No. 07-56697

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DEBORA BARRIENTOS, et al.,

Plaintiffs-Appellees,

v.

1801-1825 MORTON, LLC,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

BRIEF FOR THE UNITED STATES AS *AMICUS CURIAE* SUPPORTING AFFIRMANCE OF THE DISTRICT COURT'S JUDGMENT

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INTRODUCTION AND INTEREST OF THE UNITED STATES

A regulation promulgated by the U.S. Department of Housing and Urban Development ("HUD" or "the agency"), 24 C.F.R. § 982.310, is central to this appeal. Accordingly, by letter dated April 17, 2009, the Court invited the United States, on behalf of HUD, to submit its views as an *amicus curiae* on the following question:

> Do local eviction controls, such as the Los Angeles Rent Stabilization Ordinance, L.A. Mun. Code section 151.09A, pose an obstacle to the accomplishment and execution of

> the full purposes and objectives of HUD's definition of "good cause" to terminate assisted tenancies as including the desire to raise rents, set forth in 24 C.F.R. § 982.310(d)(1)(iv)?

The Court's question concerns the possible preemptive effect of HUD's regulation and thus directly implicates the interest of the federal government. The United States therefore submits this *amicus* brief in response to the Court's invitation and provides HUD's interpretation of the regulation at issue.

HUD agrees with the district court's ultimate judgment that local eviction controls are not preempted by the regulation at issue. However, HUD disagrees with the court's reasoning in several respects, as well as its conclusion that the regulation is invalid in part.

STATEMENT OF THE ISSUE

Whether a city's ordinance, limiting the grounds on which a tenant may be evicted from rental housing, is preempted by a HUD regulation that (i) prohibits the eviction of a tenant in the "Section 8" rental assistance program, during the term of the lease, except for "good cause" (and other grounds), and (ii) provides that "good cause" "may include" a landlord's desire to raise the rent.

STATEMENT OF THE CASE

A. Statutory And Regulatory Background[1]

1. Under the "Section 8" tenant-based program, HUD provides rent assistance in the form of "Housing Choice" vouchers to low-income families, as well as elderly and disabled persons. See 42 U.S.C. § 1437f(o). A tenant who receives a Section 8 voucher can choose to live in any property whose private owner agrees to accept the voucher and to comply with the program's rules. The voucher is also portable. The tenant pays a portion of the rent, which must be "reasonable in comparison with rents charged for comparable dwelling units in the private, unassisted local market." *Id*. § 1437f(o)(10)(A). HUD provides Housing Choice voucher funding to the local public housing authority, which, in turn, pays the balance of the rent to the owner from the appropriated funds provided by HUD.

A housing assistance payment ("HAP") contract contains the terms of the agreement between the housing authority and the owner and mandates the inclusion of certain provisions in the lease between the owner and tenant. For example, the lease "shall be for a term of not less than 1 year." *Id*. § 1437f(o)(7)(A). A provision added in 1981 and pertinent to this appeal states that, "during the term of the lease,

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[1] The most pertinent statutory and regulatory provisions are contained in the Addendum to this brief.

the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for *other good cause*." *Id*. § 1437f(o)(7)(C) (emphasis added).

Congress subsequently created the "Enhanced Voucher" program, which is a subset of the Housing Choice program. See *id*. § 1437f(t). Enhanced Voucher assistance is treated like other voucher assistance under section 1437f(o), except in several specified respects. See *id*. § 1437f(t)(1)(A)-(D). For example, if the owner decides to prepay his federally assisted mortgage (referred to as an "eligibility event," *id*. § 1437f(t)(2)), "the assisted family may elect to remain in the same project in which the family was residing on the date" of that event. *Id*. § 1437f(t)(1)(B). Moreover, if the rent is increased, the amount of the federal rent assistance may also be increased. *Ibid*.

2. HUD has long had extensive regulations implementing the Section 8 tenant-based assistance program.[2] Under 24 C.F.R. § 982.309, the initial term of a lease must be at least one year. Although no regulation (or statute) prescribes any lease term after the first year, leases are typically renewed on a month-to-month

[2] However, HUD has not promulgated regulations specifically implementing the Enhanced Voucher program.

basis.[3] Another regulation provides that, "[d]uring the term of the lease, the owner may not terminate the tenancy except on the * * * grounds" set forth in the statute – serious or repeated violation of the terms of the lease; violation of applicable federal, state, or local law; or "[o]ther good cause." *Id.* § 982.310(a). That regulation states further that "'[o]ther good cause' * * * *may include*, but is not limited to * * * [a] business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or *desire to lease the unit at a higher rental*)." *Id.* § 982.310(d)(1)(iv) (emphases added). However, "[d]uring the initial lease term, the owner may not terminate the tenancy for 'other good cause', unless the owner is terminating the tenancy because of something the family did or failed to do." *Id.* § 982.310(d)(2). Thus, during that period, "the owner may not terminate the tenancy" because of any "business or economic reason," including those set forth in paragraph (d)(1)(iv). *Ibid.*

HUD regulations also implement the statutory provision that requires the rent to be "reasonable." See *id.* § 982.507. In 1998, HUD amended its regulations to provide that, "[i]n addition to the rent reasonableness limit * * *, the amount of rent

[3] After the first year, the term is established by the lease, which must be consistent with state and local law (as is true with regard to the leases of unassisted families).

[paid] to [the] owner also may be subject to rent control limits under State or local law." *Id*. § 982.509.

3. The Los Angeles Rent Stabilization Ordinance ("LARSO") was enacted in 1979 "to regulate rents so as to safeguard tenants from excessive rent increases, while at the same time providing landlords with just and reasonable returns from their rental units." L.A. Mun. Code § 151.01; see generally *TOPA Equities, Ltd. v. City of Los Angeles*, 342 F.3d 1065, 1068 (9th Cir. 2003). In addition to restricting rents, see L.A. Mun. Code § 151.04, LARSO regulates other aspects of the landlord-tenant relationship, including evictions. A landlord may evict a tenant "only upon one of [thirteen specified] grounds." *Id*. § 151.09A. Among those grounds are the landlord's desire to renovate or demolish the property or to remove it permanently from the rental market. *Id*. § 151.09A(9), (10). Although a tenant who refuses to execute a renewal of a lease may be evicted, *id*. § 151.09A(5), the expiration of a lease is not a permissible ground for eviction. An owner's desire to raise the rent is also not a lawful ground for eviction under LARSO.

