set rent but attempts
22 to excuse the impact of that restraint as "incidental and contingent." *Oppo*. at 10. But by the City's own
23 allegations, there is nothing "incidental," "contingent," or otherwise de minimis about § 6.22's impact
24 on Mr. Enayati's rights to freely set the rent on his property. These restrictions materially impair and
25 penalize that right. Indeed, the City alleges Mr. Enayati may "**dramaticall[ly] increase his profits** by
26 converting long-term rent-controlled rentals . . . into [medium-term] rentals for transient visitors who
27 turn over frequently." *Compl.*, ¶ 32 (emphasis added). Other allegations show the same. *Id.*, ¶ 76(B)(vi)
28 (Medium-term and pre-furnished rentals permit Mr. Enayati to earn "higher rents than [he] could obtain
by renting to long-term tenants in compliance with the RLRO."); *Id.*, ¶ 31 (shorter tenancies yield higher

² Thus, the City cannot argue that a landlord may seek tenancies that "maxim[ize]" profit by charging market rent. *Oppo*. at 11.

1 rents because the “longer a tenant household has resided in a rent-controlled unit, the lower the rent”);
2 *Id.*, ¶ 37 (renting on a medium-term basis confers “much higher rents”). The City cannot dispute that it
3 **intended** to leverage § 6.22’s prohibitions to subsidize rents for certain segments of renters (long-term)
4 and push business to hotels—all at the expense of landlords and medium-term renters. Thus, there is no
5 question that § 6.22 was intended to, and does in fact, violate the Costa Hawkins Act. *California*
6 *Apartment Ass’n.*, 117 Cal. App. 5th at 236 (“The relocation assistance requirement counteracts that
7 purpose by protecting tenants, at landlords’ expense, from the free market.”).

8 **Third**, the City’s assertion that § 6.22 “does not burden the right to set initial rents after vacancy,”
9 *Oppo.* at 10, is false. By prohibiting an entire rental tenancy (medium-term) and type (pre-furnished),
10 the City has not only “burdened the right to set initial rents after vacancy” but eliminated any such right
11 with respect to such categories or types. When Costa Hawkins was enacted, landlords and tenants were
12 free to engage in such categories and types of rentals. The provision of furniture has long-qualified as
13 rental consideration, *Sterling v. Santa Monica Rent Control Board*, 168 Cal. App. 3d 176, 185-86 (1985),
14 which the City does not dispute. Thus, the act’s general protection of the broader right to set an initial
15 rent necessarily encompasses the more specific right to do so for particular categories of tenancies and
16 types. *See, e.g., Howard Jarvis Taxpayers Ass’n. v. Padilla*, 62 Cal. 4th 486, 501 n.7 (2016).

17 **Fourth**, the City’s invocation of the purported implications of finding preemption here, *Oppo.* at
18 11, ignores the doctrinal issue in this case—that § 6.22 works an admitted harm to Mr. Enayati’s rights
19 to freely set the rent. Contrived hypotheticals do not provide a basis to avoid applying precedent.

20 **Fifth**, the City’s argument that § 6.22 is “entirely consistent with” the Costa Hawkins Act
21 because § 6.22 “prevent[s] turnovers so frequent that [the Charter] . . . is rendered inoperative,” *Oppo.*
22 at 11, gets it backward. Local laws are valid only if they conform to state law. Cal. Const., Art. XI, § 7.
23 The Court need not gap-fill to salvage such inoperability. *Domar Elec., Inc. v. City of Los Angeles*, 9
24 Cal. 4th 161, 171-172 (1994) (“Where the words of a charter are clear, we may not add to or alter them
25 to accomplish a purpose that does not appear on the face of the charter or from its legislative history”).³

