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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Debora N. Barrientos, et al.,
Plaintiffs,

v.

1801-1825 Morton, LLC,
Defendant.

Docket No. CV 06-6437-ABC(FMOx)

Plaintiffs' Reply Brief to Defendant's Opposition

Judge Audrey B. Collins
Date: August 20, 2007
Time: 10:00 a.m.
Courtroom 680

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

FEDERAL STATUTES

STATE STATUTES

I. INTRODUCTION

Both the City of Los Angeles and Congress have enacted protections that enable the federally assisted tenants at Morton Gardens to keep their homes so long as they comply with their leases. Defendant argues that LARSO's good cause protections have been preempted by federal law, and that the special protection established by Congress for enhanced voucher holders provides no shield against its proposed evictions. Because Defendant's federal preemption claim would represent an extraordinary expansion of federal power into an area of traditional state and local regulation without Congress' expression of requisite clarity, this Court should reject Defendant's claim that LARSO's eviction protections are unavailable to Section 8 tenants. For the 16 enhanced voucher tenants protected by Congress' specific right to remain, this Court should follow the weight of authority in rejecting Defendant's attempted evisceration of the statute. Since no legally significant factual disputes remain, summary judgment for Plaintiffs is appropriate.

II. ARGUMENT

A. DEFENDANT HAS NOT DEMONSTRATED THAT FEDERAL HAS IMPLIEDLY PREEMPTED LARSO.

Defendant's challenge to the tenants' invocation of eviction protections under LARSO rests upon the sole premise that federal law, in the form of 42 U.S.C. §1437f(o)(7)(C) and its implementing regulation, 24 C.F.R. §982.310(d)(1)(iv), preempts the grounds for eviction established under the local

police power for almost all tenants in Los Angeles. Essentially, Defendant's claim is that federal law requires that owners be allowed to terminate voucher tenancies for "other good cause" that includes "business or economic reasons," and that this "right" cannot be impeded by state or local legislation for the public welfare.[1] Since there is no clear conflict between federal law and LARSO, Defendant's claim finds no support in federal preemption jurisprudence, nor in cases specifically involving HUD housing assistance.

Contrary to Defendant's assertion (Opposition, pp. 8-10), in order to rely on local law, it is not Plaintiffs' burden to show federal intent to preserve local law ("consent to local regulation of voucher tenancies"). Rather, the burden remains on those claiming preemption to convincingly demonstrate Congressional intent to do so. *Williamson v. Gen'l Dynamics*, 208 F.3d 1144, 1149-1150, 1152 (9th Cir. 2000). While it is true that Congress and HUD have mentioned several instances where local regulation is specifically permissible notwithstanding potentially conflicting federal mandates, these choices establish no cognizable rule of law.[2]

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[1] The Ninth Circuit already rejected a similar claim made by the prior owner of the property that federal law somehow preempted LARSO's provisions establishing the base rents for the property when it exited the federal Section 236 program back in 1998. *Topa Equities v. City of Los Angeles*, 342 F.3d 1065 (9th Cir. 2003).

[2] Defendants' reliance on *Russello v. United States*, 464 U.S. 16 (1983) and *Franklin National Bank v. New York*, 347 U.S. 373 (1954), misses the mark, as *Russello* concerns statutory interpretation, not federal preemption, and *Franklin*

It is well-established that any preemption analysis must begin with the presumption against finding federal conflict preemption in areas traditionally subject to state and local regulation, so that the traditional police power of state and local governments remains intact absent demonstration of a conflict with a "clear and manifest" federal purpose.[3] The requisite conflict exists if dual compliance is impossible or the local law stands as an obstacle to or frustrates the full purposes and objectives of the federal law.[4] Since Defendant does not claim that dual compliance is impossible, it must rely on an asserted frustration of federal purpose. This is a distinctive burden, requiring "hard evidence" of "significant frustration."[5] In a system of dual regulation, as presented here, the preferred approach is reconciliation of any perceived conflicts.[6] Since landlord-tenant law is

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National Bank actually reinforces the general rule that absent clear conflict, state and local law applies. *Id.* at 378 n.7.