Various categories of housing, such as certain public housing, are exempt from LARSO. However, it explicitly applies to "rental units for which rental assistance is paid pursuant to the Housing Choice Voucher Program" administered by HUD under

24 C.F.R. pt. 982. L.A. Mun. Code § 151.02 (definition of "Rental Units," exception 5).

B. The Facts Of This Case

1. The Morton Gardens apartment complex in Los Angeles was developed in 1971 as low-income rental housing with financing provided by the loan subsidy program authorized by Section 236 of the National Housing Act ("NHA"), 12 U.S.C. § 1715z-1. As required by that program, the project was subject to an agreement mandating its use as low-income rental housing and limiting the rents that could be charged. Excerpts of Record ("ER") 151.

Plaintiffs are 22 tenants of Morton Gardens; six receive federal rental assistance under the Housing Choice program, and sixteen others are Enhanced Voucher recipients. ER 152. The Housing Authority of the City of Los Angeles ("HACLA") administers plaintiffs' subsidies pursuant to HAP contracts between HACLA and the owner of Morton Gardens, defendant 1801-1825 Morton, LLC ("Morton"). All of plaintiffs' apartments are subject to LARSO. ER 152.

In 1998, Morton prepaid its Section 236 loan, which extinguished the use agreement. ER 151. Morton nevertheless continued its participation in the Section 8 program by executing HAP contracts with HACLA and by renting to tenants who receive Section 8 vouchers. See ER 151-54. However, in March 2006, Morton

served notices on plaintiffs, advising them of its intent to withdraw from the Section 8 program and to charge the full market rate rent for the units. See ER 159-80. HACLA advised Morton that it could terminate its HAP contract only with the tenants' consent or in accordance with lawful eviction procedures under state and local law. ER 181. In response to plaintiffs' complaints, the Los Angeles Housing Department agreed with HACLA and reminded Morton that the apartment units in question are subject to LARSO's limits on eviction, which do not permit eviction on the ground that the landlord wishes to lease a unit at a higher rent. ER 182. See L.A. Mun. Code § 151.09A.

Morton rescinded the March 2006 notices. ER 156. On June 30, 2006, it served each plaintiff with a new 90-day eviction notice, stating that it had "made a business decision to no longer participate in the Section 8 voucher program for your unit." ER 191-212. The notices cited HUD's regulation authorizing termination of tenancy for "good cause," such as the landlord's "desire to lease the unit at a higher rental," 24 C.F.R. § 982.310(a)(3), (d)(1)(iv). ER 191-212.

2. Plaintiffs brought this action, seeking to prevent their eviction. ER 241-48. The district court granted their summary judgment motion and enjoined the evictions. ER 19-62. Noting that the issue had not yet been considered by any court, the district court described the principal question as whether HUD's regulation

authorizing tenancy termination for "good cause" preempts LARSO's specified limits on evictions. ER 21.

The district court first addressed a federal statutory question not involving preemption or LARSO. It ruled that, although Enhanced Voucher tenants have a statutory right to remain on the premises if an "eligibility event" (such as prepayment of the mortgage) occurs, see 42 U.S.C. § 1437f(t)(1)(B), that does not protect them from eviction for the reasons specified in section 1437f(o)(7)(C), including "good cause." ER 30-34. In making that ruling, the court cited a HUD guidance document, Notice PIH 2001-41 (HA), "Section 8 Tenant-Based Assistance (Enhanced and Regular Housing Choice Vouchers) for Housing Conversion Actions - Policy and Processing Guidance" (Nov. 14, 2001), § II.B. ER 34. That document states:

> A family that receives an enhanced voucher has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for housing choice voucher assistance (e.g., the rent is reasonable, unit meets [Housing Quality Standards], etc.). The owner may not terminate the tenancy of a family that exercises its right to remain except for a serious or repeated lease violation or other good cause.

Appellees' Addendum 142.[4]

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[4] Although this guidance document, by its terms, expired on November 30, 2002, it nevertheless reflects HUD's current views respecting the Enhanced Voucher program, for which there are no formally adopted regulations. See *supra* note 2.

However, the district court concluded that the HUD regulation's definition of "good cause" to include a landlord's desire to raise rents "effectively thwart[s] Congress's plan for enhanced-voucher tenants." ER 36. The court explained that, in subsection 1437f(t), Congress gave Enhanced Voucher tenants "the right to remain even if an owner desires to increase the rental rate of a unit." ER 35. HUD's regulation, however, "permit[s] an owner to circumvent the congressionally created rights of enhanced-voucher tenants." ER 36. The district court therefore held that the regulation conflicts with and "must yield to the clear terms and intent of subsection [1437f(t)]," and, to the extent that that regulation permits an eviction "based on the 'desire to lease the unit at a higher rental,'" it "cannot be enforced against tenants using enhanced vouchers." ER 37.[5] The court therefore granted summary judgment for the sixteen Enhanced Voucher plaintiffs. ER 37-38.

The district court then turned to the claims of the six remaining Housing Choice plaintiffs and addressed the question whether HUD's regulation, 24 C.F.R. § 982.310(d)(1)(iv), preempts LARSO's restrictions on eviction from a rent-

[5] HUD generally agrees with the district court's Enhanced Voucher analysis at ER 30-37. See PIH 2001-41 (HA), Appellees' Addendum 142. HUD promulgated its "good cause" regulation well before Congress created the Enhanced Voucher program, and that regulation is not intended to deny Enhanced Voucher tenants the right to remain in the same project that is guaranteed by statute, 42 U.S.C. § 1437f(t)(1)(B).

controlled property. The court examined the history of HUD's "other good cause" regulation and found nothing to suggest "any explicit HUD intent to pre-empt local limitations on evictions." ER 45. The court also pointed out that HUD has repeatedly stated that "'other good cause' should be defined by courts on a case-by-case basis, which could easily be interpreted to include the grounds for eviction provided by state and local laws." ER 45. Moreover, because "LARSO was in its infancy" when HUD first addressed the "other good cause" provision, and "[b]ecause landlord-tenant law is traditionally an area regulated by state and local law," the court was unwilling to "infer any intent by HUD to pre-empt state and local eviction controls." ER 45-46.

