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A California non-profit mutual benefit corporation
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
10

11 ACTION APARTMENT ASSOCIATION, INC., a) Case No. SC125857
California non-profit mutual benefit corporation,)
12) SECOND AMENDED COMPLAINT
Plaintiff,) FOR DECLARATORY RELIEF
13)
v.) [CCP SECTION 1060]
14)
SANTA MONICA RENT CONTROL BOARD,)
15) Verified
Defendant.)
16) Hon. Mitchell L. Beckloff
17)
18)

19 Plaintiff alleges:

20 1. At all relevant times, Plaintiff was and is a California non-profit mutual benefit
21 corporation incorporated and existing under the laws of the State of California with its principal
22 place of business in Santa Monica, California. The corporate purpose of Plaintiff is to protect
23 among other things the interests of its members who are landlords. Its members have standing to sue
24 in their own right, the interests Plaintiff seeks to protect in this action are germane to its purpose, and
25 the claim asserted and relief sought do not require the participation of any members. Thus, Plaintiff
26 has standing. *Apartment Association of Los Angeles County v. City of Los Angeles*, 136 Cal.App.4th
27 119, 129 (2006). *See also*, numerous other cases where Plaintiff and similar organizations have been
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1 granted standing, *Apartment Association of Los Angeles County, Inc. v. City of Los Angeles*, 173
2 *Cal. App. 4th 13* (2009); *Action Apartment Ass’n v. Santa Monica Rent Control Board*, 509 F.3d
3 1020 (9th Cir. 2007); *Action Apartment Ass’n v. City of Santa Monica*, 41 *Cal. 4th 1232* (2007);
4 *Action Apartment Ass’n v. Santa Monica Rent Control Board*, 94 *Cal. App. 4th 587* (2002).

5 2. At all relevant times, Defendant Santa Monica Rent Control Board (Hereafter the
6 “Board” or the “RCB”) was and is a Board created by a City Charter Amendment designed,
7 developed, created and promoted by Santa Monicans for Renters’ Rights, the controlling political
8 party in Santa Monica. Instead of functioning as an impartial administrative agency, the Board
9 functions as a tenant advocate. All apartment owners fear becoming the focus of attention of the
10 Board. Accordingly, they have joined in an association to pursue their rights.

11 3. Jurisdiction lies under Code of Civil Procedure Section 1060 for declaratory relief. A
12 controversy over an interpretation of a statute, and the duties that statute imposes, is a proper basis
13 for a declaratory relief claim. *See, e.g., Venice Town Council, Inc. v. City of Los Angeles* (1996) 47
14 *Cal.App.4th 1547* [55 *Cal.Rptr.2d 465*]; *Alameda County Land Use Assn. v. City of Hayward*
15 (1995) 38 *Cal.App.4th 1716, 1723* [45 *Cal.Rptr.2d 752*]. Statutes are inherently proper subjects of
16 declaratory relief. *Bess v. Park*, 132 *Cal. App. 2d 49, 52* (1955). Judicial economy strongly
17 supports the use of declaratory relief to avoid duplicative actions to challenge an agency's statutory
18 interpretation or alleged policies. *Venice Town Council v. City of Los Angeles*, 47 *Cal.App.4th*
19 1547, 1566 (1996); *Bess v. Park*, 132 *Cal. App. 2d 49, 52-53* (1955). Accordingly, if the facts
20 alleged show the existence of an actual controversy between plaintiff and defendant administrative
21 agency over the interpretation of a statute, City Charter, ordinance or regulation, an actual
22 controversy exists and an action for declaratory relief will lie. *Le Page v. City of Oakland*, 13 *Cal.*
23 *App. 3d 689, 693* (1970) [city charter]; *Venice Town Council v. City of Los Angeles*, 47
24 *Cal.App.4th 1547, 1565* (1996) [statute]. Any doubt should be resolved in favor of declaratory
25 relief. *Id.*

26 4. Venue is proper under Code of Civil Procedure Section 394 for an action against a
27 municipality or agency thereof.
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1 5. Plaintiff brings this action pursuant to Code of Civil Procedure Section 1021.5
2 (private attorney general statute) in its own behalf, the behalf of its individual members as well as
3 the public interest. Plaintiff seeks to enforce important property rights under the Santa Monica rent
4 control law and the State vacancy decontrol law. Other beneficially interested persons would find it
5 financially burdensome or impossible to seek vindication of the rights asserted herein. This action
6 will benefit all rental income property owners in the City of Santa Monica because it will clarify the
7 rights of property owners in a vacancy decontrol situation to bill separately for utilities including
8 water.

