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FILING FEE EXEMPT PURSUANT TO GOVERNMENT CODE § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

HOWARD JARVIS TAXPAYERS ASSOCIATION and APARTMENT ASSOCIATION OF GREATER LOS ANGELES,

Plaintiffs,

v.

CITY OF LOS ANGELES, and ALL PERSONS INTERESTED IN THE MATTER OF MEASURE ULA of the November 8, 2022, ballot, a real property transfer tax,

Defendants.

AND RELATED CONSOLIDATED CASE

Lead Case No. 22STCV39662
(Consolidated with Case No.: 23STCV00352)
Assigned for All Purposes to the Honorable Curtis A. Kin; Department 72

DEFENDANT CITY OF LOS ANGELES' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR JUDGMENT TO COMPLAINT FILED BY HOWARD JARVIS TAXPAYERS ASSOCIATION ET AL., COMPLAINT FILED BY NEWCASTLE COURTYARDS, LLC ET AL., AND ANSWER FILED BY SHAMA ENTERPRISES, LLC

Reservation IDs: 254311419406 (Lead Case) and 757938091417 (Consolidated Case)
Date: September 26, 2023
Time: 8:30 AM
Dept.: 72

Actions Filed: Dec. 21.2022, and Jan. 6, 2023

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I. INTRODUCTION

On November 8, 2022, the City's voters exercised their inherent, legislative power of initiative to adopt Measure ULA, a citizen-sponsored initiative imposing real property transfer taxes to fund affordable housing and tenant assistance programs, and thereby to prevent and remedy homelessness. Measure ULA passed with nearly 58% voter approval.

Having lost at the ballot box, two sets of plaintiffs filed suit seeking to reverse the voters' will. The Howard Jarvis Taxpayers Association and Apartment Association of Greater Los Angeles (collectively, "HJTA") filed a complaint alleging Article XIIIA, section 4 of the California Constitution (added by Proposition 13) barred the voters' approval of special taxes, specifically real property transfer taxes, to fund affordable housing and tenant assistance programs. Two property owners – Newcastle Courtyards, LLC and Jonathan Benabou, Trustee of the Benabou Family Trust (collectively, "Newcastle") – filed a complaint similarly alleging the voters lacked authority to adopt Measure ULA, pursuant to Article XIIIA, section 4, and other provisions of the California Constitution and Government Code. In addition, Newcastle claims Measure ULA violates property owners' constitutional rights, e.g., to equal protection, due process, and free speech.

HJTA and Newcastle filed their suits as "reverse validation" actions pursuant to a Code of Civil Procedure chapter that provides for prompt, conclusive resolution of the validity of certain public actions, including special taxes. Interested persons may answer the complaint and appear (within a specified deadline), either to defend or challenge the validity of the matter at issue. Here, two sets of parties answered: (1) housing advocates to support Measure ULA – Southern California Association of Non-Profit Housing, Inc., Korean Immigrant Workers Advocates of Southern California dba Koreatown Immigrant Workers Alliance, and Service Employees International Union Local 2015 (collectively, "Defendant-Supporters"); and (2) a property owner to oppose it, Shama Enterprises, LLC ("Shama"). This Court consolidated the actions.

The challengers have failed to allege facts (and could not amend to allege facts) supporting any cause of action contesting Measure ULA's validity. The Supreme Court and Courts of Appeal have conclusively held that the voters' inherent, reserved power to approve citizen-sponsored initiatives is not affected by Article XIIIA, section 4, nor by any other constitutional or statutory

provision added by Proposition 13 and its progeny, upon which the challengers rely. Those provisions limit governments' authority to propose and adopt taxes, not the voters' authority.

Arguments under Proposition 13 unavailing, the challengers strain to find some basis to invalidate the voters' will. They turn to City Charter section 450, contending it barred Measure ULA. But the Charter does not, and could not, override the voters' inherent, reserved power of initiative. Similarly, the challengers contend the City is preempted from addressing homelessness and housing issues. They baldly claim that because these are issues of concern statewide, the State has preempted local legislation in this area. But the State has taken no action to preempt (or any desire to preempt) local legislation to fund programs to address homelessness and housing affordability, which are undoubtedly a municipal affair within a charter city's legislative authority.

Each additional cause of action also fails. The challengers have no plausible claim that Measure ULA violates property owners' rights, e.g., to equal protection, due process, or free speech.

This Court should grant the City's Motion for Judgment on the Pleadings.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Voters Approve Citizen-Sponsored Tax Measure to Fund Affordable Housing.

On November 8, 2022, the City's voters approved a citizen-sponsored initiative, Measure ULA, which imposes additional real property transfer taxes of 4% on conveyances over $5,000,000 and 5.5% on conveyances of $10,000,000 or more. Measure ULA taxes are "special taxes"[1] to fund affordable housing and tenant assistance programs, which will increase and improve the housing supply for tens of thousands of Angelenos. (HJTA Compl., ¶ 18 and Exh. A [Measure ULA – first page (City Attorney Summary of Measure ULA); Section 1 (findings and purpose); Section 2 (adding L.A. Muni. Code § 21.8.2 to impose taxes)]; see also Newcastle Compl., ¶¶ 38, 166, 170 and Exh. A [Voter Information Pamphlet, including Measure ULA].)[2]

[1] A "special tax" is "any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund." (Cal. Const., art. XIIIC, § 1(d).)

[2] Charter cities commonly charge real property transfer taxes, AKA documentary transfer taxes, at rates above the base rate set by state law, pursuant their self-governance authority under Home Rule Doctrine. (See, e.g., *CIM Urban Reit 211 Main St. (SF), LP v. City and County of San Francisco* (2022) 75 Cal.App.5th 939, 949-50.) Charter city voters have approved multiple

The voters adopted extensive, detailed findings explaining their reasons for approving Measure ULA. The voters found, inter alia, that over 40,000 City residents are experiencing homelessness, approximately 30,000 City residents face eviction each year through unlawful detainer proceedings, 32% of City renters spend over 50% of their income on rent, and programs for affordable housing and rental assistance programs are underfunded and unable to keep up with demand. Measure ULA provides critical tax revenues to address these great needs. (HJTA Compl., Exh. A [Measure ULA, Section 1, e.g., subds. (a), (b), (f), (h), (o), (u), (v)].)

B. Challengers File Suits Seeking to Invalidate Voters' Approval of Measure ULA.

On December 21, 2022, HJTA filed their Complaint challenging the validity of Measure ULA. On January 6, 2023, Newcastle filed their Complaint challenging the validity of Measure ULA. The suits were filed as "reverse validation" actions pursuant to Government Code section 50077.5 and Code of Civil Procedure sections 860 – 870.5 ("Validation Statutes").[3] After publication of summons, Defendant-Supporters answered the HJTA and Newcastle Complaints to defend the validity of Measure ULA, and Shama answered the HJTA Complaint to challenge it.

On April 25, 2023, this Court (Judge Kin, presiding) granted the City and Defendant-Supporters' motion to consolidate the actions, as required by law. (See Code Civ. Proc. § 865.)

Collectively, HJTA, Newcastle, and Shama (the "Challengers") plead the following:

1. Violation of Cal. Const., Art. XIIIA, § 4 (Prop. 13) and City Charter Section 450 (HJTA's First and Second Causes of Action; Newcastle's Third Cause of Action; Shama's Answer to HJTA Compl.);

2. Violation of Gov. Code § 53725 (Prop. 62) (Newcastle's Fourth Cause of Action);

3. Violation of Cal. Const., Arts. XIIIC and XIIID (Props. 218 and 26) (Newcastle's Third, Eleventh, Twelfth and Thirteenth Causes of Action);

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transfer tax measures across the State. (See Request for Judicial Notice filed herewith ("RJN").) For example, in 2022, Santa Monica voters also approved a special tax measure imposing transfer taxes to support homelessness prevention, housing projects, and schools. (RJN, Item 11.)

[3] Government Code section 80077.5(a) requires challenges to special taxes to be brought pursuant to the Validation Statutes: "Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure applies to any judicial action or proceeding to validate, attack, review, set aside, void, or annul an ordinance or resolution approved by the voters pursuant to this article on or after January 1, 1986, that levies a special tax, or modifies or amends an existing ordinance or resolution that levies a special tax."

4. Violation of Equal Protection (Newcastle's First and Second Causes of Action);

5. Inverse Condemnation (Newcastle's Fifth, Sixth and Seventh Causes of Acton);

6. Unlawful Ex Post Facto Law / Violation of Art. I, § 10, Clause 1 of U.S. Const. (Newcastle's Eighth Cause of Action);

7. Violation of Free Speech (Newcastle's Ninth Cause of Action);

8. Violation of Substantive Due Process (Newcastle's Fourteenth Cause of Action);

9. Unlawful Delegation (Newcastle's Fifteenth Cause of Action); and

10. Void for Vagueness (Newcastle's Sixteenth Cause of Action).

The Challengers also plead claims for declaratory relief under Code of Civil Procedure sections 860 et seq. and 1060 et seq.; writ of mandate under Code of Civil Procedure section 1085; and damages under 42 U.S.C. section 1983 (e.g., HJTA's Second Cause of Action; Newcastle's Tenth through Thirteen Causes of Action), into which the Challengers seek to incorporate substantive claims discussed above.

III. STANDARDS

A. Standards for Motions for Judgment on the Pleadings.

Judgment on the pleadings is warranted where the complaint fails to allege facts sufficient to state a cause of action. (*Kapsimallis v. Allstate Ins. Co.* (2002) 104 Cal.App.4th 667, 672.) Demurrer standards apply. (*Pang v. Beverly Hospital, Inc.* (2000) 79 Cal.App.4th 986, 989.) "[M]aterial facts that were properly pleaded are deemed true, but not contentions, deductions, or conclusions of fact or law." (*Ibid.*) Courts consider attachments to the complaint and "*disregard* allegations that are contrary to law or to facts that may be judicially noticed." (*Lori Rubinstein Physical Therapy, Inc. v. PTPN, Inc.* (2007) 148 Cal.App.4th 1130, 1133 fn. 1, italics added.)

