

1 RUTAN & TUCKER, LLP
A. Patrick Muñoz (SBN 143901)
2 pmunoz@rutan.com
Douglas J. Dennington (SBN 173447)
3 ddennington@rutan.com
Jayson A. Parsons (SBN 330458)
4 jparsons@rutan.com
18575 Jamboree Road, 9th Floor
5 Irvine, CA 92612
Telephone: (714) 641-5100
6 Facsimile: (714) 546-9035

7 Attorneys for Plaintiff
ORANGE COUNTY APARTMENT HOUSE
8 ASSOCIATION, INC. dba APARTMENT ASSOCIATION
OF ORANGE COUNTY

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
11

12 ORANGE COUNTY APARTMENT HOUSE
ASSOCIATION, INC. dba APARTMENT
13 ASSOCIATION OF ORANGE COUNTY,

14 Plaintiff,

15 vs.

16 CITY OF SANTA ANA; SANTA ANA CITY
17 COUNCIL; and DOES 1-25, inclusive,

18 Defendants.
19

Case No.

Assigned for All Purposes to:
Hon. Dept.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Date Action Filed:
Trial Date: Not Set

20
21 Plaintiff ORANGE COUNTY APARTMENT HOUSE ASSOCIATION, INC. dba
22 “APARTMENT ASSOCIATION OF ORANGE COUNTY” alleges as follows:

23 **PARTIES**

24 1. Plaintiff ORANGE COUNTY APARTMENT HOUSE ASSOCIATION, INC. dba
25 “APARTMENT ASSOCIATION OF ORANGE COUNTY” (“Plaintiff” or “AAOC”) at all
26 relevant times, is and was a California mutual benefit Corporation organized and authorized to do
27 business and doing business in the State of California. Founded in 1961, AAOC is comprised of
28 approximately 2,000 rental-property owners, operators, and industry suppliers in Orange and

1 Riverside Counties. AAOC’s members collectively own and operate more than 100,000 rental
2 units in the association’s service area, including rental properties within the City of Santa Ana.
3 AAOC provides its members with professional education and training, legislative advocacy and
4 representation, resident screening services, operational assistance, networking and business
5 development opportunities, and other resources that help maximize its members’ success.

6 2. Defendant CITY OF SANTA ANA (“Defendant” or “City”) is a local government
7 entity organized under the Constitution and laws of the State and California.

8 3. Defendant SANTA ANA CITY COUNCIL (“City Council”) is the main legislative
9 and governing body of the City.

10 4. Plaintiff does not know the true names and capacities of Defendants DOES 1
11 through 25, inclusive, and therefore sues them by their fictitious names. Plaintiff alleges that
12 Defendants Does 1 through 25, inclusive, are jointly, severally and/or concurrently liable and
13 responsible for the injuries set forth herein, acting on their own or as the agents of named
14 Defendants. Plaintiff will amend this Complaint to insert the true names of the fictitiously-named
15 Defendants when the same are ascertained.

16 5. Plaintiff is informed and believes and thereon alleges that each Defendant was the
17 agent and/or employee of every other Defendant, and at all times relevant hereto was acting within
18 the course and scope of said agency and/or employment.

19 **VENUE**

20 6. Venue is proper because the regulatory actions challenged have been applied to
21 properties located in the county and judicial district in which this action is filed.

22 **FACTUAL ALLEGATIONS**

23 ***Two Ordinances Controlled Rents and Evictions in the City***

24 7. On or about October 19, 2021, Defendant City of Santa Ana adopted two
25 ordinances purporting to regulate rent increases and evictions for certain rental properties and
26 mobile homes within the City. Ordinance No. NS-3009 was known as the “Rent Stabilization
27 Ordinance,” or the “RSO.” Ordinance No. NS-3010 was known as the “Just Cause Eviction
28 Ordinance,” or the “JCEO.” At this time, the City also adopted a resolution directing staff to

1 study additional landlord-tenant regulations, as well as to consider the creation of a rent board and
2 rent registry.

3 8. Relevant here, the RSO purported to “prohibit[] . . . rent increases, except as
4 allowed” pursuant to the RSO’s limited exceptions. Under the RSO, property owners were limited
5 to increasing rents once per year by either a maximum of 3% or 80% of the change in the
6 Consumer Price Index, whichever is less. The RSO allowed for a petition process for property
7 owners if they contended that these limitations would prevent them from receiving a fair and
8 reasonable return. Under then-applicable regulations, any such petitions were to be decided by the
9 City Manager.