26 ³ None of the City’s remaining authorities salvage § 6.22’s preemption. *See Oppo.* at 8-11. In *Cobb*, 98
27 Cal. App. 4th at 351, the panel considered only whether the plaintiff qualified as a tenant before the
28 Costa Hawkins Act took effect, such that the defendant landlord could raise rent to market level. *Id.* The
Costa Hawkins Act’s scope and legislative history was not at issue. In *San Francisco Apartment Ass’n*,
74 Cal. App. 5th 290 (2022), the panel simply found that because the Costa Hawkins Act preserves a
local government’s right to regulate “grounds for eviction,” *see* Civ. Code § 1954.53(e), San Francisco
could prohibit bad faith pretextual rent increases aimed at forcing tenants out. *Id.* Here, the City does not
assert that § 6.22 falls within the that savings clause for regulating evictions. In *Pieri*, 137 Cal. App. 4th
892-93, the panel only interpreted the Ellis Act (Gov’t Code § 7060.1), which is not at issue here.

1 **b. The City Cannot Overcome Mr. Enayati’s Lawful Preexisting Use Showing**

2 None of the City’s arguments refute Mr. Enayati’s showing that the challenged medium-term,
3 pre-furnished rentals are protected as a lawful preexisting use.

4 **First**, the City cannot avoid the conclusion that § 6.22 is a zoning restriction. Oppo. at 6-8. As
5 shown by *Ewing v. City of Carmel-By-Sea*, 234 Cal. App. 3d 1579, 1584-97 (1991), California law is
6 clear that regulations imposing minimum length tenancies qualify as zoning restrictions because such
7 regulations control the use of property. The City ignores this settled law. None of the City’s proffered
8 authorities distinguish between zoning and non-zoning laws. Instead, these authorities confirm the
9 conclusion established by Mr. Enayati: where a zoning restriction subsequently prohibits a previously
10 lawful use, the person who engaged in such use may continue the now-prohibited practice.⁴

11 **Second**, the City asserts that the legal nonconforming rights doctrine does not apply to changes
12 in business regulations. Oppo. at 6-7. But that assertion lacks supporting authority. Because that doctrine
13 stems from due process rights, the City cannot avoid it by recharacterizing § 6.22.

14 **Third**, the City’s assertion that zoning ordinances do not proscribe *what* a business may do but
15 only *where* they may do so, Oppo. at 7, is belied by the City’s own code. The code not only states where
16 commercial uses are permitted but also details which uses are allowed. *See* § 9.10.040 (table identifying
17 the types of store permitted downtown and under what circumstances). There is no question that the
18 City’s zoning ordinances address *what* activity a business may engage in, thus eliminating any question
19 that § 6.22—by prohibiting medium-term, pre-furnished rentals—qualifies as a zoning restriction.

20 The City’s reliance on *Danekas*, 95 Cal. App. 4th at 651, does not alter that conclusion. Oppo. at
21 8. *Danekas* addresses the contract impairment doctrine, which does not limit the well-established rule
22 that the “rights of users of property as those rights existed at the time of the adoption of a zoning
23 ordinance are well recognized and have always been protected.” *Edmonds v. Los Angeles County*, 40
24 Cal. 2d 642, 651 (1953). And even under an impairment analysis, the City cannot simultaneously argue
25 that § 6.22 completely prohibits medium-term leases and that the impairment is not substantial. That
26 tension explains why § 6.22.100(a)(1) expressly exempts leases already in place on § 6.22’s effective
27 date. *Danekas* is also distinguishable on its facts: the law there had “no direct effect on the rent received
28

⁴ *Hansen Brothers Enterprises, Inc. v. Board of Supervisors*, 12 Cal.4th 533, 552 (1996); *McClaskin v. City of Monterey*, 163 Cal. App.2d 339, 346-47 (1958); *Bauer v. San Diego*, 75 Cal. App. 4th 1281, 1292 (1999); *Livingston Rock & Gravel Co. v. Los Angeles County*, 43 Cal.2d 121, 127 (1954); *Jones v. City of Los Angeles*, 211 Cal. 304, 312 (1930).