9 6. Since this action does not seek damages, a government claim does not need to be
10 filed. *Gottlieb v. Department of Water & Power*, 63 Cal.App.3d 202, 205-6 (1976); Government
11 Code Section 814.

12 7. In Santa Monica, tenants currently pay service providers directly for various utilities,
13 such as, gas, electric, television, internet and telephone services. In the case of the *water* in Santa
14 Monica, there are two situations. The first situation is for newer buildings. Buildings built since the
15 enactment of SMMC 7.12.150 in 1990 must be designed to accommodate individual water meters
16 for each unit, permitting each tenant to be billed for their individual consumption. They may be
17 billed directly by the Water Administration if the meter to their unit was installed and is read by the
18 City; or when there is a master meter to the building with sub-meters to each apartment, the Water
19 Administration bills the landlord based on the master meter and the landlord divides the billing
20 among the tenants based on the sub-meter readings. The second situation is for older apartment
21 buildings which are the vast majority of apartment buildings in Santa Monica. These older buildings
22 were not designed to accommodate individual metering to each unit. Water is supplied through a
23 master meter and the City Water Administration bills the landlords for the water used by the tenants.

24 8. A widely-used method for landlords to distribute the cost of water in master metered
25 buildings to the tenants is known as RUBS (ratio utility billing system). In Civil Code Section
26 1954.202(d) [part of SB-7 approved by the Governor and to become effective on January 1, 2018]
27 RUBS is defined as:
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1 Ratio utility billing system means the allocation of water and sewer
2 costs to tenants based on the square footage, occupancy, or other
physical factors of a dwelling unit.

3 9. Section 1801(f) of the Rent Control Charter Amendment (Hereafter “RCCA”) defines
4 rent as follows:

5 Rent: All periodic payments and all nonmonetary consideration
6 including but not limited to, the fair market value of goods and
7 services rendered to or for the benefit of the landlord under an
8 agreement concerning the use or occupancy of a rental unit and
premises including all payment and consideration demanded or paid
for parking, pets, furniture, subletting and security deposits for
damages and cleaning.

9 10. RCCA Section 1801(d) defines “housing services” as follows:

10 Housing services include, but are not limited to repairs, maintenance,
11 painting, providing light, hot and cold water, elevator service, window
12 shades and screens, storage, kitchen, bath and laundry facilities and
13 privileges, janitor services, refuse removal, furnishings, telephone,
parking, the right to have a specified number of occupants, and any
14 other benefit, privilege or facility connected with the use and
occupancy of any rental unit. Services to a rental unit shall include a
15 proportionate part of services provided to common facilities of the
building in which the rental unit is contained. (emphasis added)

16 Thus, under RCCA water is a housing service – not rent.

17 11. RCCA Section 1801(g) defines a “rental housing agreement” as follows:

18 An agreement, oral, written or implied, between a landlord and tenant
19 (i) for use or occupancy of a rental unit and (ii) for housing services.
(sub-sections added for clarity)

20 In other words, the terms and conditions of the rental housing agreement cover what housing
21 services the landlord has agreed to provide for the rent. If the landlord does not agree to cover
22 utilities, then they are not part of the housing services covered by the agreed rent.

23 12. In 1995 the State passed the Costa-Hawkins Rental Housing Act, Civil Code Section
24 1954.50 et seq., known as vacancy decontrol, which provides in pertinent part that “an owner of
25 residential real property may establish the initial rental rate for a dwelling or unit.” Civil Code §
26 1954.53(a).

27 13. Santa Monica Rent Control Law also defines “initial rental rate” in Section 1804(b)
28 of the Rent Control Charter Amendment:

1 As used in this subsection [Establishment of Base Rent Ceiling], the
2 term “initial rental rate” means only the amount of rent actually paid
3 by the tenant for the initial term of the tenancy.