10 9. The JCEO, on the other hand, purported to restrict a property owner’s ability to
11 evict tenants unless the owner had “just cause.” Circumstances indicating the requisite “just
12 cause” included both at-fault reasons (*e.g.*, failure to pay, material breach of lease by tenant
13 [subject to exceptions], nuisance, waste, and other reasons), and a limited number of no-fault
14 reasons (*e.g.*, owner’s intent to occupy, withdrawal of property from rental market for two or more
15 years, substantial remodels, and other reasons).

16 10. The RSO and JCEO ordinances became effective on or about November 19, 2021.

17 ***The City Adopts Another Ordinance and Significantly Alters the Regulatory Scheme***

18 11. On or about October 4, 2022, staff returned to the City Council proposing
19 significant amendments to the RSO and JCEO. Staff recommended combining the RSO and
20 JCEO into a single, new ordinance to be known as the Rent Stabilization and Just Cause Eviction
21 Ordinance (the “Ordinance”), at issue in this action.

22 12. The Ordinance proposed significant amendments the regulatory scheme by, among
23 other things, creating a rental housing board (the “Rental Housing Board”), creating a rental
24 registry (the “Rental Registry”), and creating a capital improvement petition and tenant petition for
25 property owners and tenants, respectively. The Ordinance also amends and revises language from
26 the RSO and JCEO. As of today, and as relevant to this action, landlords who own property
27 regulated by the Ordinance are prohibited from increasing rents except once per year, and are
28 limited to increases of 3% or 80% of the Consumer Price Index, whichever is less. The City

1 determines the maximum percent increase on an annual basis, and not individual owners.

2 Property owners are also prohibited from evicting tenants without just cause.

3 13. All residential rental units in the City are required to enroll in the Rental Registry
4 and owners must pay the Registry Fee.

5 14. The Ordinance's just cause eviction regulations apply to rental units that are 15
6 years or older. Approximately 96% of the City's housing stock is older than 15 years and thus
7 potentially subject to the Ordinance's just cause eviction protections if rented.

8 15. The Ordinance's rent stabilization provisions (and thus a property owner's
9 subjection to the rulings of the Rental Housing Board) apply to rental units within the City that
10 were built on or before February 1, 1995. At least 91% of the City's housing stock was built prior
11 to February 1, 1995, and is thus potentially subject to the Ordinance's rent stabilization provisions
12 if rented.

13 16. In short, the Ordinance has the functional potential to regulate almost every
14 residential unit within the City that is offered for rent.

15 17. On or about October 4, 2022, a majority of the City Council passed and adopted the
16 Ordinance. A second reading of the Ordinance was passed and adopted by a majority of the City
17 Council on October 18, 2022, with an effective date thirty (30) days thereafter of November 18,
18 2022.

19 ***The Ordinance Establishes a Rental Housing Board***

20 18. Pursuant to the Ordinance, the Rental Housing Board "shall consist" of seven (7)
21 Board Members. Each City Councilmember appoints one Board Member that is ultimately chosen
22 through an apparent "random lottery process." Despite this purportedly "random" process, the
23 Rental Housing Board "shall" be comprised of: three (3) tenants, including one mobilehome
24 tenant, two (2) landlords, and (2) at-large Members "with no financial interest in and no ownership
25 of income-generating rental housing."

26 19. The Rental Housing Board is by design imbalanced in favor of tenants and tenant
27 interests. At any given time, at least five of the voting Board Members are inclined to either be
28 actively opposed to, or indifferent to, property owner interests, while there will only ever be at

1 most two Board Members that represent property owner interests.

2 20. The Rental Housing Board exerts significant power and control over residential
3 rents and the residential rental market in the City by its consideration of, and ruling upon, petitions
4 submitted to it by property owners and tenants.

5 21. Tenants may file with the Rental Housing Board “Tenant Petitions” to request
6 Board review of rent increases or pass-through capital expenses by owners, to petition for rent
7 *decreases*, or for Board review of “any other violation of the Ordinance.”