Although the district court found that HUD does not intend to preempt restrictions on eviction such as those in LARSO, it nevertheless concluded that "the LARSO takes away *a right* specifically granted by the HUD eviction regulations." ER 51 (emphasis added). Thus, the court found that "the LARSO stands in actual conflict with the HUD regulations." ER 51. The court explained that HUD included "[a] business or economic reason" as "good cause" for termination of a Section 8 tenancy, 24 C.F.R. § 982.310(d)(1)(iv), in order "to balance perceived disincentives to owners to participate in the Section 8 program with tenants' rights not to be evicted without cause." ER 50-51. LARSO, on the other hand, "contains no such balance;

the grounds for eviction in L.A.M.C. § 151.09 are solely to protect rent-controlled tenants." ER 51.

However, despite the "actual conflict" found between HUD's regulation and LARSO's eviction controls, the district court ruled that the federal regulation has no preemptive effect because HUD exceeded its statutory authority by defining "other good cause" for terminating a tenant's lease to include a landlord's desire to raise the rent. The court characterized HUD's regulation, 24 C.F.R. § 982.310(d)(1)(iv), as an "unreasonable" and "manifestly contrary" interpretation of the "other good cause" language in the statute, 42 U.S.C. § 1437f(o)(7)(C). ER 54. The court therefore "invalidate[d] HUD's decision to include raising rents as 'other good cause' because HUD did no balancing in enacting this regulation; it favored encouraging owner participation and gave no weight to the purpose of providing low-income housing in direct contravention of its mandate from Congress." ER 55. The court accordingly granted summary judgment for the six Housing Choice plaintiffs.

3. Morton moved for reconsideration. The district court affirmed its grant of summary judgment to plaintiffs, but also clarified its prior ruling. ER 1-18. The court explained that the actual conflict it found between HUD's "good cause" regulation and LARSO's eviction controls was limited to evictions for the purpose of raising the rent. It did "*not* intend[] to suggest that * * * 'business or economic

reasons,' as otherwise undefined by HUD, somehow stood in actual conflict with the LARSO." ER 11. Moreover, "[t]he LARSO does not injure the objectives of either HUD or Congress in the area of eviction of Section 8 tenants for undefined 'business or economic reasons'." ER 12. The court found that it can "harmonize" Congress's intent, that the Section 8 voucher program operate as much as possible as the unassisted rental market, with HUD's intent, that "other good cause" be interpreted flexibly, by limiting "business and economic reasons" to "those defined by local rent control ordinances, such as the LARSO." ER 13; see also ER 14-16.

4. Morton appealed. Following briefing and oral argument, the Court invited the federal government's views on the question set forth *supra* pp. 1-2.

SUMMARY OF ARGUMENT

1. LARSO's eviction controls do not present an obstacle to the accomplishment of HUD's objectives in its "good cause" regulation, 24 C.F.R. § 982.310(d)(1)(iv). By its terms, the regulation provides that "good cause" for termination of a Section 8 tenancy "may include" a business reason such as a landlord's desire to raise the rent. *Ibid*. HUD has never interpreted that provision as prohibiting state or local governments from imposing additional restrictions on eviction, nor does any HUD regulation suggest that section 982.310 is intended to preempt an ordinance such as LARSO. Indeed, HUD's use of the permissive word

"may" in the regulation means that an owner's desire to raise the rent may – or may not – constitute "good cause" for tenancy termination.

Consistent with that wording, HUD has repeatedly emphasized, since the original promulgation of the regulation at issue, that it should be interpreted and applied flexibly, on a case-by-case basis. HUD has also sought to keep tenancy requirements as simple and as much like unsubsidized tenancy as possible. Applying LARSO's eviction controls – which apply to unassisted rentals – to Section 8-assisted rental units would further those goals.

Other provisions of the statute, regulations, and case law support that conclusion. For example, a HUD regulation recognizes that the rent for a Section 8-assisted unit may be subject to local rent control. Similarly, decisions of this Court and others have held that federal housing regulations do not preempt rent control ordinances, such as LARSO. It reasonably follows that limits on eviction, enacted as part of the same rent control ordinances, would also not be preempted.

2. The district court correctly found no preemption and entered judgment for plaintiffs. The court's reasoning, however, is flawed is several important respects. The court erroneously interpreted HUD's regulation as granting owners a "right" to terminate a tenancy because of a desire to raise the rent and accordingly found an "actual conflict" between LARSO's eviction controls and the federal regulation.

Those analytical flaws led to the district court's further error in ruling that HUD exceeded its statutory authority and that its regulation is invalid in part. But properly interpreted, the "good cause" regulation confers no "right" to terminate a section 8 tenancy any time an owner desires to raise the rent. The regulation is fully consistent with the statute and thus valid.

3. HUD's interpretation of its ambiguous regulation is reasonable and supported by the text, the agency's prior statements, and the statute itself. That interpretation is therefore entitled to deference by this Court. Moreover, although courts generally do not defer to agency conclusions respecting preemption, HUD's analysis here of LARSO's impact on the complex Section 8 statutory scheme administered by the agency is entitled to weight.

ARGUMENT

HUD's Regulation Permitting The Eviction Of A Section 8 Tenant For "Other Good Cause" Does Not Preempt LARSO's Eviction Controls.

A. LARSO Section 151.09A Does Not Pose An Obstacle To The Accomplishment And Execution Of HUD's Objectives Underlying Its "Other Good Cause" Regulation.

The Supreme Court has long recognized two categories of implied conflict preemption: first, where it is impossible for a party to comply with both state (or local) law and federal law, and, second, where the state (or local) law presents an

"'obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Wyeth v. Levine*, 129 S. Ct. 1187, 1193-94 (2009) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). See also *TOPA Equities, Ltd. v. City of Los Angeles*, 342 F.3d 1065, 1071 (9th Cir. 2003). Like a statute, a regulation can also have preemptive effect. *Wyeth*, 129 S. Ct. at 1200.

The question posed by the Court here concerns the second category of conflict preemption, often referred to as the "frustration of purpose" doctrine. Examination of HUD's "good cause" regulation and its history demonstrates that LARSO's restrictions on eviction do not present an obstacle to the accomplishment of the regulation's purposes.

1. There is little legislative history concerning the 1981 enactment of the language currently in 42 U.S.C. § 1437f(o)(7)(C), which prohibits the termination of a Section 8 tenancy except on three grounds – serious or repeated violation of the lease terms, violation of law, or "other good cause." Congress wanted to eliminate the involvement of the local public housing authority in the eviction process, but, beyond that, there is no illumination as to what it meant by "other good cause." See H.R. Conf. Rep. No. 97-208, at 694-95 (1981), *reprinted in* 1981 U.S.C.C.A.N. 1010, 1053-54.