4 14. The California Supreme Court has stated that, “The effect of this provision was to
5 permit landlords ‘to impose whatever rent they choose at the commencement of a tenancy.’” *Action*
6 *Apartment Association, Inc. v. City of Santa Monica*, 41 Cal. 4th 1232, 1237 (2007); *Cobb v. San*
7 *Francisco Residential Rent Stabilization and Arbitration Board*, 98 Cal. App. 4th 345, 351 (2002).
8 “Its [Costa Hawkins Act] overall effect is to preempt local rent control ordinances in two respects.
9 First it permits owners of certain types of property to adjust the rent on such property at will,
10 ‘[n]otwithstanding any other provision of law.’ (Civ.Code, § 1954.52, subd. (a)). Second it adopts a
11 statewide system of what is known among landlord-tenant specialists as ‘vacancy decontrol,’
12 declaring that ‘notwithstanding any other provision of law,’ all residential landlords may . . .
13 ‘establish the initial rental rate for a dwelling or unit.’” *T & A Drolapas & Sons, LP v. San*
14 *Francisco Residential Rent Stabilization and Arbitration Board*, 238 Cal. App. 4th 646, 651-652
15 (2015). In other words, upon a voluntary vacancy, the landlord can establish the initial rental rate
16 without any interference from the local rent control authorities.

17 15. The critical provision in the Costa Hawkins Act, namely “initial rental rate,” is not
18 defined in the Act. *Cobb v. San Francisco Residential Rent Stabilization and Arbitration Board*, 98
19 Cal. App. 4th 345, 351 (2002). But for the Act to have uniform application across the State, it must
20 have a uniform state construction. In an unpublished opinion binding on the Rent Control Board, the
21 Court of Appeal, Second District, Epstein, J., stated: “A state law such as Costa-Hawkins, which
22 fully occupies an area, is to apply in the same manner in all jurisdictions in the state. If local
23 government were permitted to adopt regulations defining a preemptive state law and establishing
24 presumptions of violation, chaos would result. The state law would mean something different
25 depending on the location of its application. The preemption doctrine is designed to avoid that
26 result.” Exhibit 1, Opinion in *Cabinda LLC v. Santa Monica Rent Control Board* (2000), attached
27 hereto and incorporated herein by this reference [Held: Santa Monica could not frustrate Costa
28 Hawkins Act by creating its own definition of a “voluntary vacancy” inconsistent with the undefined

1 term in the Act. The court held that the term “voluntary vacancy” did not need to be defined in the
2 Act because the meaning of the phrase was “readily understood.”].

3 16. “The Legislature is presumed to know existing law when it enacts a new statute,
4 including the existing state of the common law.” *Arthur Anderson v. Superior Court*, 67 Cal. App.
5 4th 1481, 1500-1501 (1998).

6 17. At the time that Costa Hawkins was enacted, the meaning of rent was well-
7 established. Relying on Supreme Court and Court of Appeal cases dating back to 1898, Miller and
8 Starr, *California Real Estate 4th § 34:69* (2016) state that, “Rent is the consideration paid by the
9 tenant for the use, possession, and enjoyment of the demised premises.” In *Santa Monica Rent*
10 *Control Board v. Bluvshstein*, 230 Cal. App. 3d 308, 317 (1991), when the Rent Control Board
11 argued for an unconventional meaning of rent, the Court of Appeal instructed them that rent was
12 “the consideration paid by the tenant for the use, possession, and enjoyment of the premises.”

13 18. As Miller and Starr note, rent for possession of the premises is distinguished from
14 charges a tenant must pay that arise from possession of the property, such as, gas, electric, internet,
15 telephone and water. In terms of water, the landlord provides the pipes as part of the rent; but the
16 water is supplied by the water company. Thus, under the state-wide meaning of rent embodied in
17 the Costa Hawkins Act, there is a distinction between rent and the utility service for water. Miller
18 and Starr, *California Real Estate 4th § 34:69* (2016).