[3] *Williamson v. Gen'l Dynamics*, 208 F.3d 1144, 1149-1150 (9th Cir. 2000) (citing cases); *compare Bank of America v. City and County of San Francisco*, 309 F.3d 551, 557-8 (9th Cir. 2002) (no presumption where area like banking has been traditionally regulated by federal government).

[4] *Topa Equities*, 342 F.3d at 1071, citing *Williamson v. Gen'l Dynamics*, 208 F.3d 1144, 1149 (9th Cir. 2000).

[5] *Kargman v. Sullivan*, 552 F.2d 2, 12-13 (1st Cir. 1977).

[6] *Kargman v. Sullivan*, 552 F.2d 2, 11 (1st Cir. 1977). As it was to the Ninth Circuit in *Topa Equities*, 342 F.3d at 1072, *Kargman* is especially instructive -- even where both owners and HUD sought a ruling that local rent controls of HUD-insured and subsidized properties were preempted because they jeopardized the federal government's financial interests, the court required "hard evidence" and rejected the claim until HUD later adopted an express preemption regulation.

traditionally the province of the state and local governments,[7] except in a few cases,[8] federal law has generally been found to preempt state and local law only where the federal rules establish stronger tenant protections.

Here, Defendant fails to demonstrate the clear conflict required. Defendant first relies on 42 U.S.C. §1437f(o)(7)(C), the statute establishing the good cause eviction protection for tenants.[9] This statute requires housing assistance contracts to contain a provision requiring owners to offer leases which limits owners' rights to terminate during the lease term to specified grounds, including serious or repeated lease violations, violations of federal, state or local law, or "other good cause." Standing alone, nothing in the federal statute conflicts with LARSO,

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[7] *Kargman v. Sullivan*, 552 F.2d 2, 6 and 13 (1st Cir. 1977).

[8] Defendant seeks support from *Ayers v. Philadelphia Hous. Auth.*, 908 F.2d 1184 (3d Cir. 1990), where the court held that, in a federally assisted homeownership program, the termination procedures established by federal regulations preempted state foreclosure procedures. *Ayers* involved detailed federal rules specifically addressing expeditious termination of the homebuyers' interests under the federal program, which would have been substantially impeded by the state law. Moreover, the federal rules explicitly required HUD to approve any deviations required under state law. *Ayers'* conclusion about the primacy of federal interests is therefore inapplicable here.

[9] Defendant also suggests that LARSO frustrates federal purposes to increase the supply of affordable housing (Opposition at 7), but such alleged barriers to vaguely expressed general purposes have never sufficed to displace local authority over landlord–tenant law, or any similar area of dual regulation. In fact, the specific purpose of the Section 8 program at issue here is actually "aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing." 42 U.S.C. §1437f(a). Defendant's threatened evictions will actually impair both objectives because the supply of affordable housing will be decreased, 22 low-income families will lose a decent economically mixed place to live.

which defines permissible "good cause" grounds for eviction. Certainly, there is nothing demonstrating significant frustration of a "clear and manifest" federal purpose that is required to displace state or local law.

Defendant then resorts to HUD's implementing regulation, 24 C.F.R. §982.310(d)(1)(iv), which states that "other good cause" may include a number of examples, including "business or economic reasons." Such a general statement of possible grounds is insufficient to displace local authority. As stated in Plaintiffs' opening brief (pp. 15-18), federal law does not *require* termination of tenancies for "other good cause," including business or economic reasons, but simply clarifies that such grounds are not federally proscribed in the establishment of minimum tenant protections. Local law regulating the permissible grounds for eviction and federal law recognizing "other good cause" can be harmonized simply by interpreting the federal term in light of the grounds specified by LARSO. There is no federal right to terminate voucher tenancies for business or economic reasons where such grounds are not recognized as legitimate under local law,[10] and therefore no conflict exists.

[10] Defendant seeks support for such a right from three Federal Register excerpts, but these add little support for the preemption claim. Opposition at 4-5. Only the third excerpt (60 Fed. Reg. 34674) is both accurate and applicable to the voucher program. While it describes the content of the tenancy termination rule as a reasonable balance within the context of existing law, it offers no guidance on the central issue of whether state and local law may alter the parties' rights. *See*

In fact, the statutory and regulatory framework of the voucher program is replete with expressions of federal intent that federal and state/local law co-exist in a way that preserves the same state and local protections for voucher tenants as for unassisted tenants.[11]

In the face of Plaintiff's reliance on the regulatory requirement that leases be consistent with state and local law, Defendant's citation to a HUD tenancy

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Williamson, supra, 208 F.3d at 1153-54 (9th Cir. 2000) (refusing to find federal preemption based on assertions of mixed purposes and "upsetting the balance" similar to Defendant's claims here).