When HUD issued interim regulations implementing the 1981 statutory changes, it declined to define the bases for termination of tenancy beyond those set forth in the statute. In the agency's view, "[a]pplication of the statutory standards to particular cases should be determined by the courts, normally in the course of the eviction proceeding brought by the owner." 47 Fed. Reg. 33,497, 33,499 (Aug. 3, 1982).

Two years later, however, HUD responded to public comments recommending that the agency define "other good cause" for terminating a tenancy. HUD first explained that it continued to believe that "a comprehensive regulatory definition of good cause in the Section 8 * * * Program is neither possible nor desirable," and that "good cause" is a "flexible" concept that should be determined on a case-by-case basis in the courts. 49 Fed. Reg. 12,215, 12,233 (Mar. 29, 1984). At the same time, however, the agency expressed concern that housing owners might be discouraged from participating in the Section 8 program, thereby "narrow[ing] the housing choices of assisted families." *Id*. at 12,231. HUD accordingly sought to find a balance that would protect tenant and owner alike, as well as maximize the number of rental units available to Section 8 families. It also wanted to make tenancy requirements "as simple as possible, with minimal demands on the owner beyond the normal requirements of an unsubsidized tenancy." *Id*. at 12,233.

The final rule adopted in 1984 therefore provided several "non-exclusive" "examples" of "'other good cause' for termination of tenancy by the Owner," including "a business or economic reason * * * (such as sale of the property, renovation of the unit, desire to rent the unit at a higher rental)." *Id*. at 12,233-34. HUD explained that including "a business or economic reason" as "good cause" for tenancy termination should help in addressing "owner concern" and was consistent with court decisions. *Ibid*. (citing, e.g., *Mitchell v. United States Dep't of Hous. & Urban Dev.*, 569 F. Supp. 701, 708-09 (N.D. Cal. 1983)).

In 1995, after numerous statutory amendments, HUD completed a comprehensive overhaul of its Section 8 program rules. The regulation authorizing an owner's termination of tenancy for "other good cause," however, was repromulgated with largely the same wording that it has now. "During the term of the lease, the owner may not terminate the tenancy except on [three specified] grounds," including "other good cause." 60 Fed. Reg. 34,660, 34,704-05 (July 3, 1995) (codified at 24 C.F.R. § 982.310(a)). "'Other good cause' for termination of tenancy by the owner *may include*, but is not limited to, * * * [a] business or economic reason * * * (such as * * * desire to lease the unit at a higher rental)." *Id*. at 34,705 (codified as 24 C.F.R. § 982.310(d)(1)(iv)) (emphasis added). The agency reiterated its previously expressed position that "'[t]he good cause concept should be flexible'" and

should be determined on a case-by-case basis by the courts. *Id*. at 34,673. HUD stated further that

> the rule reflects a reasonable balance between the interest of the assisted tenant and the owner within the context of the existing law. On the one hand, the lease protects the tenant against arbitrary and ungrounded termination by the owner. On the other hand, the owner is not locked in, but may terminate the tenancy for lease violation or other good cause.

Id. at 34,674.

The permissive wording of section 982.310(d)(1) – "other good cause" for terminating a tenancy "may include" the desire to lease the unit at a higher rent – is consistent with that reasoning. As the Supreme Court explained in *Rowland v. California Men's Colony*, 506 U.S. 194, 201 (1993), the use of "may" is usually considered permissive, meaning "may or may not." See also *Fernandez v. Brock*, 840 F.2d 622, 632 (9th Cir. 1988) ("may" is permissive and connotes discretion, absent clear indication to the contrary). Hence, an owner's desire to raise the rent during the term of a lease "may" – or may *not* – constitute "good cause" for termination of tenancy.

In keeping with HUD's intent when it first promulgated its "other good cause" regulation, the requirements for tenancy termination during the term of a lease have therefore remained "simple," "with minimal demands * * * beyond the normal

requirements of an unsubsidized tenancy." 49 Fed. Reg. at 12,233. HUD has never interpreted 24 C.F.R. § 982.310 as prohibiting state and local governments from providing additional protection from eviction to tenants. Moreover, no HUD regulation expressly authorizes the termination of a tenancy notwithstanding a local ordinance or state law that would otherwise forbid such an eviction, and no regulation states that local eviction controls are preempted. Compare *Independence Park Apartments v. United States*, 449 F.3d 1235, 1245 (Fed. Cir. 2006) (noting that federal government had never suggested an intent to preempt local rent controls); *TOPA Equities*, 342 F.3d at 1072 (noting that "[n]othing in the HUD regulations purports to limit states from enacting their own rent control laws of general applicability"). Thus, the eviction controls in LARSO section 151.09A would not impede HUD's objectives in the "other good cause" regulation, and they are not preempted by section 982.310(d)(1)(iv).

2. Other Section 8 regulations and provisions of the statute itself support that analysis and conclusion. Section 8 subsidized rent must be "reasonable in comparison with rents charged for comparable dwelling units in the private, unassisted local market," 42 U.S.C. § 1437f(o)(10)(A), and a HUD regulation implements that provision, see 24 C.F.R. § 982.507. Another regulation states that "the amount of rent to owner also may be subject to rent control limits under State or

local law." *Id*. § 982.509. When HUD first adopted that provision (then codified as sections 982.511 and 983.258), it explained that

> the Section 8 program rule establishes the maximum rent to owner, but does not establish the minimum rent to owner. Therefore *the rule does not pre-empt local rent control laws* which may prohibit an owner from charging the full comparable rent otherwise allowed in accordance with requirements of the Federal Program regulation.

63 Fed. Reg. 23,826, 23,830 (Apr. 30, 1998) (emphasis added).[6]

HUD's Section 8 regulations are therefore not intended to have preemptive force respecting local ordinances (such as LARSO) that impose limits on the rent that may be charged for units subject to such ordinances. It reasonably follows that restrictions on eviction, especially when enacted as part and parcel of the same rent control ordinance, are likewise not preempted by HUD's regulation that similarly imposes its own limits on eviction.