A court properly denies leave to amend if the plaintiff did not meet its burden to show it could amend the complaint to state a cause of action. (*Lowry v. Port San Luis Harbor District* (2020) 56 Cal.App.5th 211, 221 [leave denied].)[4]

[4] A common law motion for judgment on the pleadings may be made at any time before trial. (*Martinez v. San Diego County Credit Union* (2020) 50 Cal.App.5th 1048, 1058.) A statutory motion must be made at least 30 days before trial. (Code Civ. Proc. § 438(e).)

B. Plaintiffs' Burden in Challenges to Validity of Legislation.

The Challengers bear a high burden to establish Measure ULA is invalid. "Statutes must be upheld unless they are clearly, positively and unmistakably unconstitutional." (*Jensen v. Franchise Tax Bd.* (2009) 178 Cal.App.4th 426, 434, citing *Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 780.) The Challengers "cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular *application* of the statute.... Rather, [they] [] must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions." (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084; see also *United States v. Salerno* (1987) 481 US 739, 745 [a facial challenge to legislation is "the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid"].)[5]

IV. DISCUSSION

A validation action is an *in rem* proceeding which may be initiated either by a public agency or an interested person. (Code Civ. Proc. §§ 860, 863.) Through the validation action, the public agency and/or interested persons can conclusively determine, in " 'a single dispositive final judgment,' " the legality of certain governmental actions. (*Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 842, quoting *Committee for Responsible Planning v. City of Indian Wells* (1990) 225 Cal.App.3d 191, 197-98.)[6]

The Validation Statutes apply irrespective of the title(s) affixed to challenger's claim(s). "Any challenges to the validity of the governmental action must be raised in the validation proceeding." (*N.T. Hill Inc. v. City of Fresno* (1999) 72 Cal.App.4th 977, 991 fn. 10.) This

[5] The Challengers could not present an as applied claim. As applied claims "seek (1) relief from a specific application of a facially valid statute or ordinance to an individual or class of individuals … or (2) an injunction against future application of the statute or ordinance in the allegedly impermissible manner it is shown to have been applied in the past. It contemplates analysis of the facts of a particular case or cases to determine the circumstances in which the statute or ordinance has been applied." (*Tobe*, 9 Cal.4th at 1084.) Here, Measure ULA has not been applied to any Challenger, and the issue in this validation action is Measure ULA's facial validity.

[6] Validation actions are entitled to preference, and "shall be speedily heard and determined." (Code Civ. Proc. § 867.)

includes, for example, constitutional and declaratory relief claims. (*Friedland*, 62 Cal.App.4th at 846-47.) If more than one action is filed, the actions must be consolidated. (Code Civ. Proc. § 865.) The judgment is conclusive "as to all matters therein adjudicated or which at that time could have been adjudicated …." (Code Civ. Proc. § 870(a).)

Here, the Challengers' principal claims are that the City's voters unlawfully exercised their inherent, reserved power of initiative, in violation of Propositions 13, 62, 218, and 26 (codified in Cal. Const, arts. XIIIC and XIIID, and Gov. Code § 53725) and City Charter section 450. (HJTA Compl., ¶¶ 12-23 (both Causes of Action); Newcastle Compl., ¶¶ 95-133 (Third and Fourth Cause of Action); Shama Answer to HJTA Compl., ¶¶ 2-21.) Newcastle also asserts claims that the voters' exercise of their initiative authority violated property owners' constitutional rights, e.g., to equal protection, due process, and free speech. None of these claims alleges fact sufficient to support a cognizable cause of action. This Court should therefore grant judgment in favor of the City and conclusively determine that Measure ULA is valid.

A. The Article XIIIA, Section 4 Claim Fails (Proposition 13).

1. The Claim Fails Under Dispositive Precedents.

Since 1911, the California Constitution has enshrined "the people's initiative power," which is "one of the most precious rights of our democratic process." (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 930. 934, internal quotation marks and citations omitted.) "The Constitution 'speaks of the initiative and referendum, not as a right granted the people, but as a power reserved by them.' " (*Id.* at 934, quoting *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591.) The "courts have consistently declared it their duty to jealously guard and liberally construe the right so that it be not improperly annulled." (*Ibid.*, citing *Associated Home Builders*, *supra*, and *Perry v. Brown* (2011) 52 Cal.4th 1116, 1140.)

In 1978, Proposition 13 amended the State Constitution to limit governments' authority to raise revenue. Article XIIIA, section 4 ("Section 4") states: "Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district."

Four published opinions hold that Section 4 exclusively regulates government-sponsored measures (not citizen-sponsored initiatives). The essence of the rulings: Section 4 has no effect on the voters' reserved power of initiative to adopt taxes, and by simple majority approval, the voters may adopt citizen-sponsored special taxes. (*City and County of San Francisco v. All Persons Interested in the Matter of Proposition G* (2021) 66 Cal.App.5th 1058, 1070-72 ("*All Persons re Prop G*"); *Howard Jarvis Taxpayers Association v. City and County of San Francisco* (2021) 60 Cal.App.5th 227, 242 ("*HJTA v. CCSF*"); *City of Fresno v. Fresno Building Healthy Communities* (2020) 59 Cal.App.5th 220, 234-35 ("*City of Fresno*"); *City and County of San Francisco v. All Persons Interested in Matter of Proposition C* (2020) 51 Cal.App.5th 703, 714-18 ("*All Persons re Prop C*").)[7] In these uncontradicted precedents, the First and Fifth Districts held that the voters had properly approved citizen-sponsored special taxes by majority approval, even though two-thirds voter approval would have been required if the measure had been proposed by the government. (*All Persons re Prop G*, 66 Cal.App.5th at 1070-72; *HJTA v. CCSF*, 60 Cal.App.5th at 242; *City of Fresno*, 59 Cal.App.5th at 234-35; *All Persons re Prop C*, 51 Cal.App.5th at 714-18.)

This is exactly the situation here. Measure ULA is a citizen-sponsored initiative, approved by 58% of the voters, imposing special taxes to fund affordable housing and tenant assistance programs. The four dispositive cases on this issue unambiguously hold that Proposition 13 had no effect on the voters' right to exercise their inherent, reserved power of initiative.

While these precedents control, it is worth highlighting the soundness of the appellate courts' decisions. As the First District explained: " 'A defining characteristic of the initiative is the people's power to adopt laws by majority vote.' " (*All Persons re Prop G*, 66 Cal.App.5th at 1069, quoting *All Persons re Prop C*, 51 Cal.App.5th at 709.) This initiative power has "long been ensconced in our Constitution" when the California electorate adopted Proposition 13. (*All Persons re Prop C*, 51 Cal.App.5th at 715, citing *California Cannabis*, 3 Cal.5th at 934.) Nothing in Proposition 13 or its legislative history suggests the electorate intended Section 4 to repeal the

[7] The Court of Appeal's analysis is based, in part, on Supreme Court holdings that Proposition 13 and its progeny, e.g., Proposition 218 of 1996, limit elected officials' taxation authority, not the voters'. (See, e.g., *All Persons re Prop C*, 51 Cal.App.5th at 722-24.)

voters' longstanding authority to sponsor and approve tax measures, including special taxes by majority vote. (*Id.* at 715-16, citing *Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 250-51.) Moreover, the Court explained: (1) "the law shuns repeals by implication;" (2) indicia of legislative intent show that when the voters adopted Proposition 13, they intended to limit politicians' power, not their own initiative power; and (3) the power of initiative is "one of the most precious rights of our democratic process," and the courts "resolve any doubts in favor of the exercise of this precious right." (*Ibid.*, internal quotation marks omitted.) The Court thus emphatically rejected the contention that Section 4 applies to citizen-sponsored initiatives, and it affirmed the granting of a motion for judgment on the pleadings in favor of the voters' authority to impose special taxes (there, business taxes) to fund homeless services. (*Ibid.*)

In subsequent decisions, the First District stood by, and elaborated on, its analysis and confirmed that Section 4 has zero effect on the voters' power of initiative, no matter what type of tax, and that it only applies to government-sponsored tax measures. (*All Persons re Prop G*, 66 Cal.App.5th at 1070 [upholding majority voter approval of parcel taxes to fund schools, by summary judgment]; *HJTA v. CCSF*, 60 Cal.App.5th at 235 [upholding majority voter approval of taxes on commercial rents to fund early childcare and education, by judgment on pleadings].)

The Fifth District agreed with the First District, emphasizing many of the same points (re: language of Section 4 and voter intent) and also concluding that Section 4 has no impact on the voters' authority to sponsor and adopt tax measures. (*City of Fresno*, 59 Cal.App.5th at 231-35.)

The Challengers seek to make an end-run around these precedents by citing Court of Appeal cases which provide that Section 4 authorizes city councils of charter cities to adopt, upon voter approval, real property transfer taxes as general taxes, but not as special taxes. (See, e.g., *Fielder v. City of Los Angeles* (1993) 14 Cal.App.4th 137, 140, 146; *Fisher v. County of Alameda* (1993) 20 Cal.App.4th 120, 123, 130-31.) But those cases do not address *citizen-sponsored* measures imposing special taxes, which the four recent precedents conclusively (and correctly) hold is unaffected by Section 4. Since "cases are not authority for propositions not considered" (*People v. Avila* (2006) 38 Cal.4th 491, 566), the cases cited by the Challengers are inapposite. The four on-point Court of Appeal cases control.