1 by the landlord,” 95 Cal. App. 4th at 651, whereas the City admits that § 6.22 materially diminishes the
2 rent a landlord obtains because long-term rentals pay materially less, Compl., ¶¶ 31, 32, 37, 76(b)(vi).

3 **Fourth**, the City’s argument that Mr. Enayati needed a “removal permit” to show a lawful
4 preexisting use, Oppo. at 9-10, lacks merit. The Charter requires no such permit. Because the City’s
5 Charter operates as its constitution, *Creighton v. City of Santa Monica*, 160 Cal. App. 3d 1011, 1017
6 (1984), the City may impose that condition only by amendment, not by regulation.⁵ Even on its face,
7 Regulation 2008 requires removal permits **only if** the landlord rents to someone **other than** a “human
8 being.” See Regulation 2008 (subsection (c): “a landlord wishing to enter into an agreement to rent a
9 controlled rental unit **other than** to an individual, or individuals, for permanent, long-term habitation
10 must first obtain a removal permit under Charter § 1803(t);” subsection (a) defines “person” as “an
11 individual human being”). The City’s opposition selectively omits this operative “other than to an
12 individual, or individuals” qualifier. That omission is fatal as the complaint acknowledges that Mr.
13 Enayati rented to human beings, Compl., ¶¶ 1, 3, 33, 37—thereby relieving Mr. Enayati of any need to
14 obtain a permit. The City also concedes that Mr. Enayati rented these properties on medium-term leases
15 for years before § 6.22’s enactment. The City does not contest its long knowledge of that practice, yet
16 never before claimed a permit was required. The City’s position also lacks merit because, if the Charter’s
17 reference to “rental housing market” concerns only rentals for greater than a year, Oppo. at 9, then the
18 City must concede that Mr. Enayati’s properties are not subject to the Charter’s rent control provisions.⁶

19 **Fifth**, the City’s contention that Mr. Enayati cannot show his preexisting challenged rental is
20 undermined by the complaint’s citation to the Airbnb profiles. Compl., ¶¶ 1, 5, 33.

21 **c. The City Cannot Excuse Its Failure to the Coastal Act’s Permitting Preconditions**

22 The City’s diversions, Oppo. at 11-12, do not salvage its failure to comply with the Coastal Act.

23 **First**, the City tries to excuse this failure on grounds that the City is not enforcing § 6.22 within
24 the coastal zone. Oppo. at 12. This is a red herring. Reframing the question to focus on **enforcement**
25

26 ⁵ Regulation 2008’s legal effect is undermined by subsection (d)’s recognition that “[t]his regulation is
27 for public convenience only.” That subsection’s subsequent statement that it “is declarative of existing
28 law” is unsupported. Also, if, in fact, a removal permit were required “well before 2018” to engage in
medium-term rentals, Oppo. at 9, then § 6.22’s medium-term restriction would be pointless. This
implication again undermines any argument about the existence and timing of any permit requirement.

⁶ The City cannot dispute that Mr. Enayati commenced the subject rental practice years before Regulation
2008’s adoption in 2018. Before § 6.22, there was no prohibition on medium-term rentals and any rental
longer than 14 days qualified as a “long-term.” This prohibition was added to the municipal code in
September 2020. SMMC, § 6.22.060 (added by Ord. No. 2650CCS § 1, adopted Sept. 8, 2020).

1 does not alter the City’s threshold failure to comply with the Coastal Act. The authorities in the opening
2 brief—which the City ignores—confirm that such failure renders § 6.22 ineffective. Op. Br. at 11-12.
3 Neither those cases nor the act’s text conditions compliance with the act’s requirements on a decision to
4 “enforce” a restriction. Nor do they recognize an exception to the permitting requirement that is
5 predicated on how or where a government opts for such enforcement. The act categorically extends to
6 any “development,” including a geographically unrestricted law like § 6.22.