Consistent with HUD's expressed intent, this Court and others have held that various federal housing programs do not preempt local rent controls. For example,

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[6] A few months after HUD issued this rule, Congress amended Section 8 by adding a paragraph providing that, if a unit is exempt from local rent control, the rent for such unit must be reasonable in comparison to the rent for other units in the same market that are exempt from rent control. See 42 U.S.C. § 1437f(o)(10)(C). As the district court noted, ER 58, this provision strongly implies that Congress contemplated that Section 8-supported housing might be subject to local rent controls in addition to the federal "rent reasonableness" requirement.

in *TOPA Equities*, a landlord obtained a 40-year federally subsidized mortgage under NHA Section 236 in 1971, and, in return, it agreed to charge below-market rents. After TOPA prepaid its mortgage and left the program in 1998, 342 F.3d at 1069, it sought to raise the rent on its units to market level, despite LARSO's rent controls. TOPA argued, *inter alia*, that LARSO was preempted because its rent controls would frustrate the federal goal of obtaining private participation in the NHA Section 236 program. *Id*. at 1071. The Court, however, rejected that argument, finding no intent in either the statute or HUD regulations to preempt local rent controls. *Id*. at 1071-72.

Other appellate courts have rendered similar decisions. In *Independence Park*, 449 F.3d 1235, which also involved LARSO's rent controls, the Federal Circuit explained that, while owners of federally-subsidized, low-income housing may get certain benefits and bear certain burdens as a result of their participation in federal housing programs, they are not provided with "protection against the application of a variety of state and local laws that could affect the profitability of their investments." *Id*. at 1244. See also *Kargman v. Sullivan*, 552 F.2d 2, 11-13 (1st Cir. 1977). The reasoning of these rent control cases logically extends to local controls on evictions as well. Both types of controls are designed to preserve affordable housing, which is also a goal of the Section 8 program.

Several other provisions of Section 8 and HUD's regulations reflect the intent that the rent subsidy program complement state and local law insofar as the traditional landlord-tenant relationship is concerned. For example, the tenant's lease must contain terms that are "consistent with State and local law." 42 U.S.C. § 1437f(o)(7)(B)(ii)(I). See also 24 C.F.R. § 982.308(c) (housing authority "may decline to approve the tenancy if [it] determines that the lease does not comply with State or local law"). Further, an eviction notice must be the notice "used under State or local law to commence an eviction action," *id.* § 982.310(e)(2), and the HAP contract between the housing authority and the property owner "shall provide" that, in connection with the termination of a tenancy, "any relief shall be consistent with applicable State and local law." 42 U.S.C. § 1437f(o)(7)(E). At the very least, these provisions demonstrate an intended lack of tension between the federal regulations and state and local laws.

3. Thus, in response to the Court's question, LARSO's eviction controls do not pose an obstacle to the accomplishment and execution of the full purposes and objectives of HUD's regulation providing that "other good cause" for terminating a Section 8 tenancy "may" – but does not necessarily – include a landlord's desire to raise the rent. 24 C.F.R. § 982.310(d)(1)(iv). HUD's regulation therefore does not

preempt LARSO's limits on eviction, and the district court correctly entered judgment for plaintiffs.

The district court's reasoning, however, is flawed in several important respects. HUD agrees with the district court's discussion of the history and purposes of the "other good cause" regulation and the court's finding that HUD does not intend for that regulation to preempt state or local restrictions on eviction. See ER 42-46. But the district court's belief that HUD's regulation "specifically grant[s]" "a right," ER 51, is erroneous. As explained *supra* pp. 18-20, HUD's regulation states that an owner may not terminate a Section 8 tenancy except for specified reasons, including "good cause." 24 C.F.R. § 982.310(a)(3). "Good cause" "may" – or may not – include a business or economic reason, such as the landlord's desire to raise the rent. *Id*. § 982.310(d)(1)(iv). Neither the wording nor the intent of that provision gives a landlord an unqualified "right" to terminate a Section 8 tenancy because he wants to raise the rent. Rather, the regulation speaks in general terms, and, as HUD has repeatedly explained, "good cause" is a "'flexible'" concept that should be determined on a case-by-case basis by the courts. 60 Fed. Reg. at 34,673.

Because section 982.310(d)(1)(iv) does not grant any "right" to terminate a tenancy, there is no "actual conflict" between LARSO's eviction controls and HUD's regulations, as the district court erroneously concluded, see ER 51. And, without

such an "actual conflict," there was no need for the district court to consider whether HUD exceeded its statutory authority in promulgating the part of the "good cause" regulation addressed to a landlord's desire to raise rents. See ER 52-59.

The district court nevertheless addressed that issue and erred further by ruling that HUD exceeded its statutory authority, rendering the "good cause" regulation "invalid" in part. ER 55. The court mistakenly believed that "HUD did no balancing" in promulgating the "good cause" regulation – "encouraging owner participation and [giving] no weight to the purpose of providing low-income housing" – contrary to Congress's intent. ER 55. But as explained *supra* pp. 17-20, the regulation was intended to benefit *both* owners and tenants, by providing incentives for owners to participate in the Section 8 program and thereby increasing the amount of rental housing available to eligible families. Thus, the premise of the court's finding that HUD exceeded its statutory authority is incorrect.

The district court also identified two additional reasons for its invalidation of the regulation. First, "defining 'good cause' evictions to include the desire to raise rents makes assisted tenancies *less* like unassisted tenancies," which are protected by LARSO's eviction controls. ER 56. According to the court, however, Congress contemplated that the voucher program would operate as much as possible like the unassisted rental market and "could not have intended for assisted tenants to be less

well-off than unassisted tenants in rent control areas." ER 57. Second, noting that another HUD regulation provides that an owner "may be subject to rent control limits under State or local law," 24 C.F.R. § 982.509, the district court found that "[d]efining 'good cause' [for purposes of eviction] to include raising [the] rent nullifies this provision" and creates a "loophole" that is contrary to Congress's intent. ER 57.

However, both of those reasons are similarly based on the incorrect assumption that HUD's "good cause" regulation creates a "right" to terminate a Section 8 tenancy whenever the owner decides to raise the rent. We have shown that, as intended and properly interpreted, HUD's regulation does not create such a right and does not preempt LARSO's eviction controls. LARSO's limits on evictions apply to Section 8 voucher recipients, just as they apply to most other tenants. There is also no "internal inconsistency," ER 57, between HUD's regulation governing the termination of tenancy and that relating to rent controls, because neither preempts local restrictions in those areas.