[11] 42 U.S.C. §1437f(o)(7)(E) (any termination of a voucher tenancy shall be preceded by the provision of written notice specifying the grounds for that action, and any relief shall be consistent with applicable State and local law); 42 U.S.C. §1437f(o)(7)(B)(ii) (Section 8 leases must contain terms and conditions consistent with State and local law and apply generally to unassisted tenants in the property), *accord* 24 C.F.R. § 982.308(b), (c); 24 C.F.R. § 982.509 (amount of rent may be subject to State or local rent control limits); S. Rep. 104-195 at *31, 1995 WL 768616 (Leg. Hist) (upon repeal of federal good cause protection at end of lease term, protections will be continued under State and local tenant laws); *accord* S. Rep. 97-105 at *36, 1997 WL 282462 (Leg. Hist.) (termination of Section 8 Voucher tenancies should be governed by the same local laws applicable to unassisted tenancies, making the program operate like the unassisted market as much as possible, while providing decent affordable housing for eligible families).

One such provision, 24 C.F.R. § 982.509 (amount of rent may be subject to State or local rent control limits), actually would be nullified by Defendant's preemption theory. Under this authority, HACLA limits voucher rent increases to those permitted by LARSO. That action would be directly thwarted by an owner's termination of a voucher tenancy for so-called business or economic reasons because after eviction, the owner could re-let the premises at market rent. As recognized by the California Supreme Court, evictions unrelated to locally defined good causes "could be used to nullify the operation of rent regulations," *Fisher v. City of Berkeley,* 37 Cal.3d 644, 693 (1984), as well as to nullify § 982.509, which expressly approves application of local rent controls for vouchers.

addendum (Opposition at 11-12), not in evidence, adds no weight to the preemption analysis. First, the regulation requiring consistency has the force and effect of law,[12] certainly superior to a HUD form contract. Second, the addendum derives from the eviction regulation and simply repeats its terms. While it supercedes other conflicting contract provisions in order to implement the tenants' federal program protections (generally enforced through the state courts), it does not displace additional state or local law eviction protections.

Finally, not only is there no definitive evidence of a federal purpose to allow owners to terminate voucher tenancies for reasons prohibited by local law, but the federal government has expressly found to the contrary. HUD itself has recognized that its voucher regulations, including §982.310 (d)(1)(iv), have no preemptive effect. When revising that rule in 1999, HUD stated:

> ...this rule will not have federalism implications concerning the division of local, State, and Federal responsibilities. No programmatic or policy change under this rule will affect the relationship between the Federal government and State and local governments. 64 Fed. Reg. 26638 (May 14, 1999).

In these circumstances, Defendant has failed to carry its burden of demonstrating that LARSO's protections frustrate the full effectiveness of federal

[12] *E.g., Wright v. City of Roanoke Redev. and Hous. Auth.*, 479 U.S. 418 (1987) (regulations that have force and effect of law enforceable via §1983).

law sufficiently to warrant a preemption finding. Since reconciliation of federal and local law is preferred, local governments thus remain free to establish defenses to eviction by limiting the grounds for recovering possession, as the City of Los Angeles has done for voucher and unassisted tenants alike.

Especially persuasive is the New York Court of Appeals' recent unanimous rejection of an owner's similar claim that federal law preempted local eviction controls. *Rosario v. Diagonal Realty*, No. 95, 2007 WL 1879349, ___ N.E.2d ___ (N.Y. July 2, 2007). In *Rosario*, the owner sought to "opt-out" of the Section 8 program by informing the housing authority of that intent, refusing the assistance payments, and then commencing an eviction for nonpayment of rent in state court – the same "opt-out" objective but a different strategy than the evictions pursued here. The tenant then filed suit in state court seeking declaratory relief. After trial and appellate judgments in favor of the tenant, the owner was granted leave to appeal to the highest state court, which again affirmed. The court held that the voucher subsidy was a term that must be continued in a renewal lease under local law, and rejected the owner's claim that the federal good cause statute[13] preempted the local law protections requiring owners to renew leases under the voucher

