

1 **PAHL & McCAY**
A Professional Law Corporation
2 **Stephen D. Pahl, Esq.** (State Bar No. 95900)
3 **Karen K. McCay, Esq.** (State Bar No. 187664)
4 **Julie Bonnel-Rogers, Esq.** (State Bar No. 176200)
225 West Santa Clara Street
Suite 1500
San Jose, California 95113-1752
Telephone: (408) 286-5100
Facsimile: (408) 286-5722
Email: spahl@pahl-mccay.com
kmccay@pahl-mccay.com
jrogers@pahl-mccay.com

8 Attorneys for CALIFORNIA APARTMENT
ASSOCIATION

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF CONTRA COSTA

12 CALIFORNIA APARTMENT)
ASSOCIATION, a California corporation,)

13 Plaintiff)

14 v.)

15 CITY OF RICHMOND, and DOES 1)
16 through 50, inclusive,)

17 Defendants.)

18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

Case No.

**VERIFIED COMPLAINT FOR
DECLARATORY RELIEF, INJUNCTIVE
RELIEF AND ATTORNEYS' FEES FOR:**

- (1) VIOLATIONS OF THE TAKINGS CLAUSES OF THE UNITED STATES AND CALIFORNIA CONSTITUTIONS;
- (2) VIOLATIONS OF THE DUE PROCESS CLAUSES OF THE UNITED STATES AND CALIFORNIA CONSTITUTIONS;
- (3) VIOLATIONS OF THE EQUAL PROTECTION CLAUSES OF THE UNITED STATES AND CALIFORNIA CONSTITUTIONS;
- (4) UNCONSTITUTIONALLY VAGUE, AMBIGUOUS AND OVERBROAD TERMS;
- (5) UNCONSTITUTIONALLY EXERCISING JUDICIAL POWERS;
- (6) STATE LAW PREEMPTION;
- (7) VIOLATIONS OF CALIFORNIA'S FAIR EMPLOYMENT AND HOUSING ACT; and
- (8) VIOLATIONS OF THE CALIFORNIA CONSTITUTION'S RIGHT TO PRIVACY AND CALIFORNIA'S CIVIL CODE SECTIONS 1947.7 AND 1798 ET SEQ.

2017 JAN -1 A 9:05

CLERK OF THE COURT
BY: 

PER LOCAL RULE 5 THIS
CASE IS ASSIGNED TO
DEPT 9

C 17 - 00005

1 Comes now Plaintiff CALIFORNIA APARTMENT ASSOCIATION and complains as
2 follows:

3 **INTRODUCTION**

4 1. Plaintiff CALIFORNIA APARTMENT ASSOCIATION ("CAA") challenges the
5 validity of the rent control ballot measure passed by voters in Defendant CITY OF RICHMOND
6 on November 8, 2016, enacting the "Richmond Fair Rent, Just Cause for Eviction and
7 Homeowner Protection Ordinance" (hereinafter referred to as "Measure L" or "RFRO"), which
8 imposes rent control and eviction control on certain owners of real property within the City of
9 Richmond.

10 2. As set forth herein, CAA contends Measure L is invalid because it (a) results in
11 government takings without due process of law in violation of the United States and California
12 Constitutions; (b) violates the Equal Protection Clauses of the United States and California
13 Constitutions; (c) is unconstitutionally vague, ambiguous and overbroad; (d) improperly attempts
14 to exercise judicial powers; (e) is preempted by California State law; (f) is discriminatory in
15 violation of the California Fair Employment and Housing Act; and (g) violates the fundamental
16 right to privacy of landlords, tenants and other citizens of the City of Richmond.

17 **PARTIES**

18 3. Plaintiff CALIFORNIA APARTMENT ASSOCIATION ("CAA") is a California
19 corporation, operating under and by virtue of the laws of the State of California and which has
20 fulfilled all applicable requirements to conduct business and does business in the State of
21 California.

22 4. CAA is the largest rental housing trade association in the country, representing
23 more than fifty thousand (50,000) property owners and housing operators who are responsible for
24 nearly two million (2,000,000) rental housing units throughout California, including owners and
25 operators within the City of Richmond.

26 5. CAA provides its membership with support, information and educational resources
27 relevant to all aspects of California's rental housing industry. CAA is headquartered in
28 Sacramento, California, with active chapters throughout the State, including Contra Costa County.