B. HUD's Reasonable Interpretation Of Its Own Regulation And Its Response To The Court's Inquiry Are Entitled To Deference.

The proper interpretation of HUD's "other good cause" regulation is not immediately clear. A quick reading of 24 C.F.R. § 982.310(d)(1)(iv) might suggest

that there would be good cause for termination of a Section 8 tenancy any time the landlord wishes to raise the rent. However, as explained above, HUD has never interpreted its regulation in that way, nor is that the agency's intent, as the district court recognized. See ER 45. The "good cause" regulation can therefore be fairly characterized as ambiguous.

An agency's reasonable interpretation of its own ambiguous regulation – what it means and how it should be applied – is entitled to deference. *Federal Express Corp. v. Holowecki*, 128 S. Ct. 1147, 1155 (2008) (citing *Auer v. Robbins*, 519 U.S. 452, 461 (1997)). This Court has repeatedly explained that, "'[u]nder this standard, [it will] defer to the agency's interpretation * * * unless an alternative reading is *compelled* by the regulation's plain language or by other indications of the agency's intent at the time of the regulation's promulgation.'" *Siskiyou Reg'l Educ. Project v. United States Forest Serv.*, 565 F.3d 545, 557 (9th Cir. 2009) (quoting, *inter alia*, *Bassiri v. Xerox Corp.*, 463 F.3d 927, 931 (9th Cir. 2006)). Moreover, an agency's interpretation of its regulations presented in an *amicus* brief is entitled to deference where there is "no reason to suspect that the interpretation does not reflect the agency's fair and considered judgment on the matter in question." *Auer*, 519 U.S. at 462.

HUD's interpretation here of its "good cause" regulation is supported by the text of section 982.310, the agency's statements when it promulgated the rule, and the statute. That interpretation is thus reasonable and warrants deference. Cf. *Schuetz v.Banc One Mortgage Corp.*, 292 F.3d 1004, 1012-14 (9th Cir. 2002) (in light of HUD's expertise, Court defers to agency's interpretation of statute and clarification of prior policy statement), *cert. denied*, 537 U.S. 1171 (2003).

Courts ordinarily do not defer to an agency's conclusion respecting preemption. *Wyeth*, 129 S. Ct. at 1201. On the other hand, agencies "have a unique understanding of the statutes they administer and an attendant ability to make informed determinations" concerning whether a state or local law "may pose an 'obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Ibid*. Thus, a court will give weight to an agency's "explanation of [a] state [or local] law's impact on the federal scheme," where that explanation is thorough, consistent, and persuasive. *Ibid*. The analysis presented here by HUD in response to the Court's inquiry is entitled to weight under that test.

CONCLUSION

For the foregoing reasons, the district court's judgment should be affirmed.

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JUNE 2009

CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2009, I electronically filed the foregoing "Brief for the United States as *Amicus Curiae* Supporting Affirmance of the District Court's Judgment" with the Clerk for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users (Michael E. Soloff, Esq., Gerald M. Sato, Esq., and James R. Grow, Esq.) will be served by the appellate CM/ECF system.

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STATUTES and REGULATIONS

ADDENDUM

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42 U.S.C. § 1437f(o)(7)

(o) Voucher program

* * * * *

(7) Leases and tenancy

Each housing assistance payment contract entered into by the public housing agency and the owner of a dwelling unit –

(A) shall provide that the lease between the tenant and the owner shall be for a term of not less than 1 year, except that the public housing agency may approve a shorter term for an initial lease between the tenant and the dwelling unit owner if the public housing agency determines that such shorter term would improve housing opportunities for the tenant and if such shorter term is considered to be a prevailing local market practice;

(B) shall provide that the dwelling unit owner shall offer leases to tenants assisted under this subsection that –

(i) are in a standard form used in the locality by the dwelling unit owner; and

(ii) contain terms and conditions that –

(I) are consistent with State and local law; and

(II) apply generally to tenants in the property who are not assisted under this section;

(C) shall provide that during the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause, and that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking shall not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the tenancy or occupancy rights of the victim of such violence[.]

* * * * *

42 U.S.C. § 1437f(o)(10)

(10) Rent

(A) Reasonableness

The rent for dwelling units for which a housing assistance payment contract is established under this subsection shall be reasonable in comparison with rents charged for comparable dwelling units in the private, unassisted local market.

(B) Negotiations

A public housing agency (or other entity, as provided in paragraph (11)) shall, at the request of a family receiving tenant-based assistance under this subsection, assist that family in negotiating a reasonable rent with a dwelling unit owner. A public housing agency (or such other entity) shall review the rent for a unit under consideration by the family (and all rent increases for units under lease by the family) to determine whether the rent (or rent increase) requested by the owner is reasonable. If a public housing agency (or other such entity) determines that the rent (or rent increase) for a dwelling unit is not reasonable, the public housing agency (or other such entity) shall not make housing assistance payments to the owner under this subsection with respect to that unit.

(C) Units exempt from local rent control

If a dwelling unit for which a housing assistance payment contract is established under this subsection is exempt from local rent control provisions during the term of that contract, the rent for that unit shall be reasonable in comparison with other units in the market area that are exempt from local rent control provisions.

* * * * *

42 U.S.C. § 1437f(t)

(t) Enhanced vouchers

(1) In general

Enhanced voucher assistance under this subsection for a family shall be voucher assistance under subsection (o) of this section, except that under such enhanced voucher assistance –

(A) subject only to subparagraph (D), the assisted family shall pay as rent no less than the amount the family was paying on the date of the eligibility event for the project in which the family was residing on such date;

(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, and if, during any period the family makes such an election and continues to so reside, the rent for the dwelling unit of the family in such project exceeds the applicable payment standard established pursuant to subsection (o) of this section for the unit, the amount of rental assistance provided on behalf of the family shall be determined using a payment standard that is equal to the rent for the dwelling unit (as such rent may be increased from time-to-time), subject to paragraph (10)(A) of subsection (o) of this section and any other reasonable limit prescribed by the Secretary, except that a limit shall not be considered reasonable for purposes of this subparagraph if it adversely affects such assisted families;

(C) subparagraph (B) of this paragraph shall not apply and the payment standard for the dwelling unit occupied by the family shall be determined in accordance with subsection (o) of this section if –

(i) the assisted family moves, at any time, from such project; or

(ii) the voucher is made available for use by any family other than the original family on behalf of whom the voucher was provided; and

(D) if the income of the assisted family declines to a significant extent, the percentage of income paid by the family for rent shall not exceed the greater of 30 percent or the percentage of income paid at the time of the eligibility event for the project.