2. HJTA's Contentions re: City Charter Section 450(a) Are Meritless.

In an attempt to circumvent the controlling precedents, HJTA points to City Charter section 450(a), which provides in pertinent part: "Any proposed ordinance which the Council itself might adopt may be submitted to the Council by a petition filed with the City Clerk, requesting that the ordinance be adopted by the Council or be submitted to a vote of the electors of the City." (RJN, Exh. A.) According to HJTA, this language acts as "a substantive limit on legislation by initiative" which prohibits voters from taking action which the City Council may not, because of Proposition 13, take. (HJTA Complaint, ¶ 14.) The claim is meritless.

A city's charter may *broaden* the voters' initiative and referendum power; it *may not diminish it*. (*Rossi v. Brown* (1995) 9 Cal.4th 688, 698, 704.) City charters – which are adopted and amended by the voters[8] – may extend the voters' initiative power to non-legislative matters. As to the former, the Supreme Court upheld a San Francisco charter provision that broadened the voters' initiative power by extending it to non-legislative declarations of policy. (*Farley v. Healey* (1967) 67 Cal.2d 325, 328-29 [because San Francisco Charter extended initiative power to non-legislative policy matters, city's voters were entitled to place initiative on ballot to declare policy in favor of cease fire and withdrawal of U.S. troops from Vietnam].)[9]

As to the latter, the Supreme Court has soundly rejected efforts to interpret charters to diminish voters' initiative power. In *Rossi*, the Court considered San Francisco Charter provisions which (1) authorized San Francisco voters to propose and adopt ballot measures regarding " 'any ordinance, act or other measure within the power conferred upon the board of supervisors to enact,' " but (2) prohibited referenda to repeal tax ordinances. (*Rossi*, 9 Cal.4th at 693, 697, 698.)

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[8] Cal. Const., art. XI, § 3; *Howard Jarvis Taxpayers Assn. v. City of San Diego* (2004) 120 Cal.App.4th 374, 386.

[9] Absent an extension by a charter provision, the voters' power of initiative to adopt a measure (and associated power of referendum to approve or reject council action) extends only to legislative matters. (See *Arnel Development Co. v. City of Costa Mesa* (1980) 28 Cal.3d 511, 514, 515 fn. 4, and 525 [non-charter/general law city voters have no power of initiative with respect to non-legislative matters, e.g., an adjudicatory decision on a land use permit]; *San Bruno Committee for Economic Justice v. City of San Bruno* (2017) 15 Cal.App.5th 524, 530, 533 fn. 5 [non-charter/general law city voters had no power of referendum re repeal city council's approval of contract to sell real property, a non-legislative, executive action].)

The Court of Appeal erroneously held that voters lacked authority to place a measure on the ballot to repeal a tax measure based on the theory that, although the measure was presented in the form of an initiative, it was in substance a charter-prohibited referendum to repeal a tax. (*Id.* at 693-94.) The Supreme Court reversed, reasoning that the voters retained initiative power to propose an ordinance that had the effect of repealing tax legislation, thereby protecting the voters' initiative power irrespective of a charter provision that arguably precluded their authority to set aside tax legislation (and expressly so precluded repeal by referendum). (*Id.* at 696.)

Here, Charter section 450(a) does not purport to limit or diminish the voters' authority to place tax legislation on the ballot. Rather, Section 450(a) states that the voters may propose ordinances on subjects the Council may address (e.g., zoning, business regulations, building codes, rent control, taxation) by submitting a petition to the City Clerk, with a proposed ordinance, requesting the Council to either adopt the ordinance or place it on the ballot. Charter section 450(a) does not restrict, in any manner, the voters' power of initiative to propose and adopt legislation, including real property transfer taxes to fund programs to remedy and alleviate homelessness, as are now at issue.

Further, Section 450 – unlike the San Francisco Charter at issue in *Farley*, 67 Cal.2d 325, which broadened the power of initiative to non-legislative matters – does not state that the voters' power of initiative is so extended. But a previous, now repealed, City Charter provision did.

Prior to a 1985 amendment, the City Charter stated that the voters' initiative power included administrative and executive matters upon which the Council could act. In 1985, the City's voters struck references to administrative or executive matters, in what was then Charter section 272. (RJN, Exhs. B, C, D.) Since the 1985 amendment, the City Charter has provided, in the provision now codified at Section 450, that the voters retain the power of initiative with respect to legislative matters (ordinances), and does not broaden the initiative power to administrative or executive matters. (RJN, Exh. A.) Accordingly, Section 450 does not constitute a (prohibited) attempt to diminish the inherent, reserved power of initiative. Rather, it restricts the initiative power to legislative matters (and does not extend it to non-legislative administrative or executive matters).

Indeed, the First District recently rejected a claim that is strikingly similar to HTJA's. In

All Persons re Prop G, the Court considered a provision of the San Francisco Charter which defines an initiative as " 'a proposal by the voters with respect to any ordinance, act or other measure which is within the powers conferred upon the Board of Supervisors to enact.' " (*All Persons re Prop G*, 66 Cal.App.5th at 1078.) The challengers asserted that because Section 4 barred the Board of Supervisors from enacting a special tax unless it received supermajority approval, the San Francisco Charter subjected a citizen-sponsored initiative to this limitation. (*Ibid.*) The Court reiterated that "the law shuns repeals by implication," explained that the San Francisco Charter did not impose any substantive constraint on the voters' authority to approve citizen-sponsored tax measures, and pointed out that there is no evidence that San Francisco voters intended, through the city charter, to limit their authority to approve citizen-sponsored tax measures. (*Ibid.*)

Here, the facts are the same. Charter section 450 states that the City's voters may enact any ordinance the City Council could enact. Section 450 neither states nor suggests that it imposes any constraint on the voters' authority to approve citizen-sponsored tax measures. And there is no evidence that the City's voters ever intended Charter section 450 to constitute a repeal of their power to approve tax measure by initiative.[10]

Finally, even if Charter section 450(a) could be construed as a substantive limitation on the initiative power, which it cannot, *Rossi v. Brown* and *Farley v. Healey* plainly hold that a city charter *may not* diminish the voters' reserved, inherent power of initiative. Consequently, that the City Council lacks authority to propose a real property transfer tax as a special tax is of zero

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[10] Nonetheless, HJTA cites *Safe Life Caregivers v. City of Los Angeles* (2016) 243 Cal.App.4th 1029, 1046, in an attempt to support their contention that "Charter Section 450(a) is substantive limit on legislation by initiative." (HJTA Complaint, ¶ 14.) The reliance is misplaced.

As discussed, to the extent that Section 450(a) operates as a limit on the voters' power of initiative, it is merely to limit it to municipal legislation, and not to extend it to non-legislative matters (as some city charters do) or non-municipal matters. Indeed, *Safe Life Caregivers* neither states nor suggests that Charter section 450(a) limits the voters' legislative authority. Rather, it merely declares that the procedural rules governing the City's adoption of zoning ordinances were not imposed on the voters through Charter section 450(a), which the Court described as "a limit on substantive subject matter and not an incorporation of procedural requirements imposed on the council." (*Safe Life Caregivers*, 243 Cal.App.4th at 1046.) Thus, *Safe Life Caregivers* provides no support to HJTA.

import with respect to the citizens' inherent, reserved authority to propose and adopt such taxes because the City Charter may not diminish the voters' reserved, inherent power of initiative.[11] As *HJTA v. CCSF*, *All Persons re Prop C*, and *City of Fresno* make clear, voters' authority to propose and adopt tax measures by initiative *is not* affected by Proposition 13. Thus Charter section 450(a) cannot legitimately be construed to limit the voters' authority to adopt Measure ULA.

3. Newcastle's Claim that Measure ULA Is Invalid Because Homelessness Is a Matter of Statewide Concern Lacks Merit.

Much of Newcastle's Article XIIIA, Section 4 claim rests on the assertion that reducing "homelessness is unquestionably a subject of statewide concern" and therefore the City's voters lacked "any power to enact it because to do so lies beyond the City's constitutional sovereign power over municipal affairs." (Newcastle Compl., ¶ 115; see also ¶¶ 111-14, 118.) This poorly framed preemption claim is patently invalid.

Charter cities are authorized to "make and enforce all ordinances and regulations in respect to municipal affairs." (Cal. Const., art. XI, § 5(a); see also *Northgate Partnership v. City of Sacramento* (1984) 155 Cal.App.3d 65, 73 [Constitution provides charter cities with broad authority over their municipal affairs, subject to their city charters which act as instruments of limitation].) "Charter cities are specifically authorized by our state Constitution to govern themselves, free of state legislative intrusion, as to those matters deemed municipal affairs." (*Marquez v. City of Long Beach* (2019) 32 Cal.App.5th 552, 562.) "[T]his constitutional 'home rule' doctrine reserves to charter cities the right to adopt and enforce ordinances that conflict with general state laws, provided the subject of the regulation is a 'municipal affair' rather than one of 'statewide concern.' " (*Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 45.)

[11] Moreover, Charter section 450(a) refers to the voters' right to exercise the power of initiative with respect to legislative matters, and does not refer to any power of initiative with respect to non-legislative matters, as some city charters do. (See, e.g., *Farley*, 67 Cal.2d at 328-29; *Pettye v. City and County of San Francisco* (2004) 118 Cal.App.4th 233, 240; *Spencer v. City of Alhambra* (1941) 44 Cal.App.2d 75, 78, 80.) As such, the City's voters may exercise their reserved, inherent power of initiative to adopt legislation to govern City affairs, limited only to the extent that such legislation would be substantively illegal (e.g., violation of right to free speech). (*All Persons re Prop C*, 51 Cal.App.5th at 717.)