6. As part of its purpose, CAA supports private property rights and opposes rent control as stated in the following published general policies of the organization:

CAA is opposed to government control of rents and believes strongly that rent control is as damaging to renters as it is to rental property owners. CAA believes that the best way to ensure the existence of safe, affordable housing with stable rents is for government to recognize and harness market forces by establishing policies that encourage the construction of new housing and to support investment in existing housing.

CAA believes that respect for private property rights is fundamental to rental property owners' ability to build and operate safe, affordable housing for California families. CAA supports legislation and regulations that provide property owners' speedy access to administrative and judicial systems at all levels – local, state and federal – to pursue Fifth Amendment takings claims or relief from other property rights violations.

7. CAA has standing to bring this Complaint on behalf of its members who own and operate rental property within the City of Richmond and have standing to sue in their own right as the interests at stake are germane to CAA's purpose and neither the claims asserted, nor the relief requested, require individual members' participation in the lawsuit.

8. Defendant CITY OF RICHMOND ("CITY") is a charter city pursuant to Article 11, Section 3 of the California Constitution. Richmond City Council ("RCC") is a seven member legislative body that sets local policy for Defendant CITY. RCC is obligated to enforce the law at issue against CAA members pursuant to Article III, Section 1 of Defendant CITY'S Charter.

9. Plaintiff does not know the true names or capacities, whether individual, corporate, associate, or otherwise of Defendants sued herein as Does 1 through 50, inclusive. Plaintiff sues said Defendants by such fictitious names and prays leave to amend this Complaint when the true names and capacities of said Defendants have been ascertained. Plaintiff is informed and believes and thereon alleges that said Defendants conducted, participated in, or are responsible for the acts set forth herein, and Plaintiff is further informed and believes and thereon alleges that some or all of the said Doe Defendants are in combination, agency, or joint venture relationships with the named Defendant.

10. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned, each Defendant was the agent, servant, joint venturer, partner, and/or employee of

1 each and every one of the other Defendants, and was acting within the course and scope of his
2 authority, and each Defendant ratified, authorized, and approved of the acts of each other
3 Defendant. Any acts or omissions attributed herein to a corporation or other business entity were
4 authorized acts, performed by an authorized representative of said entity, acting within the course
5 and scope of his agency or authority, and were ratified by reasonable representatives of the entity.

6 VENUE AND JURISDICTION

7 11. The Superior Court in and for the County of Contra Costa has jurisdiction over this
8 proceeding because this matter involves the validity of an ordinance enacted by a charter city
9 within this County and thus this matter is properly designated as a case of general jurisdiction
10 pursuant to California Code of Civil Procedure.

11 12. Further, Measure L provides "The Board, and Tenants and Landlords of Rental
12 Units, may seek relief from the appropriate court within the jurisdiction within which the affected
13 Rental Unit is located to enforce any provision of this Chapter or its implementing regulations or
14 to restrain or enjoin any violation of this Chapter and of the rules, regulations, orders and
15 decisions of the Board," essentially acquiescing to the jurisdiction of this Court for all purposes.
16 Since all Rental Units, as defined within Measure L, are located within the CITY and the CITY is
17 within the County of Contra Costa, this Court has jurisdiction over the matters alleged herein.

18 13. Venue is proper in the Superior Court in and for the County of Contra Costa
19 pursuant to California Code of Civil Procedure Section 394 because this is an action or proceeding
20 against a city within Contra Costa County.

21 GENERAL ALLEGATIONS

22 14. Measure L was passed by majority vote on November 8, 2016, enacting the RFRO
23 which requires a system of both rent control and eviction control on most multi-family properties
24 constructed prior to February 1, 1995 (pre-Costa-Hawkins), and eviction control affecting almost
25 all residential landlords.

26 15. RCC certified the election results on December 20, 2016, and, as such, Measure L
27 took effect on December 30, 2016.

28 16. A true and correct copy of Measure L is attached hereto as Exhibit A and

1 incorporated herein by this reference. Because of its length and complexity, it is difficult to
2 summarize all the procedural and substantive nuances of Measure L within the confines of this
3 Complaint so reference shall be made to the relevant portions of Measure L attached hereto as
4 Exhibit A where pertinent.

5 17. Plaintiff contends Measure L violates the Takings Clauses, Due Process Clauses,
6 Equal Protection Clauses and Judicial Powers Clauses of the United States and California
7 Constitutions, is unconstitutionally vague, ambiguous and overbroad, is preempted by California
8 State law, violates the California Fair Employment and Housing Act and violates the right to
9 privacy of landlords, tenants and other citizens, which right is protected by the Constitution of
10 California and by the United States Constitution.