19 19. The California Department of Consumer Affairs has various publications to assist
20 consumers including tenants. On their website (dca.ca.gov) the Department has a publication
21 entitled “Before You Agree To Rent.” It states the State of California position on Shared Utility
22 Meters. For water it states: “Rental units in older buildings may not have separate water meters or
23 submeters. California law does not specifically regulate how landlords bill tenants for water and
24 sewer utilities. Ask the landlord if the rental unit that you plan to rent has its own water meter or
25 submeter. If it does not, and if the landlord will bill you for water or sewer utilities, be sure that you
26 understand how the landlord will calculate the amount that you will be billed.” Exhibit 2, California
27 Department of Consumer Affairs, Before You Agree To Rent, attached hereto and incorporated
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1 herein by this reference.

2 20. Section 1954.202(h) of the Civil Code [part of SB-7 approved by the Governor and to
3 become effective January 1, 2018] defines “water service” as “any charges, whether presented for
4 payment on local water purveyor bills, tax bills, or bills from other entities [i.e., the landlord],
5 related to water treatment, distribution or usage. . . “ In other words, any charge for water whether
6 presented by the water company or by the landlord is a charge for water service – not rent. Further
7 Section 1954.204(a) provides that a landlord who intends to charge a tenant separately from rent for
8 water service shall disclose to the tenant “(a) That the tenant will be billed for water service
9 separately from the rent.” Further Section 1954.205(a)(1)(B) provides that if the water purveyor
10 charges for volumetric usage based on a tiered rate schedule, i.e., different rates for different levels
11 of usage, the landlord may “divide each tier’s volume evenly among the number of dwelling units.”
12 Finally, Section 1954.216(c) provides that “(c) Nothing in this chapter shall be construed to apply or
13 create a public policy or requirement that favors or disfavors the use of a ratio utility billing system.”
14 In other words, State law recognizes that utilities are separate from rent and permits landlords to use
15 a ratio utility billing system. Exhibit 3, SB-7, attached hereto and incorporated herein by this
16 reference.

17 21. California Association of Realtors publishes statewide forms. Form LR Revised
18 12/15 entitled Residential Lease or Month-To-Month Rental Agreement is the Association’s
19 standard form for a residential lease. It treats utilities as separate from rent and provides in
20 paragraph 9 that, “If any utilities are not separately metered, Tenant shall pay Tenant’s proportional
21 share, as reasonably determined and directed by Landlord.” Accordingly, the association of realtors
22 which represents landlords and tenants recognizes that rent is separate from utilities and the
23 association endorses ratio utility billing. Exhibit 4, California Association of Realtors, Form LR
24 Revised 12/15, attached hereto and incorporated herein by this reference.

25 22. The City of Los Angeles has a Rent Stabilization Ordinance and a Regulatory
26 Compliance and Code Bureau that enforces the rent control laws. The compliance agency permits
27 ratio utility billing stating, “As you know, state law expressly provides that the rent rate upon re-

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1 rental of a decontrolled rental unit can be adjusted to any amount. At the inception of a tenancy, a
2 landlord may include provisions in the lease or rental agreement that make the tenant responsible for
3 the costs of utilities, including the utilization of a ‘RUBS’ system.” Exhibit 5, Letter dated August
4 17, 2015 from Los Angeles Housing & Community Investment Department, Regulatory Compliance
5 & Code Bureau.

6 23. Under the Santa Monica RCCA and the Costa Hawkins Act, for a decontrolled
7 tenancy, the landlord can establish a new rental housing agreement in which the rent and housing
8 services are set forth. Accordingly, the landlord can set the initial rental rate at will and set whatever
9 housing services he plans to provide. Thus, for example, the landlord can offer the apartment with
10 or without utilities.

11 24. In October, 2015 the Santa Monica Rent Control Board issued an Information Sheet
12 that stated among other things that “It is never permissible for an owner of a master-metered
13 building to simply pass on actual utility costs to tenants.” The Rent Control Board has repeated this
14 policy many times and it is posted on its website. Exhibit 6, Information Sheet.

15 25. In an Opinion Letter dated March 18, 2015, the General Counsel of the RCB has
16 opined that in buildings designed to accommodate individual utility meters, the service charge is not
17 rent and can be separately billed to each tenant. But in the older buildings not designed to
18 accommodate individual metering to each unit, the General Counsel of the RCB has opined that the
19 service charge is rent and cannot be separately billed to each tenant under a ratio utility billings
20 system. Exhibit 7, Opinion Letter.