Under the Home Rule Doctrine, whether an issue is of statewide concern is only relevant in situations where state legislation *actually conflicts* with charter city legislation, on an issue of statewide concern, such that the charter city's home rule authority to enact legislation with respect to municipal affairs yields to the state legislation. (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 16-17 ("*CalFed*").) As the Supreme Court explained: "a court asked to resolve a putative conflict between a state statute and a charter city measure initially must satisfy itself that the case presents an actual conflict between the two. If it does not, a choice between the conclusions 'municipal affair' and 'statewide concern' is not required." (*Id.* at 16; see also *Fielder*, 14 Cal.App.4th at 142-43.)[12]

The Newcastle Complaint blithely references proposed and enacted state laws and contends the existence of those laws proves that homelessness is a matter of concern statewide. (Newcastle Compl., ¶¶ 26-44.) But the Complaint is devoid of *any* assertion that the referenced legislation conflicts with Measure ULA. That is because there is no conflict. Instead, as the Governor's Homelessness Plan, which was included in the 2022-2023 budget, made clear the role of the state is to take a "larger role in funding and supporting local governments' efforts to address homelessness" (https://lao.ca.gov/Publications/Report/4521) and does not supplant it. The absence of any conflict between Measure ULA and state efforts to address homelessness is fatal to Newcastle's claim that the citizens of Los Angeles lacked the authority to enact Measure ULA via initiative.[13]

[12] A four-factor test applies to resolve whether a matter is a municipal affair for which the State may not interfere with charter city authority: (1) whether local legislation addresses a municipal affair; (2) whether there is an "actual conflict" between certain state and local legislation; (3) whether the state legislation concerns a matter of statewide interest; and, if so, (4) whether the state legislation is narrowly tailored. (*State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 556.) Newcastle seeks to invoke the third factor – whether potentially preemptive state statute addresses a statewide concern. (*Ibid.*) But one never gets to this third factor unless a specified state statute actually conflicts with the local legislation, such that the local law is preempted if the state legislation concerns a matter of statewide interest (third factor) and is narrowly tailored (fourth factor). (*CalFed*, 54 Cal.3d at 16; *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 707-09.) Thus, Newcastle's contentions fail.

[13] Moreover, the Second District, in upholding the City's pre-existing transfer tax, held that neither Article XIIIA, section 4, nor Government Code section 53725 preempts the City's transfer taxes. (*Fielder*, 14 Cal.App.4th at 145-46.)

B. Newcastle's Government Code Section 53725 Claim Fails (Propositions 62).

Newcastle alleges that Measure ULA violates Government Code section 53725(a), which provides in pertinent part: "No local government or district may impose any transaction tax or sales tax on the sale of real property within the city, county or district." The claim fails.

Government Code section 53725 was adopted by voter approval of Proposition 62, in 1986. (*Fielder*, 14 Cal.App.4th at 143.) It applies to general law cities, but not to charter cities. As a matter of constitutional law, a charter city's real property transfer tax is within its "home rule authority," and is thus not subject to Government Code section 53725. (*Id.* at 146 [rejecting Gov. Code § 53725 challenge to City of L.A.'s transfer tax].) *Fielder* is not a one-off. The First and Fourth Districts have also ruled that, as a matter of constitutional law, Government Code section 57325 does not apply to charter cities. (See *Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 48-49, discussing *Fielder*, 14 Cal.App.4th 137, *Fisher v. County of Alameda* (1993) 20 Cal.App.4th 120, 130-31, and *City of Westminster v. County of Orange* (1988) 204 Cal.App.3d 623, 635; see also *CIM Urban Reit*, 75 Cal.App.5th at 949-50.) Since the City is a Charter City, Section 53725 does not apply, and this claim fails as a matter of law.

C. Newcastle's Article XIIIC and XIIID Claims Fail (Propositions 218 and 26).

Newcastle also unartfully contends Measure ULA violates Articles XIIIC and XIIID of the California Constitution. (Newcastle Compl., ¶¶ 102, 223, 225, 235, 240.) Newcastle is wrong.

Through Proposition 13 and its progeny, the State's voters limited local governments' authority to raise ad valorem property taxes, based on a property's assessed value, not on the proceeds of a sale. Here, taxes on property transactions are at issue, not ad valorem property taxes. And as discussed, the voters' power to propose and adopt such taxes is not affected by Proposition 13. Through subsequent propositions, the State's voters made clear that any and all charges paid to local governments are taxes, unless the charge falls within one of seven exemptions, and the payor is only charged for the value or cost of the service or benefit provided. Here, Measure ULA taxes expressly and indisputably qualify as taxes, not as non-tax charges (e.g., assessments or fees).

In 1978, the State's voters approved Proposition 13, adding Article XIIIA to the Constitution. As discussed, Proposition 13 limited local governments' authority to impose taxes,

except as approved by the voters in accordance therewith. In addition, and as is well-known, Proposition 13 limited local governments' authority to impose and increase property taxes based on assessed value, AKA ad valorem taxes. (*Amador Valley Joint Union High School District v. State Board of Equalization* (1978) 22 Cal.3d 208, 220.)[14]

In 1996, the State's voters adopted Proposition 218, adding Articles XIIIC and XIIID to the Constitution. (*Apartment Ass'n of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 836-37.) "Proposition 218 allows only four types of local property taxes: (1) an ad valorem property tax; (2) a special tax; (3) an assessment; and (4) a fee or charge." (*Id.* at 837, citing Cal. Const., art. XIIID, § 3, subds. (a)(1)–(4), and see also § 2, subd. (a).)

In 2010, the State's voters adopted Proposition 26, revising Article XIIIC by "broadening the definition of 'tax' to include 'any levy, charge, or exaction of any kind by a local government' unless one of seven exemptions applies." (*City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal.5th 1191, 1200, quoting Cal. Const., art. XIIIC, § 1(e).) A charge imposed by a local government is thus presumptively a tax. The exemptions are for "[a]ssessments and property-related fees imposed in accordance with the provisions of Article XIII D," and for a six other types of charges imposed in exchange for services or benefits provided by the government to the payor. (Cal. Const., art. XIIIC, subds. (e)(1)-(7); see also *City of San Buenaventura*, 3 Cal.5th at 1200.)

In all instances, the exemption only applies if the charge is in exchange for a service or benefit provided by the local government to the payor. (Cal. Const., art. XIIIC, § 1, subds. (e)(1)-(7).) The last sentence of section 1(e) of Article XIIIC adds that an exemption only applies if "a preponderance of the evidence" shows that that the charge "is no more than necessary to cover the reasonable costs of the governmental activity," and the payor only pays an amount that bears a "reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity." (See also *City of San Buenaventura*, 3 Cal.5th at 1200.)

Having set forth relevant history regarding the constitutional provisions invoked by Newcastle, we now address Newcastle's alternative claims that Measure ULA taxes are not

[14] Proposition 13 also imposed requirements and restrictions on the State's authority to impose and increase taxes, including two-thirds approval of all members of the Legislature. (*Ibid.*)

actually real property transfer taxes, but are instead unlawful ad valorem property taxes, assessments, or fees. None of Newcastle's claims has merit.

1. Measure ULA Taxes are Not Property Taxes.

"A transfer tax attaches to the privilege of exercising one of the incidents of property ownership, its conveyance. Such a tax is an excise tax rather than a property tax." (*Fielder*, 14 Cal.App.4th at 145; see also *City of Huntington Beach v. Superior Court* (1978) 78 Cal.App.3d 333, 341 [transfer taxes are excise taxes, and are not property taxes, which are assessed based on a percentage of property value].) As the Supreme Court has explained, taxes imposed on property, based on assessed value, are also known as ad valorem taxes. (*American Airlines, Inc. v. County of San Mateo* (1996) 12 Cal.4th 1110, 1124.) Measure ULA taxes are imposed on the exercise of privilege or right to sell property. Thus, they are excise taxes, not property taxes (AKA ad valorem property taxes). Accordingly, Measure ULA does not violate the prohibition in Proposition 218 against imposition of ad valorem property taxes except as permitted by Proposition 13.

2. Measure ULA Taxes Are Not Assessments or Fees.

Newcastle's bald contention that the excise taxes imposed by Measure ULA are actually assessments or fees is absurd. Measure ULA taxes are imposed on the proceeds of a transaction, and not in exchange for any service or benefit provided by the government. Thus, they indisputably fall within the definition of "tax" set forth in Article XIIIC, section 1(e) (as revised by Proposition 26). As such, Newcastle has zero basis to contend that Measure ULA taxes are actually exempt from the definition of "tax," based on a theory that the excise taxes are actually assessments or fees imposed by the voters to recover the value or costs of services or benefits provided by the City to the payors of Measure ULA taxes. Thus, the Court may summarily reject Newcastle's contentions. Below, we further explain why Newcastle could not establish that the challenged taxes could qualify as assessments or fees under Articles XIIIC or XIIID.

Measure ULA Taxes Are Not Assessments. " 'Assessment' means any levy or charge upon real property by an agency for a special benefit conferred upon the real property. 'Assessment' includes, but is not limited to, 'special assessment,' 'benefit assessment,'

'maintenance assessment' and 'special assessment tax.' " (Cal. Const, art. XIIID, § 2(b).) This Proposition 218 definition essentially restates the common law definition, which has long been that an assessment (or special assessment) is a charge imposed on a property for the provision of a "special benefit over and above that received by the general public." (*Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 442, citation and internal quotation marks omitted.) While special taxes are also imposed for specific purposes, the critical distinction between a special tax and a special assessment is that "a tax can be levied without reference to peculiar benefits to particular individuals or property,"[15] whereas, "a special assessment must confer a special benefit upon the property assessed beyond that conferred generally." (*Ibid.*, citation and internal quotation marks omitted.)[16]

Measure ULA does not purport to provide any special benefit to sellers (or buyers) of real property interests over $5,000,000, beyond those provided to the public. Rather, on its face and by its operation, Measure ULA imposes taxes irrespective of whether the taxpayers will actually receive benefits from the expenditures thereby funded. As such, Measure ULA taxes are indisputably taxes, not assessments. (*Silicon Valley Taxpayers' Assn.*, 44 Cal.4th at 442.)[17]

Measure ULA Taxes Are Not Fees. " 'Fee' … means any levy other than an ad valorem tax, a special tax, or an assessment, imposed upon a parcel or person as an incident of property ownership." (Cal. Const, art. XIIID, § 2(e).) To meet this definition, the charge must be imposed "directly on property owners in their capacity as such," not because of action to use or generate revenue from the property. (*Apartment Ass'n of Los Angeles*, 24 Cal.4th at 838.) Taxes imposed in connection with a conveyance of any or all of an owner's interest in property – e.g., to sell, assign,

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[15] "Indeed, [n]othing is more familiar in taxation than the imposition of a tax upon a class or upon individuals who enjoy no direct benefit from its expenditure, and who are not responsible for the condition to be remedied." (*Ibid.*, citation and internal quotation marks omitted.)