11 18. By this Complaint, Plaintiff seeks a declaration of this Court that Measure L is
12 unconstitutional, pre-empted by State law, an unauthorized exercise of judicial powers, and
13 discriminatory on its face and, as such, is invalid and unenforceable.

14 19. By this Complaint, Plaintiff seeks an injunction of this Court enjoining CITY from
15 enforcing all provisions of Measure L because it is unconstitutional, an unauthorized exercise of
16 judicial powers, pre-empted by State law and discriminatory on its face and, as such, is invalid and
17 unenforceable.

18 20. Plaintiff brings this action in order to seek enforcement of important rights
19 affecting the public interest and to secure significant benefits for all owners of rental property
20 within the CITY.

21 FIRST CAUSE OF ACTION

22 **(Against All Defendants: Measure L Results in an Unlawful Taking 23 Under the United States Constitution and the California Constitution)**

24 21. Plaintiff realleges and incorporates herein by this reference each and every
25 foregoing paragraph of this Complaint as though fully set forth herein.

26 22. The Fifth Amendment of the U.S. Constitution provides, in pertinent part, “. . . nor
27 shall private property be taken for public use, without just compensation.”

28 23. Article 1, Section 19 of the California Constitution provides, in pertinent part, that

1 “[p]rivate property may be taken or damaged for a public use and only when just compensation,
2 ascertained by a jury unless waived, has first been paid to, or into court for, the owner.” The
3 referenced sections of the Fifth Amendment of the U.S. Constitution and Article 1, Section 19 of
4 the California Constitution are hereinafter collectively referred to as “the Takings Clauses.”

5 24. The purpose of the Takings Clauses is to prevent the government from forcing
6 some people to alone bear public burdens which, in fairness and justice, should be borne by the
7 public as a whole.

8 25. Pursuant to the Takings Clauses, a property owner must receive just compensation,
9 through the process the government provides, if private property is taken for public use.

10 26. Plaintiff contends Measure L results in an unconstitutional taking as it results in
11 private property being taken for public use without just compensation in that it fails to provide
12 owners of real property governed by Measure L a fair rate of return on their investment by:

13 a. Effectively depriving property owners governed by Measure L
14 economically reasonable use or value of their property to such an extent that it deprives
15 them of utility or value of that property (Measure L § 11.100.070);

16 b. Retroactively reducing rental rates lawfully implemented prior to Measure
17 L with no prompt or viable methodology for providing an adjustment in the rate that
18 provides property owners with a fair rate of return (Measure L § 11.100.070);

19 c. Defining “Base Rent” such that it cannot reasonably be deemed to reflect
20 general market conditions, thereby constituting an arbitrary and capricious windfall for
21 tenants (Measure L § 11.100.070);

22 d. Imposing improper conditions precedent on a landlord’s ability to petition
23 for an upward adjustment in rents (Measure L § 11.100.070(h)(2));

24 e. Allowing increased occupancy of individual units to an extent that will
25 cause the property to deteriorate at an accelerated pace and will act to reduce the value of
26 the property in the community through overcrowding and an overuse of resources
27 (Measure L § 11.100.050(a)(2)(ii));

28 f. Creating a life estate for tenants in an owner’s property which transfers the

1 value of property from its rightful owners to tenants, which life estate is equal in value to
2 owning the real property outright (Measure L § 11.100.050); and

3 g. Allowing tenants to convert real property which they do not own to an
4 unauthorized use, which exposes CAA members to liability associated with any
5 undisclosed subtenants, tax liabilities, or violations of short-term rental prohibitions
6 (Measure L § 11.100.050).

7 27. Measure L must be held invalid and unenforceable because it results in an
8 unconstitutional taking from the members of CAA, causing them to sustain damage and injury
9 including, but not limited to, loss of individual property rights.

10 WHEREFORE, Plaintiff prays for judgment against Defendant CITY and DOES 1 through
11 50 as set forth in the Prayer for Relief below.

12 SECOND CAUSE OF ACTION

13 **(Against All Defendants: Measure L Results in a Taking Without Due** 14 **Process Under the United States and the California Constitutions)**

15 28. Plaintiff realleges and incorporates herein by this reference Paragraphs 1 through
16 20 of this Complaint as though fully set forth herein.

