DAWYN R. HARRISON, Acting County Counsel
THOMAS FAUGHNAN, Senior Assistant Counsel
PETER M BOLLINGER, Assistant County Counsel
BEHNAZ TASHAKORIAN, Principal Deputy County Counsel (SBN 213311)
BTashakorian@counsel.lacounty.gov
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012-2713
Telephone: (213) 972-5724

ANDREW BAUM - State Bar No. 190397
abaum@glaserweil.com
JESSE B. LEVIN - State Bar No. 268047
jlevin@glaserweil.com
ALEXANDER J. SUAREZ - State Bar No. 289044
asuarez@glaserweil.com
GLASER WEIL FINK HOWARD
JORDAN & SHAPIRO LLP
10250 Constellation Boulevard, 19th Floor
Los Angeles, California 90067
Telephone: (310) 553-3000
Facsimile: (310) 556-2920

Attorneys *for Respondent and Defendant*
County of Los Angeles

EXEMPT
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

CALIFORNIA APARTMENT ASSOCIATION,

Petitioner and Plaintiff,

v.

COUNTY OF LOS ANGELES and DOES 1-100, Inclusive,

Respondents and Defendants.

Case No. 23STCP01114

Judge: Hon. Mitchell L. Beckloff
Dept: 86

COUNTY OF LOS ANGELES' OPPOSITION TO PETITIONER'S MOTION FOR JUDGMENT ON PETITION FOR WRIT OF MANDATE

Date: December 6, 2023
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner California Apartment Association ("Petitioner") claims that the state's unlawful detainer law, which enables landlords to commence eviction proceedings for non-payment of rent after serving a 3-day notice to cure the nonpayment or quit, preempts the 30-day notice requirement that the County of Los Angeles ("County") provided to certain vulnerable tenants who invoked the protections of the County's January 24, 2023 COVID-19 Tenant Protections Resolution ("Resolution") and accrued back rental debt during the once-in-a-century public health crisis. Petitioner is wrong for at least two reasons.

First, it is undisputed that the County may validly exercise its police powers to modify the ***substantive*** bases for eviction without fear of preemption by the state's unlawful detainer statutes. *See* Mot. at fn. 2. The County's 30-day notice requirement limits only ***the substantive grounds for eviction*** because it does not apply to all evictions for non-payment of rent, but only a narrowly defined category of especially vulnerable residential tenants who accrued rental debt after asserting the Resolution's protections. Tenants who do not fall within the defined protected class or whose nonpayment of rent falls outside of the defined date range do not come within the ambit of the 30-day notice requirement and remain subject to the 3-day notice requirement set forth in California's unlawful detainer statutes. The County's 30-day notice requirement is not preempted because it regulates the substantive grounds for eviction rather than the procedural remedies available to landlords under unlawful detainer laws.

Second, the unlawful detainer statute that Petitioner argues preempts the County's 30-Day Notice Requirement specifies that it is "subject to" the state's COVID-19 Tenant Relief Act. In the most recent amendment of the Act the legislature expressly intended to authorize local governments to provide additional protections against eviction for the nonpayment of rent accruing on or after April 1, 2022. The 30-day notice requirement is an authorized and non-preempted exercise of the County's police power because it only applies to rent accruing after April 1, 2022.

For these reasons, state law does not preempt the County's 30-day notice requirement and Petitioner's Petition must be denied and judgment entered in favor of the County.

II. STATEMENT OF FACTS

A. The County of Los Angeles Passes Emergency Tenant Protections in Response to the Pandemic.

Beginning in March 2020, in response to the catastrophic health and economic impacts of the COVID-19 pandemic, the County adopted a series of emergency orders and protections to prevent the spread of the virus. Specifically, on March 4, 2020, the Chair of the Los Angeles County Board of Supervisors ("Board") proclaimed, pursuant to Chapter 2.68 of the Los Angeles County Code, the existence of a local emergency because the County was "affected by a public calamity due to conditions of disaster or extreme peril to the safety of persons and property arising as a result of the introduction of the novel coronavirus ("COVID-19") in Los Angeles County." Respondent's Supplemental Record ("Supp. Rec.") at 63 (Resolution). On March 19, 2020, the Chair of the Board issued an Executive Order ". . . that imposed a temporary moratorium on evictions for non-payment of rent by residential or commercial tenants impacted by COVID-19, and other tenant protections . . . commencing March 4, 2020, and continuing through May 31, 2020." *Id.*