[13] The court cited 42 U.S.C. §1437f(d)(1)(B)(ii) as the relevant provision, which is likely erroneous since that provision relates to the now defunct certificate program. A virtually identical provision governing vouchers is found at 42 U.S.C. §1437f(o)(7)(C).

program. The court cited the legislative history emphasizing the federal intent to remove *federal* barriers to owner participation when Congress relaxed some of the federal tenant protections in 1995 and 1997.[14] It also found none of the conflict required for implied preemption, since owners could comply with both the requirements of the Section 8 program and local law. Local government thus remains free to establish protections for both unassisted and voucher tenants.

Defendant's attempts to distinguish the subsequently affirmed trial court decision in *Rosario* because "cause" was not alleged there again lacks merit.[15] The same federal statute is involved, and functionally the interplay between the federal and local laws is identical. The fact that Defendant has elected to cloak his opt-out in "other good cause" language rather than refusing to renew a lease at the end of a term with no cause stated cannot obscure the fact that Congress and HUD have specified no federal right to opt-out when such grounds are not recognized by local law. Put another way, if the holding in *Rosario* invalidates an owner's attempted no-cause termination at the end of the lease term where prohibited by local law, when federal protection is at its weakest, Defendant can gain no greater rights by

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[14] *See* note 11, *supra*.

[15] The local tax abatement law provided an additional ground for Court of Appeals' holding, and it was not preempted for the same reason as the renewal lease protection. *Rosario*, *supra*, 2007 WL 1879349 (pin cite unavailable).

seeking to terminate a lease during its term for "business or economic reasons" here.

B. LARSO DOES NOT LOCK LANDLORDS INTO THE SECTION 8 PROGRAM FOREVER

Contrary to the assertion of Defendant, giving effect to LARSO's eviction protections for Section 8 tenants would not lock Los Angeles landlords into the voucher program forever. Rather, those landlords who voluntarily elect to enter into Section 8 Voucher tenancies -- and thereby reap the rent security benefits of the Section 8 Voucher program in exchange for meeting its requirements[16] -- simply have to continue the tenancy until one of the following conditions is met: (i) the Section 8 tenants violate a material obligation under the original terms of the tenancy, (ii) one of the other permissible grounds under LARSO for termination of the tenancy occurs,[17] or (iii) the tenants move. This is the same situation that landlords face with regard to unassisted tenants under LARSO -- until one of the three conditions described above occurs, landlords must abide by the lease terms to

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[16] *See, e.g., Swann v. Gastonia Housing Auth.*, 502 F.Supp. 362, 365 (W.D.N.C. 1980) ("The Section 8 private landlord receives numerous benefits from participating in the program. The monthly risk of not receiving rent from the tenant is reduced because the Housing Authority is paying the majority of the rent and the tenant is paying an amount within his means"); 24 C.F.R. §982.311(b) (Housing Authority obligated to make payments under HAP contract through eviction of tenant).

[17] LARSO authorizes evictions for all of the grounds listed in §982.310, except for business or economic reasons, so tenant misconduct is adequately covered, and certain "no fault" evictions under LARSO receive additional protections.

which they initially agreed (or which the tenants have agreed to in subsequent lease extensions or modifications). *See, e.g.*, L.A.M.C. §§151.09A(2)(c), 151.09D. There is simply no inequity or undue burden in this arrangement with respect to Section 8 tenancies, any more than there is with regard to unassisted tenancies.

C. LARSO'S EVICTION CONTROLS ARE NOT PREEMPTED BY CALIFORNIA LAW

Defendant also argues that California Civil Code § 1954.535[18] -- as construed in *Apartment Ass'n of L.A. County v. City of Los Angeles*, 136 Cal.App.4th 119 (2006) -- fully regulates the right to terminate Section 8 contracts in California, and will preempt LARSO whenever it places a prohibitive burden on the exercise of that right. Opposition at 12. This argument is also incorrect.