[16] While Proposition 218 did not materially modify the definition of assessment, it did establish processes for adoption of assessments and adopt a new the standard by which a court reviews their validity. (*Silicon Valley Taxpayers' Assn.*, 44 Cal.4th at 444, 447-48.)

[17] When assessments are at issue under Proposition 218, a local agency must comply with the procedural and substantive rules of Article XIIID, section 4. Since Measure ULA does not impose assessments, those provisions do not apply

or rent – are not imposed on a property owner as an incident of ownership. (*Id.* at 841 [explaining: "[t]he power to alienate property or a property right is not limited to the right to sell or assign it," and includes conveyances of less than the fee, e.g., to rental of possession; holding: charges imposed in connection with property-conveyance activity are not fees under Proposition 218].) Measure ULA expressly imposes excise taxes on property conveyances; it does not impose fees as an incident of ownership. Thus, Measure ULA taxes are not fees, as fee is defined by Article XIIID, section (2)(e) and interpreted by the Supreme Court.[18]

As discussed above, under the definition of "tax" in Article XIIIC (as revised by Proposition 26), Newcastle's suggestion that Measure ULA taxes are actually non-tax assessments or fees, imposed pursuant to Article XIIID, is absurd and fails as a matter of law.[19]

D. Newcastle Fails to Allege Measure ULA Violates Any Constitutional Rights.

Newcastle pleads several additional causes of action, including that Measure ULA is invalid because it violates rights to equal protection and due process, takes/inversely condemns property without payment of just compensation, is unconstitutionally vague, and violates free speech and other rights. None allege facts that could state a cognizable cause of action.

1. The Equal Protection Claims Fail.

Newcastle's First and Second Causes of Action plead repetitive, overlapping equal protection claims. (Newcastle Compl., ¶¶ 57-94.) They fail as a matter of law.[20]

With respect to taxes or other economic legislation, "a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge *if there is any reasonably conceivable state of facts that could*

[18] When fees are at issue under Proposition 218, a local agency must comply with the procedural and substantive rules of Article XIIID, section 6. Since Measure ULA does not impose fees, those provisions do not apply.

[19] Moreover, the courts have held that Articles XIIIC and XIIID limit governments' authority, not the citizens' power of initiative. (*California Cannabis*, 3 Cal.5th at 943; *All Persons re Prop G*, 66 Cal.App.5th at 1074.)

[20] The California and U.S. Constitutions' guarantees of equal protection and due process are equivalent. (*Gray v. Whitmore* (1971) 17 Cal.App.3d 1, 20; *Gates v. Superior Court* (1995) 32 Cal.App.4th 481, 516, 523-25.) Thus, state and federal cases are instructive.

provide a rational basis for the classification." (*California Grocers Assn. v. City of Los Angeles* (2011) 52 Cal.4th 177, 209, citations and internal quotation marks omitted.)[21] "The party who challenges the constitutionality of a classification in a tax statute bears a very heavy burden; it must negate any conceivable basis [that] might support the classification…. If the challenged classification is based on natural, intrinsic or fundamental distinctions that are reasonable in their relation to the object of the legislation, then it will be deemed to be valid and binding." (*Borikas v. Alameda Unified School Dist.* (2013) 214 Cal.App.4th 135, 149, citation and internal quotation marks omitted.) "[T]here is no requirement that the amount of the tax be reasonable – merely that it not be confiscatory nor prohibitory." (*City of Berkeley v. Oakland Raiders* (1983) 143 Cal.App.3d 636, 640; see also *State Route 4 Bypass Authority v. Superior Court* (2007) 153 Cal.App.4th 1546, 1565 ["Equal Protection Clause is not a rule of thumb for determining the relative fairness and wisdom of different public policy choices"].)

Neither property owners, nor the wealthy or high-income earners, are protected classes which would require heightened scrutiny. Accordingly, the rational basis test applies. (*Jensen v. Franchise Tax Bd.* (2009) 178 Cal.App.4th 426, 439-40 [despite plaintiffs claiming to be victims of populist movement to "tax the rich," rational basis test applied to equal protection challenge to personal income tax imposed only on persons who earned over of $1 million annually; court upheld tax]; *Ashford Hospitality v. City and County of San Francisco* (2021) 61 Cal.App.5th 498, 503-04 [rational basis test applies to equal protection challenge to taxes]; *San Antonio Independent School Dist. v. Rodriguez* (1973) 411 U.S. 1, 18, 28–29 [wealth is not a suspect class]; *N.A.A.C.P., Los Angeles Branch v. Jones* (9th Cir. 1997) 131 F.3d 1317, 1321 ["[w]ealth is not a suspect category in Equal Protection jurisprudence"].)

Newcastle principally alleges that Measure ULA is unconstitutionally irrational because the tiered tax structure disparately treats property owners who sell properties slightly above the $5,000,000 and $10,000,000 thresholds. The contention fails as a matter of law.

[21] The courts "never require" legislators "to articulate reasons" for enacting legislation; "it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated" the legislators. (*Ibid.*)

Preliminarily, Newcastle's burden is to establish that the entirety of Measure ULA violates equal protection – not that any particular application or applications might – and that there is no set of circumstances in which it could be lawfully applied. (See Section IV-B, ante.) Thus, Newcastle's limited focus on hypothetical applications that are just above and just under the tier thresholds is a non-starter. In other words, because Newcastle does not and cannot show that Measure ULA unconstitutionally discriminates in any and all circumstances, its challenge fails.

Courts have soundly rejected equal protection challenges in strikingly similar cases. In 2021, the First District rejected an equal protection challenge to San Francisco's real property transfer tax ordinance, which include tiered rates (ranging from 0.5% to 3.0%), and which, like Measure ULA, apply to the entirety of the sales price when a sale falls within the subject tier (e.g., the rates are not marginal). (*Ashford*, 61 Cal.App.5th at 501-02.) Closely reviewing a U.S. Supreme Court precedent, the Court explained that it does not violate equal protection for a tax ordinance to impose non-marginal, tiered tax rates to the entirety of the value of the property taxed – even if a taxpayer who is taxed in a lower tier (because the property value is just below the threshold for triggering the next tier) retains more money than the taxpayer who is taxed in the higher tier (because the property value is just above the threshold for that tier). (*Id.*at 506-07, discussing *Magoun v. Illinois Trust & Savings Bank* (1898) 170 U.S. 283.) Because all members of the class within a tier were taxed at the same rate, the ordinance satisfied equal protection. (*Ibid.*)

It did not matter that parties in different tiers were treated differently, even though a party who was just below the $10,000 tier threshold would retain, post-tax, more property value than a party just above the $10,000 threshold (because non-marginal rates applied to the entirety of the property taxed): " 'One who receives a legacy of $10,000 pays 3 per cent, or $300, thus receiving $9700 net, while one receiving a legacy of $10,001 pays 4 per cent on the whole amount, or $400.04, thus receiving $9600.96, or $ 99.04 less than the one whose legacy was actually $1 less valuable.' " (*Ibid.*, quoting *Magoun*, 170 U.S. at 299-301.) The First District thus concluded that, since San Francisco's real property taxes are similarly structured – imposing non-marginal tiered tax rates – there was no basis for an equal protection claim. (*Id.* at 507-09.)

Measure ULA taxes are structured in the same manner as San Francisco's. Accordingly,

Ashford is on point, and Newcastle's challenge fails.

Other courts are in accord. The Third District rejected an equal protection challenge to a tax that applied only to corporations with 50 or more employees (and not to non-corporate businesses, nor to corporations with fewer than 50 employees) to fund cleanup of hazardous materials handled by both taxed and non-taxed businesses. (*Morning Star Co. v. Board of Equalization* (2011) 201 Cal.App.4th 737, 755-56.) *Morning Star* is analogous because the taxes there applied if a certain threshold was met (there a 50-employee threshold; here a $5,000,000 threshold), and not at all if not met, even though the differences between the taxed and the non-taxed were minor. Thus, since the *Morning Star* plaintiffs' equal protection claim failed (as did the *Ashford* plaintiffs' claim), Newcastle's claim also fails.

Newcastle seeks to avoid the foregoing by citing to *Stewart Dry Goods Co. v. Lewis* (1935) 294 U.S. 550. (Newcastle Compl., ¶¶ 58, 62, 64-66, 80-82.) Their reliance is misplaced, as the First District Court of Appeal dispositively explained in *Ashford*.

In *Stewart Dry Goods*, the Court invalidated a graduated gross receipts tax in which the tax on a transaction for a specific amount varied based on the amount of gross receipts for *all* transactions. In other words, the tax rate on a sale for X dollars was not consistent for all sales at that amount; rather, the rate varied based on the sellers' aggregate gross receipts. (*Id.* at 557-58.)

That is not the situation here. In *Ashford*, the First District explained that *Stewart Dry Goods* was inapplicable, and the tiered taxes satisfied equal protection, because each tiered rate applied equally to all sales within the applicable tier (without variation based on revenue from other transactions, as was the case in *Stewart Dry Goods*). (*Ashford*, 61 Cal.App.5th at 504-06.) Thus, *Stewart Dry Goods* provides Newcastle no support.