Thereafter, during the ensuing years of the COVID-19 pandemic, the Board replaced the eviction moratorium with a Tenant Protections Resolution that granted qualifying tenants an affirmative defense to an unlawful detainer action and other protections from harassment and intimidation ("Protections"). Supp. Rec. at 63-64. And after more than a dozen periodic reviews, the County repeatedly extended and modified the Resolution in response to the evolving nature of the pandemic. *See Id.* at 58 (Board Motion Passing January 24, 2023 Resolution). The County's tenant protections helped thousands of economically vulnerable people in the County avoid becoming homeless during the pandemic. *Id.* at 59.[1]

[1] The LA Times reported on success of pandemic relief measures and cited a study that attributed the greatest effect to renter protections, estimating they reduced evictions by more than 50% in California and the County. Supp. Rec. at 59; *see also*, Doug Smith, Pandemic eviction protections, direct payments kept homelessness in check, study shows, Dec. 15, 2022 (available online at: https://www.latimes.com/california/story/2022-12-15/eviction-protections-and-relief-checks-kept-homelessness-in-check-during-the-pandemic-a-new-study-found).

B. <u>The County's Resolution Put a Final Expiration Date on the Resolution and Implemented the 30-Day Notice Requirement</u>.

On January 24, 2023, the Board approved and adopted its last version of the COVID-19 Tenant Protections Resolution. Supp. Rec. at 84. Among other things, the Resolution extended certain protections for the final time through March 31, 2023, and added a provision requiring landlords to serve on a particular class of tenant a 30-day notice to cure or quit prior to initiating an unlawful detainer action for rental debt incurred during a precise time window in which the tenant was under the protection of the Resolution (the "30-Day Notice Requirement"). *Id*. at 72 (Resolution § VI(A)(1)(c)). It provides, in pertinent part:

> <u>30-Day Notice to Cure or Quit</u>. Following expiration of the Resolution, if a Landlord seeks to evict a Residential Tenant described in subsection VI.A.1.b., above, for rent incurred from July 1, 2022, through March 31, 2023, the Landlord must first serve on the Residential Tenant a 30-day notice to cure or quit prior to initiating the unlawful detainer action. …This protection shall survive the expiration of the Resolution.

Id. The 30-Day Notice Requirement ***does not apply to all rental debt.*** It only applies to rental debt accrued "for rent incurred from July 1, 2022, through March 31, 2023." *Id*.

The 30-Day Notice Requirement ***does not apply to all residential tenancies***. It applies only to a specific class of tenant defined in subsection VI.A.1.b (hereafter, "At-Risk Moderate-to-Low-Income Tenants") who qualified for the Protections and accrued debt tenants, defined as:

1. a residential tenant;
2. whose household income is at or below 80 percent area median income;
3. who is unable to pay rent incurred from July 1, 2022, through March 31, 2023;
4. because of Financial Impacts Related to COVID-19;
5. who has provided timely notice to the landlord to this effect; and
6. who has timely self-certified their income level and financial hardship.

Supp. Rec. at 72 (Resolution § VI.A.1.b).

"Financial Impacts" is defined by section IV.E of the Resolution to mean either: (1) "[s]ubstantial loss of household income caused by the COVID-19 pandemic. 'Substantial loss' as used in this paragraph is defined as a loss of at least 10% of a Tenant's average monthly household

income for the 12-month period immediately preceding March 1, 2020, as may be established by pay stubs, payment receipts, letters from employers, or other evidence"; or (2) "[i]ncreased or extraordinary costs in food, fuel, child care, and/or unreimbursed medical expenses in an amount greater than 7.5% of a Tenant's average monthly household income for the 12-month period immediately preceding March 1, 2020." Supp. Rec. at 69 (Resolution § IV.E).