1. The Express Preservation Of Local Eviction Controls In The Costa-Hawkins Rental Housing Act Precludes A Finding That LARSO's Eviction Controls Are Preempted by Civil Code § 1954.535

The Costa-Hawkins Rental Housing Act, Civil Code §§ 1954.50 *et seq.*, generally provides for so-called "vacancy decontrol"; that is, the right of a landlord to set the initial rental rate for a rent control unit at whatever amount he or she

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[18] Section 1954.535 reads: "Where an owner terminates or fails to renew a contract or recorded agreement with a governmental agency that provides for rent limitations to a qualified tenant, the tenant or tenants who were the beneficiaries of the contract or recorded agreement shall be given at least 90 days' written notice of the effective date of the termination and shall not be obligated to pay more than the tenant's portion of the rent, as calculated under the contract or recorded agreement to be terminated, for 90 days following receipt of the notice of termination of nonrenewal (sic) of the contract."

chooses after an old tenant vacates the unit and a new tenancy begins. *See* Civil Code §§1954.53(a).

The Costa-Hawkins Act establishes two types of additional protections for assisted tenants. First, Section 1954.53(a)(1) and (a)(1)(A) provide that vacancies following an "owner's termination or nonrenewal of a contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant"[19] are not entitled to full vacancy decontrol. Rather, a landlord who effectuates the termination of such a contract entered into prior to 2000 in a rent control jurisdiction cannot raise the rent for the vacated unit for a 3 year period. This provision was adopted as a partial disincentive to "prevent landlords from arbitrarily terminating their Section 8 tenants in order to get a [rent] decontrolled unit." *See Apartment Ass'n*, 136 Cal.App.4th at 131 n.3 (3rd para.) (quoting legislative history). Second, Section 1954.535 additionally provides that, where a landlord is terminating a government assistance contract anywhere in California (including non-rent control jurisdictions), it must provide 90 days notice to the affected tenant, and cannot change the tenant's obligation to only pay her portion of the rent as specified in the government assistance contract during that 90-day period. This provision was adopted because the standard 30 day notice

[19] Under Section 8, the landlord and the PHA enter into a contract whereby the PHA agrees to make the rent subsidy payments to the landlord in exchange for its agreement to abide by the terms of the program. *See* 24 C.F.R. §§ 982.451-52.

period provided by California law did not provide sufficient time for Section 8 recipients to secure replacement housing. *See Apartment Assn.*, 136 Cal.App.4th at 131 n.3 (4th para.) (quoting legislative history).

The California Legislature intended that these special provisions would provide *minimum* protections to assisted tenants. Critically, Costa-Hawkins further provides that "[n]othing in this section shall be construed to affect any authority of a public entity that may otherwise exist to regulate or monitor the grounds for eviction." Civil Code §§ 1954.53(e). The policy behind this express preservation of local eviction controls was to allow *additional* protection of tenants by municipal governments against evictions motivated by a desire to circumvent rent control. As explained in *Bullard v. San Francisco Residential Rent Stabilization Bd.*, 106 Cal.App.4th 488 (2003):

> There can be no doubt the Legislature was well aware of the incentive for eviction created by vacancy decontrol. Civil Code section 1954.53, subdivision (e) is a strong statement that the state law establishing vacancy decontrol *is not meant to affect the authority of local governments to monitor and regulate the grounds for eviction, in order to prevent pretextual evictions.*

Id. at 492 (italics added).[20]

[20] Another provision of Costa-Hawkins eliminates all local authority to regulate the rental rates for certain types of properties. *See* Civil Code § 1954.52. Even with respect to these units, however, the Legislature *expressly preserved* local authority to regulate the grounds for eviction. *See* Civil Code § 1954.52(c).

Nothing in the 1999 amendments to Costa-Hawkins -- including the addition of Civil Code § 1954.535 -- altered in any way this strong legislative policy of preserving local eviction control authority for all tenants, including Section 8 recipients. Indeed, any such conclusion is inconsistent with the clear intent of the 1999 amendments to provide *additional* statewide protections for Section 8 tenants, not to strip away from these assisted tenants local protections enjoyed by all other tenants. Therefore, it is clear that LARSO's eviction controls are not preempted.

2. Nothing In *Apartment Ass'n* Indicates That §1954.535 Preempts LARSO Eviction Controls For Section 8 Tenancies

Defendant asserts that *Apartment Ass'n* is authority for the right of landlords to terminate Section 8 tenancies without interference by local law. It is not.