17 29. Section One of the Fourteenth Amendment to the U.S. Constitution states in
18 relevant part: “. . . nor shall any State deprive any person of life, liberty, or property, without due
19 process of law;”

20 30. Article 1, Section 7 of the California Constitution provides, in pertinent part, that:
21 “[a] person may not be deprived of life, liberty, or property without due process of law;” The
22 referenced sections of the Fourteenth Amendment of the U.S. Constitution and Article 1, Section 7
23 of the California Constitution are hereinafter collectively referred to as “the Due Process Clauses.”

24 31. Under these Due Process Clauses, government must not impose binding
25 determinations upon parties without giving them appropriate notice of the issue and an opportunity
26 to be heard. Property owners must be given adequate notice of new laws which may interfere with
27 their reasonable expectation of a fair rate of return in accordance with due process.

28 32. Plaintiff contends Measure L violates the Due Process Clauses by:

- 1 a. Imposing new legal consequences about which CAA members had no
2 notice (Measure L §§ 11.100.050, 11.100.070);
3 b. Obviating vested rights without notice (Measure L §§ 11.100.050,
4 11.100.070);
5 c. Retroactively reducing rental rates lawfully implemented to pre-Measure L
6 rates with no prompt or viable methodology for providing an adjustment in the rate that
7 provides property owners with a fair rate of return (Measure L § 11.100.070); and
8 d. Implementing a petition process which denies a landlord with a fair
9 opportunity to be heard (Measure L §§ 11.100.070(c-d).

10 33. Measure L must be held invalid and unenforceable because it results in an
11 unconstitutional taking from the members of CAA without due process of law, causing them to
12 sustain damage and injury including, but not limited to loss of individual property rights.

13 WHEREFORE, Plaintiff prays for judgment against Defendant CITY and DOES 1 through
14 50 as set forth in the Prayer for Relief below.

15
16 **THIRD CAUSE OF ACTION**

17 **(Against All Defendants: Measure L Violates the Equal Protection
18 Clauses of the United States and the California Constitutions)**

19 34. Plaintiff realleges and incorporates herein by this reference Paragraphs 1 through
20 20 of this Complaint as though fully set forth herein.

21 35. Section One of the Fourteenth Amendment to the U.S. Constitution states in
22 relevant part: “. . . nor shall any State . . . deny any person within its jurisdiction the equal
23 protection of the laws.”

24 36. Article 1, Section 7 of the California Constitution provides, in pertinent part, that:
25 “[a] person may not be deprived of life, liberty, or property without due process of law or denied
26 equal protection of the laws;” The referenced sections of the Fourteenth Amendment of the
27 U.S. Constitution and Article 1, Section 7 of the California Constitution are hereinafter
28 collectively referred to as “the Equal Protection Clauses.”

37. Measure L provides, in pertinent part, that “[t]here shall be no more than two

1 members that own or manage any rental property, or are realtors” on the City of Richmond Rent
2 Board (Measure L § 11.100.060(b)).

3 38. All individuals have fundamental rights to real property and government service
4 including the right to hold office by election or appointment. It is unlawful to enact arbitrary
5 exclusions from office.

6 39. Measure L must be held invalid and unenforceable because it unconstitutionally
7 jeopardizes the exercise of the fundamental right to hold office by members of CAA and further
8 violates their First Amendment right to political expression and association, causing the members
9 of CAA to sustain damage and injury.

10 WHEREFORE, Plaintiff prays for judgment against Defendant CITY and DOES 1
11 through 50 as set forth in the Prayer for Relief below.

12 FOURTH CAUSE OF ACTION

13 **(Against All Defendants: Measure L is Unconstitutionally Vague,**
14 **Ambiguous and Overbroad under the Due Process Clauses)**

15 40. Plaintiff realleges and incorporates herein by this reference Paragraphs 1 through
16 20 of this Complaint as though fully set forth herein.

17 41. An ordinance is impermissibly vague and ambiguous under the Due Process
18 Clauses if its prohibitions and requirements are not clearly defined where the vagueness of the law
19 allows for multiple interpretations and the danger of arbitrary and discriminatory application.

20 42. Measure L is unconstitutionally ill-defined, lacking clarity and detail, including, but
21 not limited to, the following provisions:

22 a. Measure L’s reporting requirements as written make it procedurally
23 impossible for a Landlord to ever increase rent, change the terms of tenancy or terminate a
24 tenancy. Section 11.100.060(s)(1) provides:

25 Within sixty (60) days after the adoption of this Chapter, all
26 Landlords shall be required to file a copy of all rental increase
27 notices, change of terms of tenancy and termination notices with the
28 Board **before serving the tenant the notice.** A proof of service,
with the time and date of service of notice, shall be included with
notice filed with the City (emphasis added).