"Related to COVID-19" is defined by section IV.M of the Resolution as any of the following: (1) "A suspected or confirmed case of COVID-19, or caring for a household or family member who has a suspected or confirmed case of COVID-19"; (2) "Lay-off, loss of compensable work hours, or other reduction or loss of income or revenue resulting from a business closure or other economic or employer impacts related to COVID-19"; (3) "Compliance with an order or recommendation of the County's Health Officer to stay at home, self-quarantine, or avoid congregating with others during the state of emergency"; (4) "Extraordinary, unreimbursed medical expenses related to the diagnosis of, testing for, and/or treatment of COVID-19"; or (5) "Childcare needs arising from school closures in response to COVID- 19." Supp. Rec. at 70 (Resolution § IV.M).

C. The California COVID-19 Tenant Relief Act Amends the Unlawful Detainer Law to Authorize Broader Local Protections.

The State enacted its own protections in the form of the COVID-19 Tenant Relief Act of 2020 (the "Act") beginning on August 31, 2020, by Assembly Bill 3088 ("AB 3088"). 2020 Cal. Legis. Serv. Ch. 37 (A.B. 3088) (West). It is undisputed that AB 3088 also amended the unlawful detainer law providing the 3-day notice to cure or quit to state that an unlawful detainer action thereunder was "subject to the COVID-19 Tenant Relief Act of 2020" *Id.*; *see also* Cal. Civ. Proc. Code § 1161(2).

The Act included Code of Civil Procedure section 1179.05 ("Section 1179.05"), which expressly preempts any ordinance, resolution, regulation, or administrative action by any city and/or county to protect tenants from eviction in response to the COVID-19 pandemic ***as specified in subsection (a) thereof***. *See* Cal. Civ. Proc. Code § 1179.05(a).

Section 1179.05 was amended numerous times, including by the latest amendment on

March 31, 2022, by Assembly Bill 2179. 2022 Cal. Legis. Serv. Ch. 13 (A.B. 2179) (West); s*ee also* Supp. Rec. at 86-92. The Senate Floor Analysis of Bill No. AB 2179, explained that intent of the amendment was, in part, to extend "preemption of additional local protections against eviction for nonpayment of rent that were not in place on August 19, 2020" through June 30, 2022. Supp. Rec. at 86 (California Bill Analysis, A.B. 2179 Senate Floor Analyses (3/30/2022)). Thereafter, "for rent that accrues on or after April 1, 2022, local jurisdictions **are free to establish additional protections against eviction**." *Id*. at 88 (California Bill Analysis, A.B. 2179 Senate Floor Analyses (3/30/2022) (emphasis added)).

Importantly, the County's Resolution took effect after June 30, 2022, and the 30-Day Notice Requirement applies only to rent accruing on or after April 1, 2022.

III. LEGAL STANDARD

"Whether state law preempts a local ordinance is a question of law[.]" *Roble Vista Associates v. Bacon*, 97 Cal.App.4th 335, 339 (2002). "The party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption." *Big Creek Lumber Co. v. Cnty. of Santa Cruz*, 38 Cal. 4th 1139, 1149 (2006) (as modified (Aug. 30, 2006)). The preemption inquiry begins with the presumption that a local ordinance is not preempted. *Id.* at pp. 1149-50. Counties have:

> plenary authority to govern, subject only to the limitation that they exercise this power within their territorial limits and subordinate to state law. Apart from this limitation, the police power of a county or city under this provision is as broad as the police power exercisable by the Legislature itself.

Candid Enterprises, Inc. v. Grossmont Union High Sch. Dist., 39 Cal. 3d 878, 885 (1985) (cleaned up). Under the Constitution of the State of California, "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." Cal. Const. art. XI, § 7. There is generally a "strong presumption that legislative enactments must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears." *Walker v. Superior Ct.*, 47 Cal. 3d 112, 143 (1988).

IV. ARGUMENT

A. The County's 30-Day Notice Requirement is Not Preempted By State Law Because It Limits the Substantive Bases for Eviction.

Petitioner contends that the 30-Day Notice Requirement is preempted by state law because Code of Civil Procedure section 1161 ("Section 1161"), "fully occupies the field of a landlord's possessory remedies following nonpayment of rent" and because the 30-Day Notice Requirement contradicts the 3-day notice required by Section 1161(2). Plaintiffs' Record at 7 (Petition ¶¶ 18–21). Petitioner's preemption arguments fail for two reasons.