In *Apartment Ass'n* (a case in which HACLA was not a party), the California Court of Appeal only considered whether California Civil Code §1954.535 preempted a provision of LARSO providing that "[i]t shall be unlawful for any landlord to terminate or fail to renew a rental assistance contract with the Housing Authority of the City of Los Angeles (HACLA), and then demand that the tenant pay rent in excess of the tenant's portion of the rent under the rental assistance contract." LAMC §151.04B. Both of these provisions only come into play by their plain language once the landlord "terminate[s] or fail[s] to renew a rental assistance contract," *id*; *compare supra* n.18, and do not define the

substantive grounds under which an owner could lawfully terminate or fail to renew such rental assistance contracts. Indeed, because the landlords' association challenged the validity of the LARSO provision on its face, *Apartment Ass'n* did not involve any actual termination of a Section 8 Voucher contract or tenancy. *Id.* at 124-235. The Court of Appeal therefore had no occasion to consider at all the question of under what grounds such a termination could occur, let alone whether Section 1954.535 makes valid an attempt to terminate a Section 8 tenancy[21] in violation of LARSO's eviction controls, the question raised here.[22]

Rather, the Court of Appeal simply compared the language of the two provisions – both of which, as noted, involve a situation in which the termination of the government contract by a landlord was assumed substantively valid -- and their legislative histories, and then concluded that Civil Code § 1954.535's

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[21] A valid termination of the underlying tenancy also terminates the contract between the landlord and the PHA. *See* 24 C.F.R. §§ 982.309(b)(2), .311(b).

[22] Indeed, there is no reason the Court of Appeal would have addressed the question of whether a landlord could terminate a Section 8 tenancy in violation of applicable local eviction control laws given that, in its appellate brief on behalf of the City, the City Attorney assumed that "[d]wellings subject to the federal Section 8 rental assistance program are exempt from RSO rent limitations." Appellant's Opening Brief, 2005 WL 1305124 at 4 (emphasis added).

In 2006, in accordance with the long-held position of both the Rent Adjustment Commission and HACLA , the City Council amended LARSO expressly to clarify that its provisions *do apply* to rental units in the Section 8 voucher program (as opposed to the prior "certificate program"), *see* L.A.M.C. § 151.02 (subsection 5 under the definition of Rental Units); Ordinance No. 177587. Thus, the question of whether a landlord can terminate a Section 8 tenancy where doing so violates LARSO presents itself here.

requirement of 90 days notice of termination of the contract and associated rent limitation was intended fully to occupy the field of rent freezes following notices of termination, and thus superseded the local ordinance to the extent the latter inconsistently suggested a freeze of indefinite duration. *Apartment Ass'n*, 136 Cal.App.4th at 125, 132. In other words, rather than reaching out to opine on an issue of federal law -- the circumstances under which a Section 8 contract may be terminated by a landlord -- the Court of Appeal merely interpreted and applied legislation regarding the *consequences* of such terminations under *California's* statutory notice provisions.

Properly viewed, therefore, the statement in *Apartment Ass'n* regarding "a landlord's recognized right to terminate or refuse to renew a Section 8 contract" without undue interference by local law, 136 Cal.App.4th at 133, does not speak to, or constitute precedent with regard to the validity of LARSO's eviction controls. *See Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd.*, 19 Cal. 4th 1182, 1195 (1999) ("It is axiomatic that language in a judicial opinion is to be understood in accordance with the facts and issues before the court. An opinion is not authority for propositions not considered"); *Martin v. City & County of San Francisco*, 135 Cal.App.4th 392, 400 n.4 (2005) (assumption in prior case that CEQA applied to building interiors not relevant precedent because "[q]uestions which merely lurk in the record, neither brought to the attention of the court nor

ruled upon, are not to be considered as having been so decided as to constitute precedents") (internal quotation marks omitted).