8 22. Property owners, on the other hand, may petition the Board via “Fair Return
9 Petitions” if an owner contends that the Ordinance’s rent stabilization provisions preclude receipt
10 of a fair and reasonable return, as well as by “Capital Improvement Petitions” whereby an owner
11 seeks to pass along certain capital improvement expenses to tenants. The Rental Housing Board is
12 also granted authority to promulgate and implement policies and procedures for the administration
13 and enforcement of the Ordinance.

14 ***The Ordinance Establishes a Rental Registry and Fee***

15 23. The Ordinance also establishes a Rental Registry within the City of Santa Ana that
16 will become effective July 1, 2023. Under the Ordinance’s provisions, all providers of rental
17 housing that are subject to the Ordinance’s rent stabilization provisions must provide property,
18 income, and tenancy information for each unit to the City. A Rental Registry fee applies for
19 enrollment in the Registry.

20 24. Specifically, property owners must turn over the following information to the City
21 via a registration form (“Registration Form”): (1) address of each unit; (2) number of bedrooms
22 and bathrooms; (3) name, address, and contact information of [i] owner, [ii] authorized
23 representatives, and [iii] property managers; (4) date of assumption of ownership by owner; (5)
24 current rent; (6) date and amount of last rent increase; and (7) move-in date of current tenants.
25 The Rental Housing Board and/or the program’s administrator may require additional information
26 to be collected and recorded.

27 25. Property owners must re-register their units with the City each year by submitting a
28 Registration Form.

1 26. If change in ownership of any rental unit occurs, the property owner must notify the
2 City of the transfer and the new owner must submit a Registration Form to the City.

3 27. If a vacancy occurs, the owner must submit a Registration Form to the City once
4 the unit is re-rented.

5 28. Each time an owner submits a Registration Form, including the required annual
6 filings for each rental unit within the City, the owner must pay a fee to the City (the “Registry
7 Fee”). Failure to pay the Registry Fee to the City in a timely manner “shall be deemed a debt to
8 the City,” inclusive of any late charges, penalties, and other City assessments. Property owners
9 may pass-through up to fifty percent (50%) of the Registry Fee to tenants who do not qualify as
10 low-income, to be paid by the tenant in twelve equal monthly installments.

11 29. Beginning October 1, 2023, the City will begin commencing “enforcement” actions
12 against property owners who do not register a unit with the Rental Registry and pay the Registry
13 Fee. If a property owner fails to enroll in the Rental Registry, he or she is prohibited from (1)
14 advertising any unit for rent; (2) demanding or accepting rent for a unit; (3) evicting any tenant
15 from a unit; or (4) increasing rents.

16 **FIRST CLAIM FOR RELIEF**

17 **Due Process – Fourteenth Amendment of the U.S. Constitution;**

18 **42 U.S.C. § 1983**

19 30. Plaintiff incorporates herein by reference each and every allegation contained in
20 paragraphs 1–29 of this Complaint as though fully set forth herein.

21 31. The Due Process Clause of the Fourteenth Amendment to the United States
22 Constitution provides in part: “[N]or shall any State deprive any person of life, liberty, or
23 property, without due process of law.”

24 32. As the United States Supreme Court has repeatedly recognized, procedural due
25 process “demands impartiality on the part of those who function in judicial or quasi-judicial
26 capacities.” (*Schweiker v. McClure* (1982) 456 U.S. 188, 195.) Put another way, a “fair trial in a
27 fair tribunal is a basic requirement of due process.” (*In re Murchison* (1955) 349 U.S. 133, 136.)

28 33. The Rental Housing Board is a quasi-judicial body and Board Members act and

1 rule in quasi-judicial capacities. (See, e.g., *Ocean Park Associates v. Santa Monica Rent Control*
2 *Bd.* (2004) 114 Cal.App.4th 1050, 1061 [rent control board held to act in quasi-judicial manner].)

3 34. The composition of the Rental Housing Board is imbalanced in favor of tenants by
4 design. By stacking the deck against landlords and in favor of tenants and tenant interests, the
5 Rental Housing Board will not be a forum for fair adjudication of the petitions presented to it.
6 Furthermore, because the Ordinance grants the Board considerable power to shape policies and
7 regulations moving forward, any such future regulations will be tainted by this imbalanced and
8 unfair process.