First, Petitioner overstates the preemptive effect of the unlawful detainer statutes. Accurately stated, unlawful detainer statutes have been held to occupy the field only as to the *procedures* to be followed to allow a landlord to recover possession of rental property. *Birkenfeld v. City of Berkeley*, 17 Cal.3d 129, 149 (1976) ("The purpose of the unlawful detainer statutes is procedural."). Local governments may exercise their police powers to modify *the substantive grounds for eviction*. *Id*. (explaining that the "elimination of particular grounds for eviction is a limitation upon the landlord's property rights under the police power giving rise to a substantive ground of defense in unlawful detainer proceedings" and "[t]he mere fact that a city's exercise of the police power creates such a defense does not bring it into conflict with the state's statutory scheme."). Petitioner does not dispute this distinction, but relegates it to mere mention in a footnote. *See*, Mot. at fn. 2.

This distinction is dispositive. *Birkenfeld* establishes the relevant framework for determining whether or not the 30-Day Notice Requirement is preempted by Section 1161(2): if the 30-Day Notice Requirement limits the substantive grounds for eviction, it is not preempted by Section 1161(2); if the 30-Day Notice Requirement imposes a procedural hurdle, it is preempted by Section 1161(2). However, drawing a distinction between procedure and substantive law can be "difficult to draw in practice." *Vaughn v. LJ Internat., Inc.*, 174 Cal.App.4th 213, 221 (2009).

A local government's rule that extends the length of the notice-to-quit period is substantive if it applies only to a defined and uniquely vulnerable class. *See San Francisco Apartment Assn. v. City & Cnty. of San Francisco*, 20 Cal. App. 5th 510, 518–19 (2018) (holding that a city ordinance barring evictions of a defined class of students and educators during the school year imposed a

substantive limitation on eviction and was not preempted by the unlawful detainer statutes governing the procedural aspects of eviction).

In *San Francisco Apartment Assn.*, the Court of Appeal upheld a San Francisco ordinance that barred no-fault evictions of families with children and educators during the school year against a preemption challenge under the State's unlawful detainer statutes. The court recognized that *Birkenfeld* provided the proper framework (*id*. at 515)[2] and noted that the city's ordinance had both a substantive component and a procedural impact (*id*. at 516–17). The court recognized that the ordinance created a class protected from evictions—i.e., educators and children who were or could be attending school or day care, during the regular school year; procedurally, the ordinance restricted the timing of the eviction far beyond the 3-day notice requirement specified in the unlawful detainer statutes, save during the summer months. *Id*. at 516–17.

Despite the fact that the ordinance had the effect of extending the 3-day notice to quit period for as long as 9 months, the court found the City of San Francisco's ordinance to be a substantive limitation on evictions. Tenants within the protected class had a substantive defense to eviction. Tenants outside of the protected class—including because the regular school year had ended or would end by the effective date of the notice of termination—no longer had such a substantive defense. *Id*. at 518. The court found that the procedural impact of the city's ordinance, was "necessary to regulate the substantive grounds of the defense it creates." *Id.* (internal quotes omitted). Therefore, the Court concluded that, under the *Birkenfeld* framework, the San Francisco ordinance was "a permissible limitation upon the landlord's property rights under the police power, rather than an impermissible infringement on the landlord's unlawful detainer remedy." *Id*. (internal quotes omitted).

Here, the County's Resolution is functionally the same as San Francisco's. It protects an especially vulnerable class of citizens similar to the families with children and educators during the

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[2] The *San Francisco Apartment Assn*. court rejected the plaintiff's argument based on the *Tri County Apartment Assn.* and *Channing Properties* cases upon which Petitioner primarily relies, finding that those cases "primarily involve state statutes other than the unlawful detainer statutes, and therefore do not employ the procedural-substantive framework established in *Birkenfeld*. Instead, they stand for the general proposition that various state laws preempt the field of the timing of landlord-tenant transactions." *San Francisco Apartment Assn*. at 519.