Newcastle also contends Measure ULA taxes are unconstitutional because they apply to real property sales but not personal property sales. (Newcastle Compl., ¶¶ 77-79.) This contention misconstrues the nature of Measure ULA taxes. Real property transfer taxes tax only real property, not personal property. Courts have repeatedly upheld such taxes as lawful, and rational. (See, e.g., *CIM Urban Reit*, 75 Cal.App.5th at 949-50; *Ashford*, 61 Cal.App.5th at 501-02, 504-06; *Fielder*, 14 Cal.App.4th at 145-46.) In any event, the California courts have conclusively ruled

that tax legislation does not violate equal protection when it taxes different products at different rates. (*California Assn. of Retail Tobacconists v. State of California* (2003) 109 Cal.App.4th 792, 843-44 [rational to tax cigarettes at rates that differed from rate for other tobacco products].)

Newcastle also contends that because serial sales of multiple properties under $5M each, but over $5M in the aggregate, would not be taxed, but a single sale over $5M would be taxed, Measure ULA violates equal protection. (Newcastle Compl., ¶¶ 71-72.) Not so.

First, the sellers are not similarly situated. A challenger must prove it is similarly situated "in all material respects" to the purported comparator. (*People v. Chatman* (2018) 4 Cal.5th 277, 289; *SmileDirectClub, LLC v. Tippins* (9th Cir. 2022) 31 F.4th 1110, 1123.) The challenger is not similarly situated to the purported comparator if their respective properties, projects, or circumstances include differentiating characteristics. (See, e.g., *Law School Admissions v. State* (2014) 222 Cal.App.4th 1265, 1286-87 [LSAT providers challenged statute requiring LSAT providers to accommodate persons with disabilities, but not requiring providers of standardized tests to do so; LSAT providers could not establish they are "similarly situated for purposes of preventing disability discrimination in the law school admissions process"]; *Cooley v. Superior Court* (2002) 29 Cal.4th 228, 254 [no disparate treatment where State provided different standards for habeas corpus and civil commitment hearings].) Here, a party who sells multiple properties, each for $5M or less, is not similarly situated to a party who sells one property over $5M.

Second, even if they were similarly situated, it is rational to tax single sales of property over $5M, but not sales for less, as conclusively established above.

Newcastle also seeks to fold in inapplicable claims. For example, Newcastle contends Measure ULA violates an apportionment requirement of equal protection. (Newcastle Compl., ¶¶ 84, 89, 91.) Apportionment concerns allocation of business activity between or among jurisdictions. (*City of Los Angeles v. Shell Oil Co.* (1971) 4 Cal.3d 108, 118, 124.) Local taxes may not "unfairly discriminate against *intercity* businesses by subjecting such businesses to a measure of taxation which is not fairly apportioned to the quantum of business actually done in the taxing jurisdiction." (*Id.* at 124., italics added.) To prove a violation, the taxpayer "bears the burden of showing that extraterritorial values are being taxed." (*Park 'N Fly of San Francisco,*

Inc. v. City of South San Francisco (1987) 188 Cal.App.3d 1201, 1210.) Measure ULA taxes apply to sales within the City, not to sales outside the City. Thus, there is no apportionment issue.

Newcastle also contends Measure ULA taxes are unconstitutional because homelessness and affordable housing issues are statewide concerns. (Newcastle Compl., ¶¶ 91-94.) But, as the voters found when they adopted the extensive findings set forth in Section 1 of Measure ULA, homelessness in the City of LA is an intense issue of local concern. (HJTA Compl., Exh. A, Section 1.) Further, Newcastle's contention is premised on their mistaken belief that homelessness and affordable housing are not local concerns because they are also of concern statewide, and thus the City's voters were preempted from adopting Measure ULA. But as discussed above, Newcastle's "statewide concern" contentions are legally meaningless, as Measure ULA does not conflict with any state laws. (See Section IV-A-3, ante.)

Further, taxes need not bear any relationship between burden and benefits, or burden and impacts. (*Sinclair Paint*, 15 Cal.4th at 875, 878; *California Assn. of Pro. Scientists v. Department of Fish & Game* (2000) 79 Cal. App. 4th 935, 944.) It is entirely within the legislative judgment of the voters, and not subject to any equal protection scrutiny, to tax property sales over $5,000,000 to fund programs to provide affordable housing and rental assistance programs. (*California Cannabis Coalition,* 3 Cal.5th at 931.) Further, even if equal protection rights were implicated, it is entirely rational for the voters to have exercised legislative judgment to tax sellers of property – who have benefitted from owning and selling high-value properties – to pay for programs to support persons who have not similarly benefitted, and who have in fact been disadvantaged by the run up in property values and by shortage of affordable housing.

2. The Substantive Due Process Claim Fails.

Newcastle's Fourteenth Cause of Action for violation of substantive due process reiterates their equal protection contentions. (Newcastle Compl., ¶¶ 242-45.) Where economic legislation is at issue (as it is here), the rational basis standards are essentially equivalent. (*Morning Star*, 201 Cal.App.4th at 756 [collecting cases].) Thus, where an equal protection claim fails, so does a substantive due process claim. (*Ibid.*) Accordingly, Newcastle's substantive due process claim falls alongside their equal protection claim.

Further, the courts are especially critical of attempts to plead substantive due process challenges to economic legislation. "[T]he use of substantive due process to extend constitutional protection to economic and property rights has been largely discredited." (*Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1184.) "[T]he complaint must also allege facts showing the agency's action was oppressive, abusive or legally irrational because it was not sufficiently related to any legitimate state interest." (*Breneric Associates v. City of Del Mar* (1998) 69 Cal.App.4th 166, 184.) Errors do not violate substantive due process. Rather, it is "arbitrary government conduct that triggers a substantive due process violation" which "is not ordinary government error but conduct that is in some sense outrageous or egregious – a true abuse of power." (*Galland v. City of Clovis* (2001) 24 Cal.4th 1003, 1032; see also *Samson v. City of Bainbridge Island* (9th Cir. 2012) 683 F.3d 1051, 1060 [even if legislation is unlawful, if it was "at least fairly debatable" that legislators acted for rational reasons, substantive due process claim fails].)[22]

As discussed with respect to the equal protection claim, the City's voters had rational bases for approving Measure ULA. Thus, Newcastle's substantive due process claim fails.

3. The Inverse Condemnation (Takings) Claims Fail.

Newcastle's Fifth and Sixth Causes of Action for inverse condemnation (takings) each allege Measure ULA unconstitutionally exacts money from property owners, without a sufficient nexus to impacts caused by property owners. (Newcastle Compl., ¶¶ 134-75.) Newcastle's Seventh Cause of Action for inverse condemnation (takings) alleges Measure ULA is so arbitrary and unreasonable that it constitutes confiscation of property, not taxation. (Newcastle Compl., ¶¶ 176-88.) These claims fail as a matter of law.

(a) No Property Has Been Taken, and Newcastle Cannot Seek Just Compensation or Injunctive Relief.

The Takings Clauses of the California and U.S. Constitutions require governments to pay just compensation when they take property for public use. (Cal. Const., art. I, § 19; U.S. Const., 5th Amend.) The state and federal Constitutions are congruent with respect to takings challenges to

[22] State and federal standards are the same, as discussed in footnote 20, ante.

legislation. (*California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 457 fn. 10 ("*CBIA v. San Jose*"); *San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal.4th 643, 664.) Thus, we cite equally to state and federal cases.

The Constitutions do not prohibit takings, but instead place a condition on the exercise of regulatory power that is "so onerous that its effect is tantamount to direct appropriation and ouster." (*Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528, 536, 537; see also *Allegretti & Co. v. County of Imperial* (2006) 138 Cal.App.4th 1261, 1270.)

If a party believes the government has condemned their property, it may file suit for payment of just compensation. But they may not challenge the validity of legislation by claiming it violates the Takings Clauses, prior to application of the legislation in a manner that arguably condemns their property, so long as they could file a takings suit thereafter. (*Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1016; *Washington Legal Foundation v. Legal Foundation of Washington* (9th Cir. 2001) 271 F.3d 835, 849, *aff'd sub nom. Brown v. Legal Foundation of Washington* (2003) 538 U.S. 216; see also *Patrick Media Group, Inc. v. California Coastal Com.* (1992) 9 Cal.App.4th 592, 611; *Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 10.)[23]

Here, Measure ULA became operative on April 1, 2023 (after suit was filed), and has not been applied to Newcastle. If Newcastle hereafter sells property for more than $5 million, in a non-exempt transaction, Newcastle could attempt to recover money they allege had been unlawfully taken (e.g., seeking a refund or just compensation). The City's transfer tax ordinance and state law authorize suits. (LAMC § 21.9.10 [RJN, Exh. E]; Rev. & Taxation Code § 5096 et seq.; *Hensler*, 8 Cal.4th at 13-14.) But Newcastle has no basis to pursue a takings claim either to enjoin or otherwise invalidate Measure ULA or to seek just compensation since Newcastle not been taxed.

[23] As discussed below, in 2005 the U.S. Supreme Court abrogated caselaw that had erroneously authorized takings claims based on contentions that governmental action did not advance a legitimate state interest. This decision clarified that takings claims are suits to compel payment of just compensation for exercises of otherwise valid action, not to invalidate action. The abrogation of that theory is relevant to Newcastle's claim that the Measure ULA is arbitrary and thus constitutes inverse condemnation, as discussed in Section IV-D-3-b-ii below.

(b) Each Takings Theory Is Fatally Flawed for Additional Reasons.

Newcastle's takings claims fail for additional reasons.

(i) The Unconstitutional Exaction Claims Fail.