Instead, *Apartment Ass'n* is simply one in a line of cases that hold that state legislation may dictate the notice period within which certain actions may be taken, without precluding local legislation from regulating the *substantive* grounds upon which the actions can be taken. *Cf. People v. Tannenbaum*, 23 Cal.App.4th Supp. 6, 10 (1994) (while Civil Code § 827's 30-day notice provision for changing the terms of month-to-month tenancies preempts local efforts to extend required notice period, it does not preempt provision of LARSO restricting changes that can be demanded through such a notice); *People v. Lucero*, 114 Cal.App.3d 166, 173-174 (1981) (recognizing that LARSO requirement of good cause for eviction constitutes an "exception[] to the general rule that month-to-month tenancies are terminable on 30 days' notice with or without cause" pursuant to Section 1946). As these other cases demonstrate, there simply is nothing inconsistent between *Apartment Ass'n*'s conclusion that Section 1954.535's 90-day notice requirement preempts local efforts to extend the length of time a tenant's rent obligation can remain unchanged following notice that the landlord is effecting a substantively valid termination, and the conclusion that Section 1954.535 *does not* preempt the LARSO's "good cause" requirements that directly regulate what constitutes a substantively valid termination of rent control tenancies, including Section 8

tenancies. Indeed, Costa-Hawkins' express preservation of local eviction controls precludes any other conclusion.

D. THE ENHANCED VOUCHER PLAINTIFFS' RIGHT TO REMAIN PROHIBITS EVICTION FOR THE VAGUE CONCEPT OF BUSINESS OR ECONOMIC REASON

Federal law grants the Enhanced Voucher Tenants a specific right to remain in their homes. Under the Unified Enhanced Voucher Authority Statute, 42 U.S.C. § 1437f(t)(1)(B), a family receiving enhanced vouchers "may elect to remain in the same project in which the family was residing on the date of the eligibility event for the project." As recognized by the courts, Congress intended this language to guarantee enhanced voucher tenants an enforceable right to remain in their homes if they so choose.

Despite this right, Defendant contends that enhanced vouchers are identical to standard vouchers with respect to evictions, thus permitting eviction for any grounds permitted by 24 C.F.R. §982.310(d)(1)(iv), including a business or economic reason.

However, the federal statute protects enhanced voucher holders from having their leases terminated for a business or economic reason. The language of §1437f(t) expresses clear congressional intent that the right to remain supersedes any conflicting provisions of the ordinary voucher program (§1437f(o)), including 24 C.F.R. §982.310:

> In general. Enhanced voucher assistance under this subsection for a family shall be voucher assistance under subsection (o), *except that under such enhanced voucher assistance- …*
>
> (B) the assisted family may elect to remain in the same project in which the family was residing on the date of the eligibility event for the project....

42 U.S.C. 1437f(t) (emphasis added).

This statute expressly confers upon Enhanced Voucher Tenants the right to remain in their homes, "as long as they remain eligible and continue to occupy the apartments." *Estevez v. Cosmopolitan Associates LLC*, 2005 WL 3164146 at *4 (E.D.N.Y. Nov. 28, 2005). "A plain reading of [42 U.S.C. § 1437f(t)] makes clear that, upon the occurrence of an eligibility event, Section 8 tenants receive … enhanced vouchers with their increased value and unfettered right to remain. It is these additional benefits that set enhanced vouchers apart from other tenant-based voucher assistance." *Estevez*, 2005 WL 3164146 at *5. Other federal courts have consistently upheld this right to remain. *Jeanty v. Shore Terrace Realty Ass'n*, 2004 WL 1794496 (S.D.N.Y. Apr. 10, 2004).

Defendant contends that because these cases do not involve an asserted good cause for eviction, they should not apply here. This contention ignores the unmistakable consistency of the statutory interpretations to invalidate the owners'

varied attempts to evade the security of tenure promised by the statute. Viewed in this light, 24 C.F.R. §982.310, which permits eviction for the vague concept of business or economic reason, cannot override the federal enhanced voucher statute, because any owner could then assert such nebulous reasons to circumvent the right to remain. Nor does it make sense to apply it, because owners receiving enhanced voucher assistance can receive the same economic rents as are available from unassisted tenants in the building. *Jeanty*, 2004 WL 1794496 at *4. Thus, "business or economic reasons" cannot provide good cause for termination and, absent tenant misconduct, Defendant does not have good cause to evict the Enhanced Voucher tenants. Although differing on the timing and the mechanics of "opt-out," Defendant is simply attempting to refuse the enhanced vouchers, as did the owners in *Estevez* and *Jeanty*. Those courts invalidated this type of conduct as a violation of §1437f(t), and Defendant's conduct here warrants the same result.