school year, namely: (1) residential tenants; (2) whose household income is at or below 80 percent area median income; (3) who are unable to pay rent incurred from July 1, 2022, through March 31, 2023; due to Financial Impacts Related to COVID-19; (4) who provided timely notice to the landlord to this effect; and (5) who timely self-certified their income level and financial hardship. *See* Supp. Rec. at 72, 76 (Resolution §§ VI.A.1.c, VI.A.1.b, VI.B.1.b). Tenants that do not fall within the protected class of At-Risk Moderate-to-Low-Income Tenants remain subject to the 3-day notice requirement set forth in Section 1161(2). Similar to the San Francisco ordinance, the County's 30-Day Notice Requirement has a procedural impact of extending the notice period, but the County expressly found that the protected tenants are at risk of falling into homelessness (Supp. Rec. at 59-60 [Board Motion Passing January 24, 2023 Resolution], 64 [Resolution]) and that the 30-Day Notice Requirement is necessary to give these tenants the opportunity to avoid homelessness by allowing them to either cure a longstanding default in rental payments or to quit and secure alternative housing (*id*. at 60-61 [Board Motion Passing January 24, 2023 Resolution], 72 [Resolution§ VI.A.1.c]).

Therefore, for the same reasons the San Francisco ordinance was a substantive limitation on the grounds to evict children and educators during the school year, the County's 30-Day Notice Requirement is not preempted because it is a substantive limitation on the grounds to evict At-Risk Moderate-to-Low-Income Tenants.

The *San Francisco Apartment Assn.* court's holding was guided by *Rental Hous. Assn. of N. Alameda Cnty. v. City of Oakland*, 171 Cal. App. 4th 741 (2009), which is similarly instructive. There, the court of appeal denied a landlord petition for writ of mandate challenging Oakland's Just Cause for Eviction Ordinance. That ordinance required, among other things, that landlords provide tenants with a written notice and an opportunity to cure any offending conduct, including non-payment of rent, before the landlord could resort to eviction procedures under Section 1161(2). *Rental Hous. Assn. of N. Alameda Cnty., supra,* 171 Cal. App. 4th at 762. Although the City of Oakland's notice requirement imposed an inherent and indefinite delay on a landlord's unlawful

detainer remedy than the 3-day notice to quit[3], there the court concluded that the notice requirement served to "limit a landlord's right to initiate an eviction due to certain tenant conduct by requiring that the specified conduct continue after the landlord provides the tenant written notice to cease" and that such notice requirements regulated "the substantive grounds for eviction, rather than the procedural remedy available to the landlord once grounds for eviction have been established." *Rental Hous. Assn. of N. Alameda Cnty.*, *supra*, 171 Cal. App. 4th at 762–63.

Here, the County's 30-Day Notice Requirement has the same impact as the notice requirement in the City of Oakland's Just Cause for Eviction Ordinance. The 30-Day Notice Requirement merely requires that a landlord give a tenant notice of the offending conduct—i.e., the tenant's failure to pay rent incurred from July 1, 2022, through March 31, 2023— and a specified time within which to cure the offending conduct, before initiating an unlawful detainer proceeding. Therefore, the 30-Day Notice Requirement is a permissible substantive limitation on the substantive grounds for evictions. The 30-Day Notice Requirement is not preempted by Section 1161(2) because it only limits the substantive bases for eviction. Petitioner's reliance on cases outside of the unlawful detainer field that fail to apply the *Birkenfeld* framework provide no basis for finding otherwise.

Second, the cases on which Petitioner relies are inapposite because they do not bear on the preemptive effect of Section 1161(2) nor on the distinction between procedural and substantive modifications set forth in *Birkenfeld*. Nor do they deal with local or municipal laws that exclusively apply to unique and defined classes of tenants.

Many of Petitioner's cases just generally state that one of the purposes[4] of the unlawful detainer statutes is to provide a speedy remedy to determine the right to possess real property. *See*

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[3] "Although the [*Rental Hous. Assn.*] court did not discuss the impact on timing in its preemption discussion, this notice requirement imposed an inherent delay on a landlord's unlawful detainer remedy." *San Francisco Apartment Assn.*, *supra*, 20 Cal. App. 5th at 518.