A property owner may seek to allege the government inversely condemned property by demanding or exacting property as a condition for issuance of a permit, where the exaction lacked a nexus and rough proportionality to impacts that would be caused by the property owner through the owner's use of the permit. (*CBIA v. San Jose*, 61 Cal.4th at 457-58; *Koontz v. St. Johns River Water Mgmt. Dist.* (2013) 570 U.S. 595, 605.) This takings theory is known as the *Nollan*/*Dolan* Doctrine (or unconstitutional exactions doctrine). (See *CBIA v. San Jose*, 61 Cal.4th at 457-58.)

Such a takings claim is limited to challenges to ad hoc, adjudicative land use decisions (e.g., a demand or condition imposed on issuance of permit);[24] no such claim may be made to challenge the validity of tax legislation. The California Supreme Court explained why: the "sine qua non" for a *Nollan*/*Dolan* claim is the "discretionary deployment of the police power" in "the imposition of land-use conditions in individual cases." (*San Remo Hotel*, 27 Cal.4th at 670.) After carefully reviewing the U.S. Supreme Court cases, the Court held that *Nollan/Dolan* applies to ad hoc discretionary decisions, not to challenges to legislation. (*Id.* at 668-69;[25] see also *CBIA v. San Jose*, 61 Cal.4th at 460-61; *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 869; *Action Apartment Assn. v. City of Santa Monica* (2008) 166 Cal.App.4th 456, 470; *McClung v. City of Sumner* (9th Cir. 2008) 548 F.3d 1219, 1227; *Garneau v. City of Seattle* (9th Cir. 1998) 147 F.3d 802, 811-12.)

Accordingly, Newcastle's unconstitutional exactions claims are dead on arrival.

(ii) Newcastle Lacks a Cognizable Taking Claim Based on Their Contentions that Measure ULA Is Arbitrary.

Newcastle's Seventh Cause of Action alleges Measure ULA taxes are so arbitrary that they constitute inverse condemnation. This claim is not cognizable.

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[24] It is well established that city's decision to issue a permit is adjudicatory. (*Arnel*, 28 Cal.3d at 518; *Essick v. City of Los Angeles* (1950) 34 Cal.2d 614, 623.)

[25] Indeed, the U.S. Supreme Court decisions upon which this doctrine are based were as applied challenges. (See, e.g., *Dolan v. City of Tigard* (1994) 512 U.S. 374, 382-83, 394-96.)

Newcastle cites one tax case which, in passing, hypothesizes that a tax could be so arbitrary that it constitutes confiscation or a taking in violation of the Fifth Amendment: *Brushaber v. Union Pac. R.R. Co.* (1916) 240 U.S. 1, 24. (See Newcastle Compl., ¶ 186.) But *Brushaber* actually discusses the Due Process Clause of the Fifth Amendment, which concerns the reasonableness of governmental action, and does not discuss the Takings Clause or engage in any takings analysis. (*Ibid.*) Indeed, the California Supreme Court has described *Brushaber* as a due process case, not as a takings case. (*McCreery v. McColgan* (1941) 17 Cal.2d 555, 561.) And Newcastle cites no case which considers, let alone holds, that a tax is so arbitrary that it constitutes a taking. Thus, Newcastle's pursuit of this theory is baseless.

Moreover, in 2005, the U.S. Supreme Court abrogated takings caselaw that had, erroneously, allowed takings challenges to legislation based on contentions that the legislation was arbitrary and unreasonable, and failed to advance legitimate state interests. (*Lingle*, 544 U.S. at 541, 544-45.) Such means-ends analysis implicates due process principles and has no place in takings jurisprudence. (*Ibid.*; see also *Allegretti*, 138 Cal.App.4th at 1280.) Therefore, the cases which predate *Lingle* (2005), or that post-date *Lingle* but fail to consider its ruling that the reasonableness of legislation has no place it takings jurisprudence, are of no precedential value.[26]

Additionally, Newcastle relies on cases that have nothing to do with taxation. Rather, they concern whether, under the *Nollan/Dolan* Doctrine, the government unconstitutionally exacted property in exchange for issuance of a regulatory permit (e.g., *Koontz*, 507 U.S. 595), or unconstitutionally took the interest from client funds deposited in lawyers' trust accounts (*Brown v. Legal Foundation of Washington* (2003) 538 U.S. 216). (See Compl., ¶¶182, 183.) These cases have no bearing on whether a tax constitutes a taking and, instead, concern whether the government's exercise of its police or regulatory powers (not its taxation power) went "too far" and thus constituted a taking. (*Koontz*, 507 U.S. at 610, *Brown*, 538 U.S. at 233) A government's

[26] "[T]he Takings Clause presupposes that the government [] acted [for] a valid public purpose…. It does not bar the government from interfering with property rights." (*Lingle*, 544 U.S. at 543.) Thus, the validity of the legislation is not at issue. The issue in a takings case is whether just compensation is owed as a condition for the exercise of otherwise lawful exercise of police power. (*Id.* at 536-37; *Allegretti*, 138 Cal.App.4th at 1269-70.)

police or regulatory powers, which are exercised to advance the public welfare, are distinct from its taxation powers, which are, of course, exercised to raise revenue. (*Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 875, 878.)[27] Thus, the regulatory takings cases cited by Newcastle provide no support for their claim that the voters' exercise of taxation authority constituted condemnation. As the Seventh Circuit Court of Appeals explained, while taxes take money from taxpayers, this is not the sense in which the constitution uses "'takings.' " (*Coleman v. C.I.R.* (7th Cir. 1986) 791 F.2d 68, 70.)

Third, even if a taxpayer could, in some circumstance, allege that a tax constituted inverse condemnation, Newcastle has not alleged, and could not allege, facts sufficient to state such a claim. As discussed with respect to the equal protection and substantive due process claims, numerals rational reasons support the voters' approval of Measure ULA and their imposition of the taxes on sales over $5,000,000.

4. The Ex Post Facto Law Claim Fails.

Newcastle's Eighth Cause of Action alleges Measure ULA violates the Ex Post Facto Clause of the U.S. Constitution (Art. I, § 10, clause 1). (Newcastle Compl., ¶¶ 189-205.) But such claims only apply to penal laws. Measure ULA is not a penal law, thus the claim fails.

"[O]ur best knowledge of the original understanding of the Ex Post Facto Clause [is that] Legislatures may not retroactively alter the definition of crimes or increase the punishment for criminal acts." (*Collins v. Youngblood* (1990) 497 U.S. 37, 43; see also *Kansas v. Hendricks* (1997) 521 U.S. 346, 370 [Ex Post Facto Clause "pertain[s] exclusively to penal statutes"]; *Stogner v. California* (2003) 539 U.S. 607, 609 [statute which revives otherwise time-barred criminal prosecution violates the ex post facto clause]; accord *People v. McVickers* (1992) 4 Cal.4th 81, 86 [California law is the same].)

Measure ULA taxes are not criminal penalties. They are excise taxes imposed on the

[27] Note also that charter cities' taxation authority is within their constitutional home rule authority, unlike general law cities' taxation authority, which derives from a grant of power from the State Legislature. (*CIM Urban Reit*, 75 Cal.App.5th at 948 [charter cities]; *Fielder*, 14 Cal.App.4th at 145-46 [charter cities]; *County of Los Angeles v. Sasaki* (1994) 23 Cal.App.4th 1442, 1454 [general law cities].)

proceeds of a transactions, voluntarily taken by the parties. Thus, this cause of action fails as a matter of law.[28]

Even if the Ex Post Fact Clause could apply, Measure ULA is not retroactive. It applies at the time of sale, as of April 1, 2023. Thus, Newcastle's claim fails.

And if Measure ULA could be deemed to operate retroactively, the U.S. Supreme Court has repeatedly upheld retroactive tax legislation. (See *United States v. Carlton* (1994) 512 U.S. 26, 30; *United States v. Hemme* (1986) 476 U.S. 558; *United States v. Darusmont* (1981) 449 U.S. 292; *Welch v. Henry* (1938) 305 U.S. 134; *United States v. Hudson* (1937) 299 U.S. 498.) California courts have also rejected challenges to retroactive taxes. (See *Roth Drugs v. Johnson* (1936) 13 Cal.App.2d 720, 730.)

In sum, the prohibition against ex post facto laws does not apply because Measure ULA is neither criminal no retroactive, and even if it were, it would not violate the Ex Post Facto Clause.

5. The Free Speech Claim Fails.

Newcastle's Ninth Cause of Action alleges Measure ULA violates free speech protected by U.S. and California Constitutions, attempting to transform the act of selling real property into an alleged statement about the sale of real property. (Newcastle Compl., ¶¶ 206-13.) The claim fails.

Constitutional rights to free speech do not apply to conduct unless that conduct is "inherently expressive." (*Rumsfeld v. Forum for Academic & Institutional Rights, Inc.* (2006) 547 U.S. 47, 66.) Conduct is inherently expressive if it "is intended to be communicative and ... in context, would reasonably be understood by the viewer to be communicative." (*Feldman v. Arizona Secretary of State's Office* (9th Cir. 2016) 843 F.3d 366, 386-87 [flag-burning and wearing military medals, even if not authorized, are expressive conduct within scope of First Amendment], citing *Clark v. Cmty. for Creative Non-Violence* (1984) 468 U.S. 288, 294.)

As both federal and state courts have ruled, regulations on non-expressive conduct do not implicate free speech rights even if the conduct is in part initiated, evidenced, or carried out by means of language, whether spoken, written, or printed. (*National Association for Advancement of*

[28] If Measure ULA were treated as penal, then all taxes imposed on money received in a transaction would be unconstitutional.