1 It is impossible for a landlord to include the proof of service on the tenant with the notice
2 to be filed with the City if the notice to be filed with the City must be filed before it is
3 served on the tenant.

4 b. Measure L allows a landlord to terminate a tenancy for "Breach of Lease,"
5 but only where the tenant continues to "substantially violate" the "material terms" of the
6 lease or rental agreement provided that such terms are "legal and reasonable," which make
7 the "Just Cause for Eviction Protections" unconstitutionally incomprehensible and leave
8 open the possibility that a term could be found to be unreasonable, even if legal in some
9 circumstances, resulting in inconsistent application and enforcement of Measure L
10 (Measure L § 11.100.050(a)(2));

11 c. Measure L allows a landlord to terminate a tenancy for "Failure to Give
12 Access" without "Good Cause" without identifying what may justify a tenant denying a
13 landlord access to a unit in contravention of applicable California law (Measure L §
14 11.100.050(a)(4));

15 d. Measure L requires a notice to cease be provided prior to terminating a
16 tenancy for breach of lease, nuisance or failure to give access "within a reasonable period
17 prior to serving a notice to terminate tenancy," but does not define how much notice is
18 required under what circumstances (Measure L § 11.100.050(d));

19 e. Measure L provides, in pertinent part:

20 . . . [t]he Board may authorize the Tenant of such a non-reporting
21 unit or where the Rent housing fee is unpaid to withhold all or a
22 portion of the Rent for the Rental Unit until such time as the Rental
23 Housing Fee is paid or notice filed. After a notice is properly filed
24 or fee paid, the Board shall determine what portion, if any, of the
25 withheld Rent is owed to the Landlord for the period in which the
26 notice was not properly filed or fee paid. Whether or not the Board
27 allows such withholding, no Landlord who has failed to properly
28 report or pay the fee shall at any time increase Rents for a Rental
Unit until such fee or notice is reported. This shall go into effect
thirty (30) days after determination of the Board.

(Measure L § 11.100.060 (s)(2)). While Measure L provides that "[t]his shall go into
effect thirty (30) days after determination of the Board," it is unclear from the plain reading
of the above-quoted portion of Measure L to what "This" refers – the withholding of rent,

1 the ultimate determination of what rent should be paid after the violations are corrected or
2 the inability to increase rents;

3 f. With respect to a Landlord's right to a reasonable return on investment,
4 Measure L provides that relevant factors include (but are not limited to):

5 The cost of planned or completed capital improvements to the rental
6 unit (as distinguished from ordinary repair, replacement and
7 maintenance) where such capital improvements are necessary to
8 bring the property into compliance or maintain compliance with
applicable local code requirements affecting health and safety, and
where such capital improvement costs are properly amortized over
the life of the improvement.

9 (Measure L § 11.100.070 (g)(3)). Measure L fails to provide any method by which to
10 quantify what may be "necessary" thereby leaving the recovery of capital improvements by
11 way of a petitions unpredictable and, therefore, unconstitutional; and

12 g. Measure L provides for a determination of compliance with "California
13 Civil Procedure Section 1942.4,"¹ which does not currently exist under California Law
14 (Measure L § 11.100.070(d)(13)).

15 43. Measure L must be held invalid and unenforceable because it contains
16 unconstitutionally vague and ambiguous provisions which are likely to result in arbitrary
17 enforcement, causing members of CAA to sustain damage and injury including, but not limited to,
18 loss of individual property rights.

19 44. Further, Measure L is unconstitutionally overbroad in that it is not narrowly
20 tailored to achieve their stated purposes while infringing on fundamental rights of CAA's
21 members. For example, Measure L provides:

22 All Tenants that are displaced based on Sections 11.100.050(a)(5),
23 (6) or (7) shall have the first right of refusal to return to the unit **if it**
should be ever returned to the market by the Landlord or
successor Landlord. Rent shall be the Rent lawfully paid by the
24 tenant at the time the Landlord gave notice of basis listed in Sections
25 11.100.050(a)(5), (6) or (7).

26 So restricting a rental unit in perpetuity is clearly unconstitutionally overbroad.

27
28 ¹ Plaintiff believes, but does not know, that CITY intended to refer to California Civil Code Section 1942.4; however,
Measure L refers to "California Civil Procedure Section 1942.4."