[4] While a speedy remedy is *a* purpose of the unlawful detainer statutes, they have other purposes that are not served by finding preemption in this case. For example, "[t]he purpose of the [3-day] notice required by section 1161, subdivision 2, is to give the tenant the opportunity to pay the rent due and retain possession by avoiding forfeiture." *Valov v. Tank*, 168 Cal. App. 3d 867, 874 (Ct. App. 1985); *see also*, *Foster v. Williams*, 229 Cal. App. 4th Supp. 9 (Cal. App. Dep't Super. Ct. 2014).

Mot. at 11:7-12:8, citing *Kassan v. Stout*, 9 Cal. 3d 39 (1973) (construing Section 1161 as providing the proper remedy to a tenant's unauthorized assignment of the leasehold); *Staudigl v. Harper*, 76 Cal. App. 2d 439 (1946) (finding unlawful detainer complaint stated facts sufficient to constitute a cause of action against defendant tenant); *Martin-Bragg v. Moore*, 219 Cal. App. 4th 367 (2013) (construing an unlawful detainer action under Section 1161 as the inappropriate forum for the resolution issues raised by countervailing quiet title action); and *Lindsey v. Normet*, 405 U.S. 56 (1972) (construing Oregon's forcible entry and wrongful detainer statute as justifying summary proceeding because of limited applicability of statute).

Other cases that Petitioner relies on only state general principles of field preemption without construing the preemptive effect of Section 1161(2) or, more generally, the unlawful detainer statutes. *See* Mot. at 12:10-25, citing *Am. Fin. Servs. Assn. v. City of Oakland*, 34 Cal. 4th 1239 (2005) (finding city's anti-predatory lending ordinance preempted by Financial Code sections enacted to combat predatory lending practices); and *O'Connell v. City of Stockton*, 41 Cal. 4th 1061, 1067 (2007) (finding ordinance permitting city to seize and hold for forfeiture any motor vehicle used to solicit act of prostitution or to attempt to consummate drug transaction preempted by portions of the California Uniform Controlled Substances Act and the Vehicle Code). Though Petitioner cites these cases for general principles of field preemption, neither case addressed the preemptive effect of Section 1161(2) or the distinction between procedural and substantive law.

Petitioner relies heavily on *Tri Cnty. Apartment Assn. v. City of Mountain View*, 196 Cal. App. 3d 1283 (Ct. App. 1987), which does not help Petitioner, but instead underscores the substantive vs. procedural distinction for the purposes of preemption. There, the court held preempted a city ordinance requiring landlords to give all residential tenants under a month-to-month tenancy at least 60 days' notice of a rental increase. *Id.* This conflicted with state law, Civil Code section 827, expressly allowing landlords to increase rents on all month-to-month tenants on not less than 30 days' notice. The *Tri Cnty. Apartment Assn.* court found that the only "difference between Section 827 and the Ordinance is the minimum notification period, 30 days versus 60 days"—a procedural difference *Id*. at 1289. Notably, the Plaintiffs in the *Tri Cnty. Apartment Assn.* case conceded that if the city had instead enacted rent control measures, i.e. a substantive

modification, they would not be able to challenge the city's ordinance in court on preemption grounds. *Id*. at 1290.

Here, the County's Resolution does more than merely replace a procedural requirement of 3 days of notice with 30 days of notice that applies to all tenants and all rental debts. The 30-Day Notice Requirement applies only (1) to a defined class of At-Risk Moderate-to-Low-Income Tenants that were at a heightened risk of falling into homelessness because of the financial impacts of the COVID-19 pandemic; and (2) for the nonpayment of rent during nine specific months—i.e., from July 1, 2022, through March 31, 2023. The 30-Day Notice Requirement does not apply to any other tenants nor to nonpayment of rent in any other months. Thus, the Resolution is markedly different from the ordinance at issue in *Tri Cnty. Apartment Assn.* The County's Resolution, intended to address the COVID-19 pandemic, and not unlawful detainer notice provisions generally, is more akin to the rental control measures that the *Tri Cnty. Apartment Assn.* plaintiffs conceded would not have been preempted.