21 26. The RCCA authorizes the RCB to issue rules and regulations; but the Information
22 Sheet and the Opinion Letter are not rules or regulations of the RCB.

23 27. The RCCA does not authorize the General Counsel or staff to adopt rules or
24 regulations. RCCA 1803(g). Nor does the RCCA authorize opinion letters or Information Sheets
25 prepared by General Counsel or staff.

26 28. The RCB has no authority to regulate anything except rent increases. The precise
27 wording is set forth in RCCA Section 1800 in pertinent part:

1 The purpose of this Article, therefore, is to alleviate the hardship
2 caused by this serious housing shortage by establishing a Rent Control
3 Board empowered to regulate rentals in the City of Santa Monica so
4 that rents will not be increased unreasonably and so that landlords will
5 receive no more than a fair return. (Emphasis added)

6 Accordingly, the Board has no authority to regulate what housing services must be provided by the
7 landlord. Nor does it have authority to include housing services within the definition of rent except
8 as the landlord and tenant agree in their rental housing agreement.

9 29. The Opinion Letter and Information Sheet are designed to expand the control of the
10 RCB by intimidating landlords into compliance even though these informal pronouncements are
11 unauthorized and ultra vires.

12 30. Even though it has no authority to do so, when the Board learns from a tenant that the
13 landlord has a proportionate sharing agreement for utilities, it sends an “advisory letter” to the
14 landlord. Exhibit 8 is such a letter dated March 9, 2011 from the RCB to the landlord for the four-
15 unit building at 1121 15th Street. It cites lease provisions that the tenant was to pay for one-fourth of
16 the utility bills, and states unequivocally that “these provisions violate the Santa Monica Rent
17 Control Law.” It further explains, “billing separately for a proportionate share of master-metered
18 utility costs conflicts with the regulation of rents under the RCL. A tenant can only be liable for
19 separate utility payments when the unit is individually metered and the tenant is the direct customer
20 of the utility.” The Board explains how it wants the new rent to cover utilities stating, “the owner
21 may factor in the unit’s proportional share of master-metered utility costs. That proportionate cost
22 can be folded into the initial rent, but it cannot be a separate charge over and above the unit’s MAR
23 (maximum allowable rent). Nor can that proportionate cost be added to the unit’s MAR once the
24 rent is established.” In other words, the landlord is supposed to estimate the unit’s share of the
25 utility cost and then lock it into the initial rent so that all future annual general adjustments permitted
26 by the Board will be based on the locked in amount regardless of how drastically the utility charge
27 may increase.

28 31. Exhibit 8 further explains that if a landlord adopts a RUBS system, he is liable for
civil and/or administrative remedies. Section 1809(a) of the Rent Control Charter Amendment states

1 that the remedies include all payments received in excess of the maximum lawful rent, reasonable
2 attorney's fees, court costs, and treble damages.

3 32. Exhibit 8 further demonstrates how the Board enforces these provisions by sending
4 its advisory letter to all of the tenants in the building with a copy to an Information Coordinator, an
5 employee of the Board, who will explain to the tenants how to proceed against the landlord and
6 provide the forms.

7 33. Another example of a RUBS provision is set forth in a recent decision of a hearing
8 officer in a case involving a five-unit building at 907 18th Street. In a new vacancy under Costa
9 Hawkins, the lease established the initial rental rate as \$3,250 per month plus utilities at either \$100
10 per month or "1/5 of the water/sewer/trash (Master Meter for Water/Sewer)" billing, at the tenant's
11 option. The hearing officer ruled that granting the tenant the option each month of paying a fixed
12 amount or a proportion of the utility bill violated the rent control law even though the rational tenant
13 would always pay the lesser of the two amounts. Exhibit 9, Notice of Decision, attached hereto and
14 incorporated herein by this reference.