1 WHEREFORE, Plaintiff prays for judgment against Defendant CITY and DOES 1 through
2 50 as set forth in the Prayer for Relief below.

3 **FIFTH CAUSE OF ACTION**

4 **(Against All Defendants: Measure L Violates the Judicial Powers
5 Clauses of the United States and California Constitutions)**

6 45. Plaintiff realleges and incorporates herein by this reference Paragraphs 1 through
7 20 of this Complaint as though fully set forth herein.

8 46. Article III, Section 1 of the U.S. Constitution provides, in pertinent part, "[t]he
9 judicial power of the United States, shall be vested in one Supreme Court, and in such inferior
10 courts as the Congress may from time to time ordain and establish."

11 47. Article VI, Section 1 of the California Constitution provides, in pertinent part, that:
12 "[t]he judicial power of this State is vested in the Supreme Court, courts of appeal, and superior
13 courts, all of which are courts of record." The referenced sections of Article III, Section 1 of the
14 U.S. Constitution and Article VI, Section 1 of the California Constitution are hereinafter
15 collectively referred to as "the Judicial Powers Clauses."

16 48. An administrative agency may constitutionally hold hearings, determine facts,
17 apply the law to those facts, and order relief—including certain types of monetary relief—so long
18 as (a) such activities are authorized by statute or legislation and are reasonably necessary to
19 effectuate the administrative agency's primary, legitimate regulatory purposes and (b) the essential
20 judicial power remains ultimately in the courts through review of agency determinations.

21 49. Measure L provides that the decision of the hearing examiner shall be the final
22 decision of the Board in the event of no appeal to the Board and that the decisions of the hearing
23 examiner shall not be stayed pending appeal (Measure L § 11.100.070(d)(11)). While elsewhere
24 in Measure L it provides that no action or decision by the Board shall go into effect until thirty
25 (30) days have expired to allow for judicial review by appealing to the appropriate court within the
26 jurisdiction (Measure L § 11.100.090), Section 11.100.070(d)(11) appears to contradict such
27 limitation giving immediate effect to the hearing officer's decision thereby rendering it an
28 unconstitutional exercise of judicial powers.

50. In addition, Measure L contains several provisions creating affirmative defenses to any unlawful detainer action, which, when coupled with the immediacy of the Hearing Officer's decision, in practical effect results in a self-enforceable judgment, thereby violating the Judicial Powers Clauses.

51. Further, Measure L appears to provide to the CITY the authority to adjudicate claims under Civil Code² Section 1942.4 (Measure L § 11.100.070(d)(13)), without statutory authority for doing so and, as such, violates the Judicial Powers Clauses.

WHEREFORE, Plaintiff prays for judgment against Defendant CITY and DOES 1 through 50 as set forth in the Prayer for Relief below.

SIXTH CAUSE OF ACTION

(Against All Defendants: Measure L Is Preempted by State Law)

52. Plaintiff realleges and incorporates herein by this reference Paragraphs 1 through 20 of this Complaint as though fully set forth herein.

53. While chartered cities such as CITY have the full power to legislate on municipal affairs, those powers are limited where:

a. The subject matter has been so fully and completely covered by general law as to clearly indicate it has become exclusively a matter of state concern;

b. The subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or

c. The subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on transient citizens of the state outweighs the possible benefit to the municipality.

54. Measure L imposes additional procedural notice requirements on a landlord's ability to terminate a tenancy, a subject matter over which the State has asserted its control, rendering Measure L invalid. Such additional notice requirements include, but are not limited to:

² In point of fact, Measure L. § 11.100.070(d)(13) refers to California Civil Procedure Section 1942.4, which does not in fact exist, as alleged in the Fourth Cause of Action *supra*.