Similarly, Petitioner's reliance on *Mobilepark W. Homeowners Assn. v. Escondido Mobilepark W.*, 35 Cal. App. 4th 32 (1995) is misplaced. Petitioner simply quotes a portion of *Mobilepark W. Homeowners Assn.* for the proposition that where a statute sets a notice period, a local ordinance may not impose a different notice requirement. However, *Mobilepark W. Homeowners Assn.* is distinguishable from the instant case for the same reasons set forth above. *Mobilepark W. Homeowners Assn.* did not discuss the preemptive effect of Section 1161(2), nor did it address the distinction between substantive and procedural law. Moreover, the *Mobilepark W. Homeowners Assn.* court's discussion on preemption has been dismissed as mere dicta. *Vill. Trailer Park, Inc. v. Santa Monica Rent Control Bd.*, 101 Cal. App. 4th 1133, 1141 (2002) (as modified (Sept. 24, 2002)[5] (explaining *Mobilepark W. Homeowners Assn.* "concerned the validity of rent control ordinances adopted by the City of Escondido, which imposed additional requirements for long-term mobilehome lease agreements that went beyond the requirements provided in Civil Code section 798.17. In dicta, the appellate court stated that the additional requirements of the Escondido

[5] Disapproved of on other grounds by *Dhillon v. John Muir Health*, 2 Cal. 5th 1109 (2017).

ordinances contradicted the [Mobilehome Residency Law].").

Petitioner's citation to *Channing Properties v. City of Berkeley*, 11 Cal. App. 4th 88 (1992) is also inapposite. As in *Tri Cnty. Apartment Assn.* the ordinance at issue in *Channing Properties* did no more than alter a notice requirement provided for under state law. The ordinance did not define and limit its application to a protected class, like the At-Risk Moderate-to-Low-Income Tenants specified in the County's 30-Day Notice Requirement; it did not limit its application to rental units being removed during a specified limited date range; and the ordinance was not in response to a public emergency of global proportions like the COVID-19 pandemic. *Channing Properties* cited Section 1161 in passing, without considering its preemptive effect, and without distinguishing between procedural and substantive limitations.

As a result Petitioner lacks any on-point authority supporting preemption of the County's Resolution.[6] Applying the only on point authority in *San Francisco Apartment Assn.* and *Rental Hous. Assn. of N. Alameda Cnty.,* and the presumption against preemption, only supports the conclusion that the Resolution is a substantive modification of the bases for eviction and not preempted by the state's unlawful detainer statutes.

B. <u>The COVID-19 Tenant Relief Act Authorizes Protections Against Eviction for the Nonpayment of Rent Accruing on or after April 1, 2022</u>.

Petitioner's claim of preemption also fails because it is undisputed that Section 1161(2), the unlawful detainer statute that Petitioner claims to preempt the 30-Day Notice Requirement, was amended to state that it is "subject to" the state's COVID-19 Tenant Relief Act of 2020. *See* Mot. at 16:4-9. The legislature's latest amendment of the Act, on March 31, 2023, in Assembly Bill 2179 ("AB 2179"), expressly intended to allow local governments to provide additional protections against eviction for the nonpayment of rent accruing on or after April 1, 2022. Supp. Rec. at 88

[6] Petitioner relies on the same authority that the *San Francisco Apartment Assn.* court explicitly distinguished as inapposite. *San Francisco Apartment Assn.*, *supra*, 20 Cal.App.5th at 519-521 ("The Property Owners also rely on two cases, [*Tri County Apartment Assn.*] and [*Channing Properties*]. These cases primarily involve state statutes other than the unlawful detainer statutes, and therefore do not employ the procedural-substantive framework established in *Birkenfeld*. Instead, they stand for the general proposition that various state laws preempt the field of the timing of landlord-tenant transactions.").

(California Bill Analysis, A.B. 2179 Senate Floor Analyses (3/30/2022)). Because the 30-Day Notice Requirement it is permitted by the Act and is, therefore, not preempted by Section 1161(2) because it applies only for rent accruing after April 1, 2022.

The Act specifically defines the scope of its preemptive effect in Code of Civil Procedure section 1179.05 ("Section 1179.05"), which defines the limits on an "ordinance, resolution, regulation, or administrative action adopted by a city, county, or city and county in response to the COVID-19 pandemic to protect tenants from eviction[.]" Cal. Civ. Proc. Code § 1179.05(a). The state amended Section 1179.05 in AB 2179. The legislative history for AB 2179 recounts that "[w]hen California first enacted statewide statutory eviction protections in the late summer of 2020, the bill included provisions preempting the ability of local jurisdictions to go farther than whatever protections against eviction for nonpayment of rent they already had on the books as of August 19, 2020." Supp. Rec. at 90 (California Bill Analysis, A.B. 2179 Senate Floor Analyses (3/30/2022)).