9 35. While courts may presume that hearing officers are unbiased, “[t]his presumption
10 can be rebutted by showing a conflict of interest or some other reason for disqualification.”
11 (*Withrow v. Larkin* (1975) 421 U.S. 35, 46.) Disqualifying circumstances include those where the
12 hearing officer “has a pecuniary interest in the outcome” of rulings by their respective board. (*Id.*
13 at p. 47 & fns. 16, 17; see also, e.g., *Gibson v. Berryhill* (1973) 411 U.S. 564.)

14 36. As alleged herein, the Rental Housing Board’s imbalanced composition will infect
15 the fairness of its rulings, and the three tenant Board Members will have a pecuniary interest in the
16 outcome of the Board’s decisionmaking process. This is so because, as alleged herein, the Rental
17 Housing Board rules on petitions by both landlords and tenants. These petitions include Fair
18 Return Petitions and Capital Improvement Petitions by landlords. Tenant Petitions, on the other
19 hand, may be submitted by tenants to seek decreases in rent, challenge fair return increases and
20 capital improvement pass-through costs, or for any other violation of the Ordinance by property
21 owners. Therefore, the Rental Housing Board has direct control over whether property owners
22 with units subject to the Ordinance’s rent control provisions may increase rents commensurate
23 with a fair return on investment, or whether property owners may pass-through certain capital
24 improvement expenses, or whether tenants are granted decreases in rent. Given that at least 91%
25 of the City’s residential housing stock is potentially subject to the rulings of the Rental Housing
26 Board if rented, the Board will have inordinate power and control over the rate of rent inflation
27 throughout the City. Therefore, tenant Board Members will have an interest in retarding rent
28 increases throughout the City, as such tenant Board Members will benefit from slowing rent

1 inflation as much as possible.

2 37. Furthermore, the mere fact that landlords are granted only two seats at the table,
3 while tenants are granted three seats, and an additional two Board Members are likely to be at the
4 very least indifferent to, if not actively opposed to, property owner interests, establishes a
5 probability of unfairness that runs afoul of due process principles. “Not only is a biased
6 decisionmaker constitutionally unacceptable but ‘our system of law has always endeavored to
7 prevent even the probability of unfairness.’” (*Withrow, supra*, 421 U.S. at p. 46, quoting *In re*
8 *Murchison, supra*, 349 U.S. at p. 136.)

9 38. Acting under color of state law, Defendant has caused, and will continue to cause,
10 the violation of the City’s property owners’ procedural due process rights under the Fourteenth
11 Amendment, including property owner members of Plaintiff.

12 39. In the absence of declaratory and injunctive relief, property owners will continue to
13 be irreparably harmed and to be subjected to this deprivation of rights guaranteed to them by the
14 United States Constitution.

15 40. Plaintiff found it necessary to engage the services of private counsel to vindicate
16 their members’ rights under the law. Plaintiff is therefore entitled to an award of attorney’s fees
17 and litigation expenses as allowed by law.

18 **SECOND CLAIM FOR RELIEF**

19 **Prohibition on Property Qualifications for Holding Office – Article I, Section 22 of the**
20 **California Constitution**

21 41. Plaintiff incorporates herein by reference each and every allegation contained in
22 paragraphs 1–40 of this Complaint as though fully set forth herein.

23 42. Article I, Section 22 of the California Constitution provides that “[t]he right to vote
24 or hold office may not be conditioned by a property qualification.”

25 43. By the express terms of the Ordinance, the ownership of a property interest is a
26 precondition to holding *any* of the seven Rental Housing Board Member positions.

27 44. For instance, to qualify for one of the three “tenant” seats on the Rental Housing
28 Board, a Board Member must in fact possess a leasehold estate in residential real property.

1 Leasehold interests are property interests.

2 45. Likewise, holding any of the two “landlord” seats on the Rental Housing Board is
3 conditioned on the qualification of a Board Member holding fee title, or represents a principal who
4 retains fee title, to real property.

5 46. To be eligible to be an “at-large Member,” the Board Member must have “no
6 financial interest in and no ownership of income-generating rental housing.”

7 47. Each of the Ordinance’s Rental Housing Board Member classes is thus predicated
8 on certain property qualifications (both positive and negative), and all are in violation of Article I,
9 Section 22 of the California Constitution.

10 48. Plaintiff has a clear and present right to have Defendant refrain from enforcing the
11 Ordinance because it creates an illegal and unconstitutional Rental Housing Board to implement
12 and oversee the Ordinance’s rent control procedures.