1 a. Imposing additional requirements to the statutory notice provisions of Civil
2 Code Section 827 by mandating that a Landlord notify a tenant in writing that he or she
3 need not accept terms effectuated by a notice provided under that California law (Measure
4 L § 11.100.050 (a)(2));

5 b. Preventing landlords from terminating tenancies for committing a nuisance,
6 committing waste or using the premises for an unlawful purpose without first giving
7 tenants a "Written Notice to Cease," essentially vitiating a landlord's statutory right to
8 terminate on these grounds in direct contravention of California Code of Civil Procedure
9 Section 1161(4) (Measure L §§ 11.100.050(a)(2-3), 11.100.050(d)); and

10 c. Requiring landlords to file with the "Board," as defined by Measure L, a
11 copy of all rental increase notices, changes of terms of tenancy and tenancy termination
12 notices, before serving the tenant the notice (while simultaneously requiring the filing of a
13 "proof of service with the time and date of service of notice" on the tenant even though
14 Measure L requires filing of the notice before the tenant is served), and providing that
15 failure to file the notices, changes of terms and tenancy termination notices is a complete
16 affirmative defense in an unlawful detainer action--thus changing the procedural
17 requirements for terminating a tenancy established by State law under California Code of
18 Civil Procedure Section 1161 (Measure L §§ 11.100.060(s)(1), (3)).

19 55. Measure L must be held invalid and unenforceable because it is pre-empted by
20 State law subjecting members of CAA to conflicting requirements where the State has intended to
21 occupy fully the subject matter being legislated.

22 WHEREFORE, Plaintiff prays for judgment against Defendant CITY and DOES 1 through
23 50 as set forth in the Prayer for Relief below.

24 SEVENTH CAUSE OF ACTION

25 (Against All Defendants: Measure L Violates the California Fair 26 Employment and Housing Act)

27 56. Plaintiff realleges and incorporates herein by this reference Paragraphs 1 through
28 20 of this Complaint as though fully set forth herein.

1 65. Pursuant to California's Information Practices Act of 1977 ("CIPA") codified at
2 California Civil Code Section 1788 *et seq.*, California law mandates that "in order to protect the
3 privacy of individuals, it is necessary that the maintenance and dissemination of personal
4 information be subject to strict limits." Cal. Civ. Code § 1798.1(c).

5 66. Under California Law, "the term 'personal information' means any information that
6 is maintained by an agency that identifies or describes an individual, including, but not limited to,
7 his or her name, social security number, physical description, home address, home telephone
8 number, education, financial matters, and medical or employment history. It includes statements
9 made by, or attributed to, the individual." Cal. Civ. Code § 1798.3.

10 67. CIPA contains certain notice requirements and procedural protections with respect
11 to the collection, maintenance and disclosure of personal information, almost all of which are
12 violated by many provisions of Measure L because, among other things:

13 a. Measure L provides that all Maximum Allowable Rent adjustment hearings
14 shall be open to the public." (Measure L § 11.100.070(d)(5) (emphasis added)).

15 b. Measure L provides that the "Board shall make available for inspection and
16 copying by any person an official record" . . . "for the cost of copying. . . ." This record
17 will include, but not be limited to all exhibits, papers and documents required to be filed or
18 accepted into evidence during the proceedings. (Measure L § 11.100.070(d)(7) (emphasis
19 added)).

20 68. Some of the personal information to be collected by the Board pursuant to
21 Measure L, and which is made available to the general public in violation of the right of privacy of
22 landlords, tenants and witnesses to lease violations, include, but are not limited to, the following:

23 a. Measure L requires that all "Written Warnings Notices" include "any
24 information necessary to determine the date, time, place, witnesses present, and other
25 circumstances concerning the reason for the notice" (Measure L § 11.100.050(d) (emphasis
26 added)).

27 b. Measure L authorizes a hearing examiner to "require either party to a Rent
28 adjustment hearing to provide it with any books, records and papers deemed pertinent in

1 addition to that information contained in registration statements" (Measure L §
2 11.100.070(d)(4)).

3 c. Measure L provides the hearing examiner "shall conduct a current building
4 inspection and/or request the city to conduct a current building inspection if the hearing
5 examiner finds good cause to believe the Board's current information does not reflect the
6 current condition of the Controlled Rental Unit. The Tenant may request the hearing
7 examiner to order such an inspection prior to the date of the hearing." (Measure L §
8 11.100.070(d)(4)).

9 d. Measure L grants the Board the following powers and duties among other
10 things: (i) conduct hearings; (ii) make such studies, surveys and investigations, conduct
11 such hearings, and obtain such information as is necessary to carry out its powers and
12 duties; (iii) collect and/or receive copies of notices of termination of tenancy and changes
13 in terms of tenancy; and (iv) create a searchable database of information collected
14 (Measure L § 11.100.060(e)).

15 69. The collection, compilation, storage and disclosure of the above personal
16 information, as well as other information to be collected under Measure L, is all subject to CIPA
17 and none of the procedural protections of CIPA are contained within Measure L.