The legislative intent of AB 2179 was to amend Section 1179.05 to provide that "[l]ocal jurisdictions are preempted from applying new or additional local additional protections against eviction for nonpayment of rent, if that rent accrued on or before March 31, 2022" but adds "***[f]or rent that accrues on or after April 1, 2022, local jurisdictions are free to establish additional protections against eviction***." Supp. Rec. at 88 (California Bill Analysis, A.B. 2179 Senate Floor Analyses (3/30/2022)).

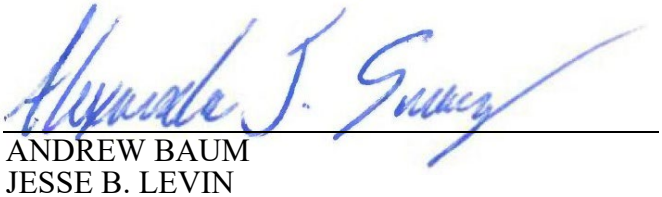
The 30-Day Notice Requirement falls squarely within the "new or additional local additional protections against eviction for nonpayment of rent" permitted for "rent that accrues after April 1, 2022" because the County's 30-Day Notice Requirement applies to tenants whose rent was incurred from July 1, 2022, through March 31, 2023, and only where the nonpayment of that rent is due to financial impacts resulting from COVID-19. Supp. Rec. at 88 (California Bill Analysis, A.B. 2179 Senate Floor Analyses (3/30/2022)). The County's resolution is therefore authorized by the Act and represents an additional protection against eviction by that the County was free to establish, in keeping with the legislative intent of the latest amendment of Section 1179.05.

V. CONCLUSION

For all of the foregoing reasons, the County respectfully requests that the Court deny Petitioner's Petition for Writ of Mandate and enter Judgment against Petitioner and in favor of Respondent.

DATED: November 6, 2023

GLASER WEIL FINK HOWARD JORDAN & SHAPIRO LLP

By: 

ANDREW BAUM
JESSE B. LEVIN
ALEXANDER J. SUAREZ
Attorneys for Respondent and Defendant County of Los Angeles

PROOF OF SERVICE

STATE OF CALIFORNIA, 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 10250 Constellation Boulevard, 19th Floor, Los Angeles, California 90067.

On November 6, 2023, I served the foregoing document(s) described as(1) **COUNTY OF LOS ANGELES' OPPOSITION TO PETITIONER'S MOTION FOR JUDGMENT ON PETITION FOR WRIT OF MANDATE; and (2) COUNTY OF LOS ANGELES' SUPPLEMENTAL RECORD IN SUPPORT OF OPPOSITION TO PETITIONER'S MOTION FOR JUDGMENT ON PETITION FOR WRIT OF MANDATE** on the interested parties to this action by delivering a copy thereof in a sealed envelope addressed to each of said interested parties at the following address(es):

SEE ATTACHED LIST

☐ **(BY MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in Los Angeles, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

☐ **(BY ELECTRONIC SERVICE)** by causing the foregoing document(s) to be electronically filed using the Court's Electronic Filing System which constitutes service of the filed document(s) on the individual(s) listed on the attached mailing list.

☒ **(BY E-MAIL SERVICE)** I caused such document to be delivered electronically via e-mail to the e-mail address of the addressee(s) set forth in the attached service list.

☐ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

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

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the above is true and correct.

Executed on November 6, 2023, at Los Angeles, California.

Gwendolyn Edwards

Gwendolyn Edwards

GlaserWeil

SERVICE LIST

Nielsen Merssamer Parrinello Gross & Leoni, LLP
Christopher E. Skinnel, Esq.
Hilary J. Gibson, Esq.
2350 Kerner Blvd., Suite 250
San Rafael, CA 94901
Email: cskinnel@nmgovlaw.com
hgibson@nmgovlaw.com

Attorneys for Plaintiff
CALIFORNIA APARTMENT ASSOCIATION

GlaserWeil