15 34. Plaintiff is informed and believes that there are over 200 units in Santa Monica with
16 RUBS provisions. Furthermore, the officers and directors of ACTION confer with its members on a
17 regular basis and believe that all of its members owning residential buildings that are master metered
18 for water support this lawsuit and ratio utility billing. None of the members whether they have
19 implemented RUBS or not wish their names and properties identified to the Rent Control Board
20 because they fear the emotional and economic impact of becoming the focus of enforcement actions
21 by the Board or at the initiative of the Board.

22 35. Individual landlords have requested, and ACTION in behalf of landlords has
23 requested, that for all new tenancies in buildings master metered for water, the Rent Control Board
24 permit rental housing agreements in which the tenants to pay a mutually agreed, proportionate share
25 of the water charges to the property. Most recently Michael Millman in his own behalf as a Santa
26 Monica landlord and as an officer and director of ACTION formally requested approval to use
27 RUBS and to date the RCB has ignored his requests. Exhibit 10 is an accurate copy of the letter of
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1 Mr. Millman to the Rent Control Board incorporated herein by this reference. The Complaint in this
2 action is another request for permission to use RUBS. The Santa Monica Rent Control Board
3 however has refused and continues to refuse to permit this proposed arrangement in any form and
4 has established a contrary policy unauthorized by the RCCA and the Costa Hawkins Act. This
5 policy of the Rent Control Board places owners of buildings master metered for water at a
6 competitive disadvantage with owners of newer buildings and owners in neighboring jurisdictions,
7 forces them to pay for the water used by the tenants and subjects them to civil and criminal penalties
8 for excessive use of water by their tenants.

9 36. An actual controversy sufficient for declaratory relief lies when the parties are in
10 fundamental disagreement over the construction of any enactment, or they dispute whether a public
11 entity has engaged in conduct or has established policies in violation of applicable law. *Alameda*
12 *County Land Use Assn. v. City of Hayward*, 38 Cal.App.4th 1716, 1723 (1995).

13 37. Plaintiff desires a judicial determination of its rights and duties and a declaration that
14 its interpretation of the Santa Monica RCCA and its regulations as well as the Costa Hawkins Act is
15 correct.

16 38. A judicial interpretation is necessary and appropriate at this time because among
17 other reasons the cost of water is a major cost of operating a rental income property and the City of
18 Santa Monica Water Resources Division has implemented substantial increases in water rates for the
19 time period from 2015 to 2020. The rates in 2016 were 5% higher than 2015 which were 9% higher
20 than 2014. For 2017-2019 the water rates are set to increase 9% per annum so that by the start of
21 2020 the water rate will have increased 41% from 2014 without considering the compounding effect
22 of increases upon increases. Moreover, the State has been in the midst of an historic drought which
23 has necessitated reducing water usage. On April 1, 2015 Governor Brown issued an executive order
24 that the State Water Resource Control Board impose restrictions to achieve a statewide reduction in
25 water usage. In response to the Governor's order, the City of Santa Monica has mandated a
26 reduction in water use from 2013 levels. Less use of water reduces the revenues of the Water
27 Resources Division inevitably leading to higher rates payable by the landlords. Moreover, the City
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1 has implemented financial penalties to be paid by landlords in master metered buildings if their
2 tenants fail to reduce their utilization sufficiently. The fines start at \$250 per offense and each day
3 that the offense continues is a separate offense. SMMC Section 7.16.070(a). A second offense
4 within twelve months carries a penalty of \$500 and a third offense within twelve months carries a
5 penalty of \$1,000. Water Shortage Response Plan, Section 8. If tenants use too much water, civil
6 penalties can escalate up to \$10,000 per offense. SMMC Section 7.16.070(g). An offense is
7 declared a public nuisance and the City Attorney is authorized to bring criminal charges. SMMC
8 Section 7.16.070(e). The combined effects of the 41% higher water rates already imposed on
9 landlords, the pressure to increase the rates more due to mandatory cutbacks, and the imposition of
10 fines on landlords for excessive tenant use of water make the Santa Monica Rent Control Board's
11 policy of prohibiting proportionate passing on of water charges in buildings master metered for
12 water extremely inconsistent with the intent and meaning of the vacancy decontrol statute.
13 Moreover, any incentive for the tenants to reduce water consumption in this time of draught is lost
14 by the interpretation of the Costa Hawkins Rental Housing Law by Defendant.