13 49. In the absence of declaratory and injunctive relief, property owners will continue to
14 be irreparably harmed and to be subjected to this deprivation of rights guaranteed to them by the
15 California Constitution.

16 **THIRD CLAIM FOR RELIEF**

17 **Due Process – Fourteenth Amendment of the U.S. Constitution;**

18 **42 U.S.C. § 1983**

19 50. Plaintiff incorporates herein by reference each and every allegation contained in
20 paragraphs 1–49 of this Complaint as though fully set forth herein.

21 51. Price controls, including rent controls, are constitutional only if they are not
22 arbitrary, discriminatory, or demonstrably irrelevant to their stated purposes. (*Birkenfeld v. City of*
23 *Berkeley* (1976) 17 Cal.3d 129, 165 [in bank].)

24 52. Rent controls specifically are legitimate exercises of a municipality’s police power
25 if, and only if, they are reasonably calculated to eliminate excessive rents while simultaneously
26 providing landlords with a just and reasonable return on their property.

27 53. As alleged herein, the Ordinance’s rent control provisions serve to cap annual rent
28 increases at a maximum of 3% or 80% of the Consumer Price Index, whichever is less. The

1 annual maximum percent increase is determined by the City and not by individual landlords.

2 54. The face of the Ordinance makes it apparent that the effect of the Ordinance’s rent
3 control provisions will necessarily be to lower rents more than reasonably required for the
4 Ordinance’s legitimate purposes, if any exist, and are thus constitutionally confiscatory.

5 55. In years with low inflation, property owners will be limited to a maximum increase
6 of 80% of the CPI rate. In years with high inflation, property owners will be limited to a
7 maximum increase of 3% in rents. For example, in years where inflation is 1%, property owners
8 can increase rents by a maximum of 0.8%. In years where inflation is 10%, property owners can
9 increase rents by a maximum of 3%. Therefore, the Ordinance’s rent control scheme is most
10 pernicious in years where the need to raise rents is the highest for property owners (*i.e.*,
11 inflationary periods). But even if inflation is low, property owners will *never* be able to increase
12 rents commensurate with inflation. The delta between inflation of the dollar versus inflation of
13 rents in the City will thus grow to unconstitutional proportions and deprive owners of a fair return
14 on investment. Because the Ordinance restricts rent increases for regulated properties in such a
15 manner, it is invalid on its face as it is impossible for the City to avoid confiscatory results.

16 56. Furthermore, the Ordinance’s Rental Housing Board and related Fair Return
17 Petition procedures do not save the Ordinance from its confiscatory nature. Given the sheer
18 volume of potential petitions that will and must be considered by the Rental Housing Board, any
19 such process will be burdensome, marked by serious delay, and unwieldy. In other words, the
20 Rental Housing Board and Fair Return Petition process is incapable of providing adjustments to
21 maximum rents for aggrieved property owners without substantially greater incidence and degree
22 of delay than is otherwise necessary.

23 57. Additionally, as alleged herein, the Rental Housing Board will not be a fair forum
24 for adjudication of the petitions presented to it. Therefore, property owner petitioners who
25 manage to complete the petition process despite its significant and substantial potential for delay
26 will nevertheless be precluded from meaningful upward rental adjustments on account of the
27 imbalanced nature of the Rental Housing Board in favor of tenants and tenant interests.

28

1 **FOURTH CLAIM FOR RELIEF**

2 **Unlawful Search – Fourth Amendment of the U.S. Constitution;**

3 **42 U.S.C. § 1983**

4 58. Plaintiff incorporates herein by reference each and every allegation contained in
5 paragraphs 1–57 of this Complaint as though fully set forth herein.

6 59. By forcing property owners to enroll in the Rental Registry and supply the
7 information demanded of them, the City will engage in unreasonable and unlawful searches in
8 contravention of the Fourth Amendment to the United States Constitution.

9 60. The provision of residential rental housing is not a closely regulated business for
10 purposes of the Fourth Amendment’s restriction on unreasonable searches. (*Patel v. City of Los*
11 *Angeles* (2015) 576 U.S. 409.)

12 61. The City of Santa Ana has no substantial government interest in the collection of
13 the information it demands of property owners. The City’s purported interests in establishing the
14 Rental Registry are limited to furthering its constitutionally defunct Ordinance, as alleged
15 hereinabove.