7 The City’s own authority confirms this. In *Sierra Club v. California Coastal Com.*, 35 Cal. 4th
8 839 (2005), the California Supreme Court considered whether the Coastal Act authorizes the Coastal
9 Commission to determine a local government’s compliance with the act for a proposed project both
10 within and outside of the coastal zone. *Id.* at 843. The Court identified that “[i]n issuing a permit in this
11 case, the Commission found that as conditioned, the part of the proposed project *within the coastal zone*
12 *is in conformity with the Coastal Act’s policies and requirements.*” *Id.* (emphasis added). Here, in
13 contrast, the City agrees that as written, § 6.22 prohibits medium-term, pre-furnished rentals within the
14 coastal zone and in enacting § 6.22, the City neither sought nor obtained a permit for that “portion” of §
15 6.22 extending to properties within the coastal zone. That the Court affirmed the Commission’s exercise
16 of authority *based on its finding that the in-zone portion of the project complied with the act*
17 underscores the City’s need to ensure that the in-zone portion of § 6.22 is “in conformity with the Coastal
18 Act’s policies and requirements.” *Sierra Club*, 35 Cal. 4th at 843.⁷ In any event, the City’s enforcement-
19 based distinction ignores the reality that, given its unqualified geographic scope, § 6.22 will intimidate
20 and effectively deter anyone from engaging in the prohibited practices within the coastal zone.

21 **Second**, the City’s assertion that Mr. Enayati’s “Coastal Act challenge is effectively a sweeping
22 facial challenge,” Oppo. at 12 n.10, misunderstands the point. As written, § 6.22 extends to the coastal
23 zone. Yet the City failed to comply with the act’s preconditions. That failure renders § 6.22 inoperative.
24 Nothing about this depends on any facial or as-applied argument.

25 **d. The City Cannot Dispute that the City Council Acted Without Authority**

26 The City proffers two responses to Mr. Enayati’s showing that the City Council lacked the
27 authority to enact, and thus apply, § 6.22’s pre-furnished rental prohibition. Neither is persuasive. **First**,
28 the City’s assertion that the Rent Board does not have “exclusive jurisdiction” over rent-related matters,
including providing “furniture,” Oppo. at 12, lacks supporting authority or reasoning. That deficit is
unsurprising. Charter § 1802 provides that the Rent Board “shall exercise its powers and duties under

⁷ Public Res. Code § 30604(d)’s text compels the same conclusion.

1 this Article *independent of* and without interference from the City Council, City Manager, and City
2 Attorney”—the bolded portion of which the City omits. *Oppo.* at 12. These are terms of art conferring
3 exclusive jurisdiction. *Creighton*, 160 Cal. App. 3d at 1019 (electorate intended rent control law to be
4 “exclusively administered” by a Board “independent of City Council interference or control”). The
5 Charter’s other purpose (omitted by the City)—“to ensure that the Rent Control Board possesses
adequate and independent authority to carry out its duties,” § 1800—confirms that construction.

6 **Second**, the City’s assertion that § 6.22 does not interfere with the Rent Board’s authority because
7 that section is “consistent with” the Charter’s “purpose” and “strengthens” its protections, *Oppo.* at 12,
8 is beside the point. The best indication of a law’s “purpose” is its text. *California Cannabis Coal. v. City*
9 *of Upland*, 3 Cal. 5th 924, 933 (2017), *as modified on denial of reh’g* (Nov. 1, 2017). Here, the Charter
10 confers the Rent Board with exclusive authority to regulate rent-related matters. The Charter is the City’s
11 constitution. *Creighton*, 160 Cal. App. 3d at 1017. The City cannot backdoor the City Council’s
12 encroachment on that constitutional authority through a non-textual characterization of the Charter’s
13 “purpose” or mere ordinance. That rebalancing of authority requires an amendment. Because the City
14 does not dispute that the provision of furniture qualifies as consideration for rent (nor can it, *Sterling*,
168 Cal. App. 3d at 185-86), the City Council lacks authority to prohibit pre-furnished rentals.⁸