15 39. The landlord provides the water pipes but the water itself is provided by a separate
16 service company. Landlords should not be forced to include this service in its rent when the tenant
17 has agreed to pay his or her proportionate share of the water charges in a separate utility bill.

18 40. Unless and until the court renders a judgment declaring the rights and responsibilities
19 of the parties under the law, the parties will operate in a state of uncertainty and intimidation because
20 most of Plaintiff's members, especially the primarily elder landlords, unable to underwrite litigation
21 or unwilling to assume the emotional stress of litigation, will be denied their right to pass through
22 the rapidly increasing water rates to the parties who in fact use the water.

23 41. An aggrieved party is not required to exhaust administrative remedies before bringing
24 a declaratory relief action where the party can positively state what the administrative agency's
25 decision would be. *Venice Town Council, Inc. v. City of Los Angeles*, 47 Cal. App. 4th 1547, 1567
26 (1996). Although the Santa Monica Rent Control Board has conceded that the Costa Hawkins
27 Rental Housing Act preempts any inconsistent local regulation or policy, it has stated on many
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1 occasions that the owner of a building master metered for water may not pass on the costs of water
2 to the tenants. Moreover, the RCB at its meeting of February 9, 2017 passed a recommendation to
3 the City Council that it outlaw Ratio Utility Billing Systems for all rental properties in Santa
4 Monica. Accordingly, it would be a futile gesture to seek review before the Board.

5 42. Declaratory relief is permissible “before there has been any breach of the obligation
6 in respect to which such declaration is sought.” Code of Civil Procedure §1060.

7 43. Declaratory relief is favored when the challenged statute or policy imposes civil and
8 criminal penalties for its violation as here where a violation can cause the landlord damages for
9 excessive rent, attorneys’ fees and costs and treble damages plus fines and criminal punishment for
10 excessive use of water by tenants.

11 44. Declaratory relief is favored in these situations involving numerous building owners
12 because it avoids a multiplicity of actions by the Rent Control Board against each landlord for each
13 lease using the proportionate sharing methodology. *Venice Town Council, Inc. v. City of Los*
14 *Angeles*, 47 Cal. App. 4th 1547, 1567 (1996).

15 45. Declaratory relief is favored when the adverse class of persons cannot afford to sue
16 individually as is the case for small landlords.

17 46. Declaratory relief is favored in behalf of an organization when the members of an
18 advocacy organization are afraid of being disclosed to the adverse party and seek anonymity.
19 *NAACP v. Alabama*, 357 U.S. 449 (1958); *Britt v. Superior Court*, 20 Cal. 3d 844 (1978).

20 THEREFORE, Plaintiff prays for a judgment against Defendant as follows:

21 For judgment, pursuant to Code of Civil Procedure Section 1060 declaring:

- 22 (1) That utilities, including water in a master metered building, are housing services that
23 landlords can exclude in a new rental housing agreement under vacancy de-control;
24 (2) That the RCB has no authority under the RCCA to regulate or prohibit landlords from
25 entering into rental housing agreements with new tenants that provide for separate billing
26 of utilities using a ratio utility billing system (RUBS).
27 (3) For attorneys’ fees as allowed by law including without limitation those pursuant to Code
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1 of Civil Procedure Section 1021.5 for enforcement of an important right affecting the
2 public interest;

3 (4) For costs of suit herein;

4 (5) For such other and further relief as the court deems proper.
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6 Dated: March ____, 2017

LAW OFFICE OF DONALD F. WOODS, JR.

7
8 By _____
9 Donald F. Woods, Jr.
10 Attorney for Plaintiff

11
12 Verification

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14
15 I, Elaine Golden-Gealer, declare:

16 I am the president of the Plaintiff in this action.

17 I have read the foregoing Second Amended Complaint for Declaratory Relief. The facts
18 stated therein are true of my own knowledge except as to those matters stated upon information and
19 belief, and as to those matters I believe them to be true.

20 Executed this _____ day of March, 2017 at Santa Monica, California.

21 I declare under penalty of perjury that the foregoing is true and correct.
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24 _____
25 Elaine Golden-Gealer, President
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