(2) Eligibility event

For purposes of this subsection, the term "eligibility event" means, with respect to a multifamily housing project, the prepayment of the mortgage on such housing project, the voluntary termination of the insurance contract for the mortgage for such housing project (including any such mortgage prepayment during fiscal year 1996 or a fiscal year thereafter or any insurance contract voluntary termination during fiscal year 1996 or a fiscal year thereafter), the termination or expiration of the contract for rental assistance under this section for such housing project (including any such termination or expiration during fiscal years after fiscal year 1994 prior to October 27, 2000), or the transaction under which the project is preserved as affordable housing, that, under paragraphs (3) and (4) of section 515(c), section 524(d) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note), section 223(f) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4113(f)), or section 201(p) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-1a(p)), results in tenants in such housing project being eligible for enhanced voucher assistance under this subsection.

* * * * *

24 C.F.R. § 982.310

§ 982.310 Owner termination of tenancy.

(a) *Grounds*. During the term of the lease, the owner may not terminate the tenancy except on the following grounds:

(1) Serious violation (including but not limited to failure to pay rent or other amounts due under the lease) or repeated violation of the terms and conditions of the lease;

(2) Violation of federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the premises; or

(3) Other good cause.

* * * * *

(d) *Other good cause.*

(1) "Other good cause" for termination of tenancy by the owner may include, but is not limited to, any of the following examples:

(i) Failure by the family to accept the offer of a new lease or revision;

(ii) A family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or premises;

(iii) The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or

(iv) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rental).

(2) During the initial lease term, the owner may not terminate the tenancy for "other good cause", unless the owner is terminating the tenancy because of something the family did or failed to do. For example, during this period, the owner may not terminate the tenancy for "other good cause" based on any of the following grounds: failure by the family to accept the offer of a new lease or revision; the owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or a business or economic reason for termination of the tenancy (see paragraph (d)(1)(iv) of this section).

* * * * *

24 C.F.R. § 982.509

§ 982.509 Rent to owner: Effect of rent control.

In addition to the rent reasonableness limit under this subpart, the amount of rent to owner also may be subject to rent control limits under State or local law.

L.A. Mun. Code § 151.02

SEC. 151.02. DEFINITIONS.

* * * * *

Rental Units. (Amended by Ord. No. 157,385, Eff. 1/24/83.) All dwelling units, efficiency dwelling units, guest rooms, and suites, as defined in Section 12.03 of this Code, and all housing accommodations as defined in Government Code Section 12927, and duplexes and condominiums in the City of Los Angeles, rented or offered for rent for living or dwelling purposes, the land and buildings appurtenant thereto, and all housing services, privileges, furnishings and facilities supplied in connection with the use or occupancy thereof, including garage and parking facilities. (First Sentence Amended by Ord. No. 170,445, Eff. 5/6/95, Oper. 7/5/95.) * * * The term shall not include:

* * * * *

5. Housing accommodations owned and operated by the Los Angeles City Housing Authority, or which a government unit, agency or authority owns, operates, or manages and which are specifically exempted from municipal rent regulation by state or federal law or administrative regulation, or housing accommodations specifically exempted from municipal rent regulation by state or federal law or administrative regulation. This exception shall not apply once the government ownership, operation, management, regulation or rental assistance is discontinued. This exception shall not apply to rental units for which rental assistance is paid pursuant to the Housing Choice Voucher Program codified at 24 CFR part 982, and those units are subject to the provisions of this article to the fullest extent allowed by law. (Amended by Ord. No. 177,587, Eff. 7/5/06.)

* * * * *

L.A. Mun. Code § 151.09A

SEC. 151.09. EVICTIONS.
1. (Amended by Ord. No. 154,237, Eff. 8/30/80, Oper. 9/1/80.)

A. A landlord may bring an action to recover possession of a rental unit only upon one of the following grounds:

1. The tenant has failed to pay the rent to which the landlord is entitled, including amounts due under Subsection D of Section 151.05.

2. (Amended by Ord. No. 175,130, Eff. 3/31/03.) The tenant has violated a lawful obligation or covenant of the tenancy and has failed to cure the violation after having received written notice from the landlord, other than a violation based on:

(a) The obligation to surrender possession upon proper notice; or

(b) The obligation to limit occupancy, provided that the additional tenant who joins the occupants of the unit thereby exceeding the limits on occupancy set forth in the rental agreement is either the first or second dependent child to join the existing tenancy of a tenant of record or the sole additional adult tenant. For purposes of this section, multiple births shall be considered as one child. The landlord, however, has the right to approve or disapprove the prospective additional tenant, who is not a minor dependent child, provided that the approval is not unreasonably withheld; or

(c) A change in the terms of the tenancy that is not the result of an express written agreement signed by both of the parties. For purposes of this section, a landlord may not unilaterally change the terms of the tenancy under Civil Code Section 827 and then evict the tenant for the violation of the added covenant unless the tenant has agreed in writing to the additional covenant. The tenant must knowingly consent, without threat or coercion, to each change in the terms of the tenancy. A landlord is not required to obtain a tenant's written consent to a change in the terms of the tenancy if the change in the terms of the tenancy is authorized by Los Angeles Municipal Code Section 151.06, or if the landlord is required to change the terms of the tenancy pursuant to federal, state, or local law. Nothing in this paragraph shall exempt

a landlord from providing legally required notice of a change in the terms of the tenancy.

3. (Amended by Ord. No. 180,449, Eff. 2/5/09.) The tenant is committing or permitting to exist a nuisance in or is causing damage to, the rental unit or to the unit's appurtenances, or to the common areas of the complex containing the rental unit, or is creating an unreasonable interference with the comfort, safety, or enjoyment of any of the other residents of the rental complex or within a 1,000 foot radius extending from the boundary line of the rental complex.