18 WHEREFORE, Plaintiff prays for judgment against Defendant CITY and DOES 1 through
19 50 as set forth in the Prayer for Relief below.

20 NINTH CAUSE OF ACTION

21 (Against All Defendants: Declaratory Relief Pursuant to Cal. Code of
22 Civ. Pro. § 1060)

23 70. Plaintiff realleges and incorporates herein by this reference each and every
24 foregoing paragraph of this Complaint as though fully set forth herein.

25 71. An actual controversy has arisen and now exists between Plaintiff and Defendant
26 relative to their respective rights and duties under Measure L.

27 72. Plaintiff contends that Measure L violates the Takings Clauses, the Equal
28 Protection Clauses, the Due Process Clauses and the Judicial Powers Clauses of the United States

1 and California Constitutions, is unconstitutionally vague, ambiguous and overbroad, is preempted
2 by California State law, violates the California Fair Employment and Housing Act, and violates
3 the fundamental right to privacy of landlords, tenants and other citizens of the City of Richmond
4 and, therefore, is invalid and unenforceable.

5 73. Plaintiff requests that this Court issue an order declaring Measure L invalid and
6 unenforceable because it: (a) violates, amongst other things, the Takings Clauses, the Equal
7 Protection Clauses, the Due Process Clauses and the Judicial Powers Clauses of the United States
8 and California Constitutions; (b) is preempted by California State law; (c) is discriminatory on its
9 face; and (d) violates the fundamental right of privacy of landlords, tenants and other citizens of
10 the City of Richmond.

11 WHEREFORE, Plaintiff prays for judgment against Defendant CITY and DOES 1 through
12 50 as set forth in the Prayer for Relief below.

13 **TENTH CAUSE OF ACTION**

14 **(Against All Defendants: Injunctive Relief Pursuant to Cal. Code of**
15 **Civ. Pro. §§ 525 *et seq.*)**

16 74. Plaintiff realleges and incorporates herein by this reference each and every
17 foregoing paragraph of this Complaint as though fully set forth herein.

18 75. Plaintiff contends that Measure L violates the Takings Clauses, the Equal
19 Protection Clauses, the Due Process Clauses and the Judicial Powers Clauses of the United States
20 and California Constitutions, is unconstitutionally vague, ambiguous and overbroad, is preempted
21 by California State law, violates the California Fair Employment and Housing Act, and violates
22 the fundamental right to privacy of landlords, tenants and other citizens of the City of Richmond
23 and, therefore, is invalid and unenforceable.

24 76. Defendant is threatening to apply and proceed with enforcement of Measure L
25 against members of Plaintiff CAA.

26 77. Unless and until enjoined by an order of this Court, Defendant CITY and those
27 acting in concert with CITY will enforce the illegal and invalid Measure L against members of
28 Plaintiff CAA.

1 78. Defendant should be enjoined from enforcing Measure L.

2 WHEREFORE, Plaintiff prays for judgment against Defendant CITY and DOES 1 through
3 50 as set forth in the Prayer for Relief below.

4 **PRAYER**

5 WHEREFORE, Plaintiff CALIFORNIA APARTMENT ASSOCIATION prays for
6 judgment against Defendant CITY OF RICHMOND and DOES 1 through 50, and each of them,
7 as follows:

8 1. For a Declaration that Measure L is impermissibly retroactive, vague, ambiguous,
9 overbroad, preempted by existing California Law, unconstitutional, void, without effect, invalid
10 and/or unenforceable.


11 2. For a temporary restraining order, preliminary injunction, and permanent
12 injunction prohibiting Defendant CITY, as well as its City Council, officers, agents, employees,
13 attorneys, and all persons who are in active concert or participation with it, from enforcing
14 Measure L.

15 3. For an award of reasonable attorney's fees and costs of suit as allowed by law,
16 including, but not limited to, pursuant to Code of Civil Procedure Section 1021.5, as Plaintiff
17 brings this action in order to seek enforcement of important rights affecting the public interest and
18 to secure significant benefits for all owners of rental property within the CITY and the necessity
19 and financial burden of private enforcement are such as to make the award of attorneys' fees
20 appropriate.

21 4. All other relief that the Court deems to be just and equitable.

22 DATED: January 5, 2017

PAHL & McCAY
A Professional Law Corporation

23
24 By: 
25 Stephen M. Pahl

26 Attorneys for PLAINTIFF
27 CALIFORNIA APARTMENT ASSOCIATION
28