15 **II. The Opposition Fails to Salvage the Remainder of the City’s UCL and FAL Claims**

16 **a. The City Still Fails to Identify Any Fraudulent Conduct**

17 Recognizing that its complaint forecloses its ability to assert fraud based on the intended length
18 of an Airbnb guest’s stay, the City narrows the “fraud” at issue to Mr. Enayati’s (1) purportedly deceptive
19 use of “the lease addendum provision to deliberately misrepresent that he was complying with the
20 unfurnished requirement,” (2) misrepresentations that “the lease agreement was designed to protect
21 against squatters,” and (3) “other untrue statements to fraudulently induce guests to . . . rent the units
22 despite the legal requirements of [§ 6.22].” *Oppo.* at 14. None of these statements were likely to deceive
23 members of the public—much less the Airbnb renters who, despite the City’s request for an “inference”
to the contrary, *id.* at 15, the complaint solely identifies as recipients of such statements.⁹

24 ⁸ The City fails to contest, and thus concedes, the opening brief’s showing that state law preempts its
25 failure to submit vacancy forms theory. *Op. Br.* at 12 fn. 6.

26 ⁹ The City’s cited allegations, *Oppo.* at 14-15 (citing Compl., ¶¶ 54, 62, and 76(B)(v)), show its failure
27 to allege that it viewed the leases. The Court should not “infer” an allegation this essential to the City’s
28 fraud theory. It should likewise reject the City’s bare contention that Mr. Enayati was likely to deceive
“other individuals who may have read the leases.” *Oppo.* at 14. The City neither identifies these

1 The lease portion cited in the complaint says *nothing* about compliance with the pre-furnished
2 restriction. *See* Compl., ¶ 49. A lease conditions a renter’s rights to possess a property. *See* Cal. Civ.
3 Proc. Code § 1161 (unlawful detainer occurs when tenant retains possession after failure to perform
4 under lease). Plainly, such conditions are aimed at protecting against a person unlawfully taking or
5 maintaining such possession (i.e., squatting), eliminating any question about the accuracy of Mr.
6 Enayati’s purported second statement. The City’s catch-all “other untrue statements” is summarily pled.

7 **b. The City’s New Theory of Unfair Conduct Cannot State a UCL Claim**

8 Having pivoted its UCL unfair prong theory to focus on an unspecified class of renters
9 purportedly deprived of long-term rental opportunities, Oppo. at 2, 13-14, the City adds to the defects in
10 its claim. The City cannot show any element of the FTC Act’s consumer injury test.

11 *First*, the City cannot predicate this claim on a deprivation of rental opportunities for long-term
12 renters such that it caused a “substantial injury” and simultaneously say that § 6.22’s impact on Mr.
13 Enayati’s financial and legal rights is merely “incidental and contingent.” Oppo. at 1, 10-11. It is one or
14 the other. Otherwise, the City’s theory of the case is internally incoherent. But even taking the City’s
15 newly-proffered theory of harm at face value, the City fails to: (i) explain the nature of such harm, (ii)
16 show how the challenged rentals caused the asserted deprivation, (iii) show that but for such rentals, Mr.
17 Enayati would, in fact, have rented the subject units on a long-term basis, (iv) identify any prospective
18 renter who sought to rent from Mr. Enayati on a long-term basis, (v) discuss how much rent these so-
19 called victims paid for alternative housing (if at all), or (vi) otherwise identify or show any prospective
20 renter, specific unit sought, or date of such activity. Absent such basic facts, the City cannot show a
21 substantial injury to its newly proffered class of victims. *Berryman v. Merit Prop. Mgmt., Inc.*, 152 Cal.
22 App. 4th 1544, 1555 (2007) (“[t]he determination of whether a particular business practice is unfair
23 *necessarily involves an examination of its impact on its alleged victim . . .*”) (emphasis added) (citation
24 omitted); *see also Daugherty v. Am. Honda Motor Co.*, 144 Cal. App. 4th 824, 838–39 (2006), *as*
25 *modified* (Nov. 8, 2006) (no UCL unfair prong claim under Section 5 standard where plaintiff alleged
26 “without elaboration” that defendant’s conduct was “inherently injurious to consumers”).