Defendant's reliance on HUD Notice PIH 2001-41 is misplaced for several reasons. The notice cannot override the statutory right to remain, has long since expired (Nov. 30, 2002), and in any event says nothing about business or economic reasons as "other good cause," likely because enhanced vouchers must cover permissible rent increases. 42 U.S.C. §1437f(t)(1)(B) (providing a payment standard to cover the unit rent "as such rent may be increased from time to time"). HUD's other 2001 guidance interpreting the statute (*Section 8 Renewal Policy*)

clarifies that enhanced voucher tenants have a right to remain and the owner must renew the lease, as long as the units are offered for rental housing and the PHA finds the rent reasonable, even after the first lease term, unless the owner has cause for eviction under Federal, State, or local law. *Id.* §11-3 (to be filed in Supplemental Appendix of Authorities).

Because the proposed evictions violate §1437f(t)'s right to remain, this court should enter summary judgment for the enhanced voucher Plaintiffs.

E. INJUNCTIVE RELIEF IS PROPER BECAUSE DEFENDING A SUMMARY EVICTION IN STATE COURT IS NOT AN ADEQUATE REMEDY FOR PLAINTIFFS' CLAIMS.

Defendant argues that this Court cannot grant an injunction because defending a potential unlawful detainer action by Defendant provides Plaintiffs with an adequate remedy. Opposition at 18-19. Defendant's argument is without merit. Simply because there may be another court that can hear a claim in the future, does not divest this Court of the power to grant the requested relief. Moreover, Plaintiffs cannot raise all their claims in an unlawful detainer action, because it is a limited cause of action landlords can use against tenants not vice versa. An unlawful detainer is a summary proceeding where *the sole issue* before the court is the right to possession; neither a counterclaim nor a cross-complaint is cognizable in an unlawful detainer action. *Mihans v. Municipal Court*, 7 Cal. App. 3d 479, 486 (1970).

Further, an injunction is an appropriate remedy to prevent the wrongful eviction from one's home. *See Johnson v. U.S. Dept. of Agriculture*, 734 F. 2d 774, 789 (11th Cir. 1984) (irreparable injury is suffered when one is wrongfully ejected from their home because real property, especially a home, is unique); *Estevez*, 2005 WL 3164146 at *3, *30. (The right to remain in one's home that is created by §1437f(t), like the various other rights to assistance provided by the statute, derives exclusively from that federal scheme. Enforcement of those rights have not been relegated to the states). Moreover, Defendant's argument fails to address Plaintiffs' claim for declaratory relief, which is not precluded by the alleged existence of an adequate remedy. F.R.C.P. Rule 57.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that judgment be entered in their favor.

Respectfully submitted,

Dated: July 9, 2007

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Legal Aid Foundation of Los Angeles

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National Housing Law Project

By: _____
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Attorneys for the Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1550 West Eighth Street, Los Angeles, California 90017.

On July 9, 2007, I served the foregoing document described as:

Plaintiffs' Reply Brief to Defendant's Opposition
Case No. CV 06-06437-ABC(FMOx)
on the interested parties in this action

☒ by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Chris Evans
Kimball, Tirey & St. John
5510 Trabuco Rd.
Irvine, CA 92620

☒ (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. *[C.C.P. §§ 1012 and 1013(a)]*

☐ (BY FEDERAL EXPRESS) by delivering to a Federal Express Representative, in an envelope designated by Federal Express with delivery fees paid or provided for, addressed to the individual at the address as follows: *[C.C.P. § 1013(c)]*

☐ (BY PERSONAL SERVICE) By personally delivering copies to the individual listed above at the address listed above or by personally delivering copies to the office of the individual listed above at the address listed above, in a package clearly labeled to identify the personal being served, with a receptionist or with a person in charge. *[C.C.P. § 1011]*

☐ (BY FAX) As follows: On July 9, 2007 at approximately 2:22 PM by use of facsimile machine number (213) 640-3850, I served as copy of the foregoing on the interested parties in this action by transmitting by facsimile machine to the following: *[C.C.P. § 1013(e)]*

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 9, 2007, at Los Angeles, California.

JOSE L. RODRIGUEZ