The term "nuisance" as used in this subdivision includes, but is not limited to, any gang-related crime, violent crime, unlawful weapon or ammunition crime or threat of violent crime, illegal drug activity, any documented activity commonly associated with illegal drug dealing, such as complaints of noise, steady traffic day and night to a particular unit, barricaded units, possession of weapons, or drug loitering as defined in Health and Safety Code Section 11532, or other drug related circumstances brought to the attention of the landlord by other tenants, persons within the community, law enforcement agencies or prosecution agencies. For purposes of this subdivision, gang-related crime is any crime motivated by gang membership in which the perpetrator, victim or intended victim is a known member of a gang. Violent crime is any crime which involves use of a gun, a deadly weapon or serious bodily injury and for which a police report has been completed. A violent crime under this subdivision shall not include a crime that is committed against a person residing in the same rental unit as the person committing the crime. Unlawful weapon or ammunition crime is the illegal use, manufacture, causing to be manufactured, importation, possession, possession for sale, sale, furnishing, or giving away of ammunition or any weapon listed in subdivision (c)(1)-(5) of Section 3485 of the Civil Code.

Threat of violent crime is any statement made by a tenant, or at his or her request, by his or her agent to any person who is on the premises or to the owner of the premises, or his or her agent, threatening the commission of a crime which will result in death or great bodily injury to another person, with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, when on its face and under the circumstances in which it is made, it is so unequivocal, immediate and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person

reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety. Such a threat includes any statement made verbally, in writing, or by means of an electronic communication device and regarding which a police report has been completed. A threat of violent crime under this section shall not include a crime that is committed against a person who is residing in the same rental unit as the person making the threat. "Immediate family" means any spouse, whether by marriage or not, parent, child, any person related by consanguinity of affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household."Electronic communication device" includes but is not limited to, telephones, cellular telephones, video recorders, fax machines, or pagers. "Electronic communications" has the same meaning as the term is defined in subsection 12 of Section 2510 of Title 18 of the United States Code, except that "electronic communication" for purposes of this definition shall not be limited to electronic communication that affects interstate or foreign commerce.

Illegal drug activity is a violation of any of the provisions of Chapter 6 (commencing with section 11350) or Chapter 6.5 (commencing with Section 11400) of the Health and Safety Code.

4. (Amended by Ord. No. 171,442, Eff. 1/19/97.) The tenant is using, or permitting a rental unit, the common areas of the rental complex containing the rental unit, or an area within a 1,000foot radius from the boundary line of the rental complex to be used for any illegal purpose. The term "illegal purpose" as used in this subdivision includes, but is not limited to, violations of any of the provisions of Chapter 6 (commencing with Section 11350) or Chapter 6.5(commencing with section 11400) of the Health and Safety Code.

5. The tenant, who had a written lease or rental agreement which terminated on or after the effective date of this chapter, has refused, after written request or demand by the landlord to execute a written extension or renewal thereof for a further term of like duration with similar provisions and in such terms as are not inconsistent with or violative of any provision of this chapter or any other provision of law.

6. The tenant has refused the landlord reasonable access to the unit for the purpose of making repairs or improvements, or for the purpose of inspection as permitted or

required by the lease or by law, or for the purpose of showing the rental unit to any prospective purchaser or mortgagee.

7. The person in possession of the rental unit at the end of a lease term is a subtenant not approved by the landlord.

8. (Amended by Ord. No. 166,130, Eff. 9/16/90.) The landlord seeks in good faith to recover possession of the rental unit for use and occupancy by:

a. The landlord, or the landlord's spouse; children, or parents, provided the landlord is a natural person. However, a landlord may use this ground to recover possession for use and occupancy by the landlord, landlord's spouse, child or parent only once for that person in each rental complex of the landlord; or

b. A resident manager, provided that: no alternative vacant unit is available for occupancy by a resident manager; except that where a building has an existing resident manager, the owner may only evict the existing resident manager in order to replace him/her with a new manager.

9. (Amended by Ord. No. 176,544, Eff. 5/2/05.) The landlord, having complied with all applicable notices and advisements required by law, seeks in good faith to recover possession so as to undertake Primary Renovation Work of the rental unit or the building housing the rental unit, in accordance with a Tenant Habitability Plan accepted by the Department, and the tenant is unreasonably interfering with the landlord's ability to implement the requirements of the Tenant Habitability Plan by engaging in any of the following actions:

a. The tenant has failed to temporarily relocate as required by the accepted Tenant Habitability Plan; or

b. The tenant has failed to honor a permanent relocation agreement with the landlord pursuant to Section 152.05 of this Code.

10. (Amended by Ord. No. 176,544, Eff. 5/2/05.) The landlord seeks in good faith to recover possession of the rental unit under either of the following circumstances:

a. to demolish the rental unit; or

b. to remove the rental unit permanently from rental housing use.

Landlords seeking to recover possession for either of the circumstances described in this subdivision must comply with the requirements of Sections 151.22 through 151.28 of this article. This subdivision is a lawful grounds for eviction only where a landlord is withdrawing from rent or lease all of the rental units in a structure or building. A landlord seeking to evict tenants pursuant to either of the circumstances described in this subdivision may not withdraw from rent or lease less than all of the accommodations in a structure or building. (Para. Added by Ord. No. 177,901, Eff. 9/29/06.)

11. The landlord seeks in good faith to recover possession of the rental unit in order to comply with a governmental agency's order to vacate, order to comply, order to abate, or any other order that necessitates the vacating of the building housing the rental unit as a result of a violation of the Los Angeles Municipal Code or any other provision of law. (Amended by Ord. No.172,288, Eff. 12/17/98.)

12. The Secretary of Housing and Urban Development is both the owner and plaintiff and seeks to recover possession in order to vacate the property prior to sale and has complied with all tenant notification requirements under federal law and administrative regulations. (Added by Ord. No. 173,224, Eff. 5/11/00.)

13. The rental unit is in a Residential Hotel, and the landlord seeks to recover possession of the rental unit in order to Convert or Demolish the unit, as those terms are defined in Section 47.73 of the Los Angeles Municipal Code. A landlord may recover possession of a rental unit pursuant to this paragraph only after the Department has approved an Application for Clearance pursuant to the provisions of Section 47.78. (Amended by Ord. No. 180,175, Eff. 9/29/08.)

CERTIFICATE OF COMPLIANCE PURSUANT TO FRAP 29(d) AND CIRCUIT RULE 32-1

I certify that, pursuant to Fed. R. App. P. 29(d) and 9th Cir. R. 32-1, the attached *amicus* brief is proportionately spaced, has a typeface of 14 points, and contains 6,234 words.

June 19, 2009

s/ Christine N. Kohl
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