27 But it gets worse for the City. Having abandoned its theory that the Airbnb guests qualify as
28 victims at issue, the City is left with a measure of harm (\$18 million, Compl., ¶¶ 1, 72) that says nothing
about the unidentified renters purportedly denied the opportunity to rent long-term from Mr. Enayati.
The City’s two proffered victims—Airbnb renters (complaint) or the unidentified long-term renters

individuals nor shows how they accessed the leases. A UCL fraud claim cannot rest on a speculative,
summarily pled, hypothetical audience operating under unspecified circumstances.

1 looking (opposition)—are distinct classes engaged in different transactions. That disconnect is fatal: the
2 only alleged and quantified harm relates to a group the City concedes was not harmed (Airbnb renters),
3 while no facts support any harm to the substituted class of victims (prospective long-term renters).¹⁰

4 **Second**, the complaint shows that the challenged practices’ procompetitive benefits outweigh the
5 opposition’s purported deprivation of long-term rental opportunities. All renters signed a one-year lease
6 with a unilateral option to terminate with a 30-day notice, permitting them to stay as long-term renters
7 (and many did). Compl., ¶¶ 40, 45; RJN Ex. 11 (exemplar lease). This fact eliminates the possibility that
8 the challenged rentals deprived **any** long-term rental opportunities. Further, at least 3,000 renters want
9 medium-term, pre-furnished opportunities. Compl., ¶ 1. That makes sense because § 6.22’s clear end is
10 to protect hotels and subsidize other classes of long-term renters at the expense of landlords and medium-
11 term renters. Thus, the City must agree that, because of the challenged medium-term, pre-furnished
12 rentals, other housing options must lower prices for medium-term stays—enhancing competition.¹¹

13 **Third**, the complaint establishes that the challenged rental practices impacted only 62 properties.
14 Compl., ¶ 1. That number is de minimis compared to the thousands of units otherwise available for rent.

15 **Finally**, Business & Professions Code § 17203 authorizes only relief necessary to “restore any
16 person in interest any money . . . acquired by means of such unfair competition.” The City’s theory fails
17 to explain how rent collected from one tenant class could be awarded as “restitution” to a different class
18 of individuals who never paid anything. That disconnect cannot be reconciled because the City’s newly
19 identified victims have no relationship with Mr. Enayati, and the City does not—and cannot—show that
20 Mr. Enayati obtained any money from those individuals “by means of” the alleged misconduct.

21 CONCLUSION

22 The City’s claims fail as a matter of law. The City does not attempt to show how it can cure the
23 structural defects in its complaint. Mr. Enayati requests that the Court sustain the demurrer without leave
24 to amend. *All. for the Prot. of Auburn Cmty. Env’t. v. Cnty. of Placer*, 215 Cal. App. 4th 25, 29 (2013).

25 ¹⁰ The City cannot be a victim because it is not a consumer. Its status as a public enforcer does not excuse
26 the defect: public or private, a plaintiff must allege facts showing harm to consumers. *In re Firearm*
27 *Cases*, 126 Cal. App. 4th 959, 978–79 (2005); *Nationwide Biweekly Admin., Inc. v. Superior Ct.*, 9 Cal.
28 5th 279, 303–04 (2020) (public and private plaintiffs face same standard for showing UCL unfairness).

¹¹ The City’s reliance on “policy commitments” on housing, *Oppo*. at 14, does not change these
procompetitive benefits. The point of the UCL’s unfair prong is not to advance a government’s self-
stated policy objectives. *See Gregory v. Albertson’s, Inc.*, 104 Cal. App. 4th 845, 855 (2002).

1 DATED: July 1, 2026

Respectfully submitted,
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