16 62. The City’s unreasonable searches are not necessary to further the City’s regulatory
17 scheme. The City purports to need the Rental Registry to facilitate operation of the Ordinance’s
18 rent control provisions. However, the Ordinance already provides for tenant-led challenges to rent
19 increases beyond those allowed by way of the Ordinance’s Tenant Petition provisions and related
20 Rental Housing Board procedures. Thus, the Ordinance already places the authority and onus
21 upon tenants to proactively address allegedly unlawful rent increases, as opposed to a reactive,
22 unconstitutional, and unreasonable search scheme in violation of constitutional principles.

23 63. Finally, because the Ordinance requires submission of a novel Registration Form
24 for each rental unit in the City at least once a year, if not otherwise upon transfer of fee title to
25 another, and also upon the vacancy and re-letting of each and every unit within the City, the
26 Ordinance does not provide sufficient certainty and regularity subject to Fourth Amendment
27 requirements. Indeed, the Fourth Amendment requires that any such searches must be carefully
28 limited in time, place, and—most importantly—scope. By foisting a crushingly burdensome,

1 recursive, and onerous reporting scheme upon property owners throughout the City, and in
2 derogation of the Fourth Amendment, the City has robbed the Ordinance and its challenged
3 reporting requirements of the requisite certainty and regularity to satisfy Fourth Amendment
4 principles.

5 64. In the absence of declaratory and injunctive relief, property owners will continue to
6 be irreparably harmed and to be subjected to this deprivation of rights guaranteed to them by the
7 United States Constitution.

8 65. Plaintiff found it necessary to engage the services of private counsel to vindicate
9 their members' rights under the law. Plaintiff is therefore entitled to an award of attorney's fees
10 and litigation expenses as allowed by law.

11 **FIFTH CLAIM FOR RELIEF**

12 **Declaratory Relief**

13 **Code of Civil Procedure § 1060**

14 66. Plaintiff incorporates herein by reference each and every allegation contained in the
15 preceding paragraphs of this Complaint as though fully set forth herein.

16 67. An actual controversy has arisen and now exists between Plaintiff and its members,
17 on the one hand, and Defendants, on the other, concerning the legal effect of the City's Ordinance.
18 Plaintiff contends, for the aforesaid reasons, that the Ordinance is illegal and violates the Fourth
19 and Fourteenth Amendments to the United States Constitution. Plaintiff is informed and believes,
20 and thereon alleges, that Defendants deny that the Ordinance violates the rights and guarantees
21 secured by the Fourth and Fourteenth Amendments to the United States Constitution.

22 68. Plaintiff desires a judicial determination of Plaintiff's and Defendants' respective
23 rights and duties concerning the validity of the Ordinance.

24 69. A declaration is necessary and appropriate at this time in order that Plaintiff and
25 Defendants may ascertain their rights and duties with respect to the validity and enforceability of
26 the Ordinance. In particular, bringing this suit for declaratory relief will enable the Court to
27 ascertain the rights and duties of all parties without necessitating multiple lawsuits.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for an order and judgment against Defendants, and each of them, as follows as to all causes of action:

- 1. A declaration that the Defendant City of Santa Ana’s Rent Stabilization and Just Cause Ordinance is facially unconstitutional in its entirety under the Fourth and Fourteenth Amendments to the United States Constitution;
- 2. In the alternative, a declaration that each of the challenged portions and provisions of the Ordinance are facially unconstitutional under the Fourth and Fourteenth Amendments, respectively, to the United States Constitution;
- 3. A preliminary injunction and permanent injunction enjoining Defendant from implementing or enforcing the Ordinance, or, in the alternative, of implementing or enforcing each of its challenged provisions;
- 4. An award of fees, costs, expenses, and disbursements, including attorneys’ fees and costs to which Plaintiff is entitled pursuant to 42 U.S.C. § 1988; and
- 5. Such other and further relief as the Court may deem just and proper.

Dated: February 14, 2023

RUTAN & TUCKER, LLP
A. PATRICK MUÑOZ
DOUGLAS J. DENNINGTON

By: 
A. Patrick Muñoz
Attorneys for Plaintiff
ORANGE COUNTY APARTMENT
HOUSE ASSOCIATION, INC. dba
APARTMENT ASSOCIATION OF
ORANGE COUNTY