Psychoanalysis v. California Bd. of Psychology (9th Cir. 2000) 228 F.3d 1043, 1053-54; *Concerned Dog Owners of California v. City of Los Angeles* (2011) 194 Cal.App.4th 1219, 1229 [ordinance requiring dogs and cats to be spayed or neutered regulated conduct, not speech]; *People v. Guiamelon* (2012) 205 Cal.App.4th 383, 414 [statute prohibiting physicians from paying for referrals regulated conduct, not speech]; see also *Ohralik v. Ohio State Bar Association* (1978) 436 U.S. 447, 456 ["State does not lose its power to regulate commercial activity deemed harmful to the public whenever speech is a component of that activity"]; *Paramount Contractors and Developers, Inc. v. City of Los Angeles* (C.D. Cal. 2011) 805 F.Supp.2d 977, 1002, *aff'd* (9th Cir. 2013) 516 Fed.Appx. 614 ["California Constitution's protection of commercial speech is coextensive with the protection under the First Amendment"]; *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 959 [line between commercial and non-commercial speech is same under state and federal Constitutions].)[29]

Newcastle has not and cannot establish that the act of selling or purchasing property is expressive conduct. The act of selling property, including the associated speech communicating the facts of ownership and sale, does not constitute protected free speech because the regulated conducted is not communicative. Measure ULA is wholly focused on regulating non-expressive conduct, i.e., the purchase and sale of properties of $5,000,000 or more, and does not prohibit nor require anyone from speaking about any issue.

Any speech related to the sale of a property regulated by Measure ULA is ancillary to the act of purchasing or selling property. Providing public notice of title to property is a component of the non-expressive conduct subject to Measure ULA. However, Measure ULA does not require sellers or purchasers to provide public notice beyond what is already required under the law.

Furthermore, the tax imposition is calculated according to the sales price, not the incidental speech. There is a distinction between "restrictions on protected expression" and "restrictions on economic activity." (*Sorrell v. IMS Health Inc*. (2011) 564 U.S. 552, 567.) Whereas the First

[29] Subjecting incidental impacts on speech to constitutional scrutiny "would lead to the absurd result that any government action that had some conceivable speech-inhibiting consequences, such as the arrest of a newscaster for a traffic violation, would require analysis under the First Amendment." (*Arcara v. Cloud Books, Inc*. (1986) 478 U.S. 697, 708 (O'Connor, J., concurring).)

Amendment may prohibit the former, it "does not prevent restrictions directed at commerce or conduct from imposing incidental burdens on speech." (*Ibid.*; see also *Airbnb, Inc. v. City & County of San Francisco* (N.D. Cal. 2016) 217 F.Supp.3d 1066, 1078 [First Amendment not implicated by ordinance restricting booking of rentals for unregistered units because purpose was to suppress speech, i.e., the regulated conduct was not expression and the ordinance did not have the effect of targeting expressive activity].) Here, Measure ULA regulates economic activity rather than speech. That is, it imposes a transfer tax based on the selling price of a property, rather than an imposition to provide public notice of the title to the property. Therefore, the ordinance does not implicate constitutional rights to free speech.

6. The Unlawful Delegation Claim Fails.

Newcastle's Fifteenth Cause of Action alleges unlawful delegation of rulemaking authority. (Newcastle Complaint, ¶¶ 144-48, 246-49.) The claim fails as a matter of law.

Newcastle alleges sections 21.9.14 and 21.9.16 of Measure ULA unlawful delegate to the City authority to adopt procedures for determining that affordable housing and affordable housing non-profit organizations are exempt. The claim fails because the electorate is authorized to commit rulemaking authority to the City to determine whether property acquired by non-profit organizations to produce income-restricted affordable housing is exempt from Measure ULA.

"An unconstitutional delegation of authority occurs only when a legislative body (1) leaves the resolution of fundamental policy issues to others, or (2) fails to provide adequate direction for the implementation of that policy." (*Monsanto Co. v. Off. of Env't Health Hazard Assessment* (2018) 22 Cal.App.5th 534, 551.) Standards " 'need not be expressly set forth; they may be implied by statutory purpose.' " (*Newsom v. Superior Court* (2021) 63 Cal.App.5th 1099, 1115, quoting *People v. Wright* (1982) 30 Cal.3d 705, 713; see also *Gerawan Farming, Inc. v. Agricultural Labor Relations Bd.* (2017) 3 Cal.5th 1118, 1148.) Legislation may also "confer additional powers which are cognate and germane to its purposes," without limitations. (*Southern Cal. Jockey Club v. California Horse Racing Bd.* (1950) 36 Cal.2d 167, 171.)

The *Monsanto* Court held that Proposition 65 did not unlawfully delegate authority to an international body to determine what chemicals to list as cancer-causing, as the voters had decided

the fundamental policy issue and provided sufficient direction. (*Monsanto*, 22 Cal.App.5th at 551-52.) In *Gerawan*, the California Supreme Court rejected an unlawful delegation challenge to legislation that authorized a labor relations board to order employers and employees to participate in mediation before a third party, and for the board to adopt the mediator's decision regarding the collective bargaining contract. (*Gerawan*, 3 Cal.5th at 1130, 1151-52.)

Similarly here, in exercising their legislative authority, the City's voters made the policy decision to exempt affordable housing projects and organizations from Measure ULA, and provided standards, including a mandate to utilize certain rules set forth in the Internal Revenue Code, California Civil Code, and City Municipal Code. (Compl., ¶ 145.) The electorate also provided explicit direction for the City to adopt a procedure for determining applicability of the exemptions for organizations with a history of affordable housing development and/or affordable housing property management experience, and authorized the Council to adopt consistent implementing ordinances, regulations, and procedures. (Compl., ¶¶ 145, 146.)

Measure ULA sets forth an ample policy and direction framework easily [rpvodomg as ,icj guidance as that at issue in *Monsanto*, which upheld an initiative that provided for the government to list chemicals identified by an international agency, and *Gerawan*, which upheld legislation which provided for a third party to mediate a labor dispute and render a decision for administrative agency to consider adopting. Moreover, Measure ULA provides that the City may adopt consistent implementing ordinances, regulations, and procedures, which easily satisfies *Southern Cal. Jockey Club*. (See HTJA Compl., Exh. A [Measure ULA] §§ 21.9.11, 21.9.14, 21.9.16.) Accordingly, Newcastle's unlawful delegation claim fails to state a cause of action.

Even if Newcastle's contention had merit, it would fail for two additional reasons. First, Newcastle could not meet its burden to show Measure ULA is entirely invalid, no matter the circumstances. (See Section IV-B, ante.) Second, its contention is premature and not ripe, as regulations have not been adopted. (*Metro. Water Dist. of S. Cal. v. Winograd* (2018) 24 Cal.App.5th 881, 892-93 [controversy is ripe "when the facts have sufficiently congealed to permit an intelligent and useful decision to be made"]; *Stonehouse Homes LLC v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 540 [challenge to city council resolution directing planning

commission to prepare recommendations for ordinance was not ripe because suit would require court to "speculate as to what legislation, if any, the City might adopt and whether and how that legislation might be applied"].)

7. The Void for Vagueness Claim Fails.

To prevail on a void for vagueness claim, the plaintiff must demonstrate that the legislation " 'is impermissibly vague in all of its applications' " (unless the First Amendment is implicated, which it is not in this case). (*Hotel & Motel Ass'n of Oakland v. City of Oakland* (9th Cir. 2003) 344 F.3d 959, 972, quoting *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.* (1982) 455 U.S. 489, 494–95 [footnotes omitted].) The principal issue is whether the regulation " 'affords a fair warning of what is prescribed.' " (*Chalmers v. City of Los Angeles* (9th Cir. 1985) 762 F.2d 753, 757, citing *Village of Hoffman Estates*, 455 U.S. at 502, amended on another issue at 808 F.2d 1373 (9th Cir. 1987).) "A statutory scheme may not be held to be unenforceably vague unless such vagueness 'clearly, positively and unmistakably appears.' " (*Alfaro v. Terhune* (2002) 98 Cal.App.4th 492, 504, citation omitted.)

The courts regularly uphold non-criminal ordinances against void-for-vagueness challenges. (See, e.g., *id.* at 504-05 [rejecting challenge DNA and Forensic Data Base and Data Bank Act, even though implementing regulations would "flesh out" applicability of statute in certain situations]; *Sacramentans for Fair Planning v. City of Sacramento* (2019) 37 Cal.App.5th 698, 713-14 [upholding ordinance requiring "significant community benefit" for project approval]; *Briggs v. City of Rolling Hills Estates* (1995) 40 Cal.App.4th 637, 643 [upholding "neighborhood compatibility" ordinance protecting privacy]; *Novi v. City of Pacifica* (1985) 169 Cal.App.3d 678, 682-83 [upholding "anti-monotony" ordinance prohibiting development if "there is sufficient variety in the design of the structure and grounds to avoid monotony in the external appearance"]; *People v. Gates* (1974) 41 Cal.App.3d 590, 595 [rejecting challenge to zoning non-confirming use ordinance in which "length of time" and "other related factors" were governing standards].)

Here, Measure ULA provides clear, objective standards: 4% and 5.5% transfer taxes apply to all sales at or above specified dollar thresholds. This unequivocally clear standard, on its own, precludes a contention that Measure ULA is unconstitutionally vague, which it must be in all its

applications to be unconstitutional. Moreover, even if Newcastle could advance this claim based on cherry-picking certain provisions, e.g., the exemptions, the claim would fail because Measure ULA fairly provides notice to a person of reasonable intelligence that purchases for affordable housing are exempt.

E. Newcastle's Section 1983, Writ of Mandate, and Declaratory Relief Claims Are Invalid.

Newcastle seeks to allege a tenth cause of action for damages under 42 U.S.C. section 1983. (Complaint, ¶¶ 214-17.) But 42 U.S.C. section 1983 does not provide substantive rights. (*Chapman v. Houston Welfare Rights Organization* (1979) 441 U.S. 600, 617.) Instead, Section 1983 provides the mechanism by which a plaintiff may file suit to claim a violation of federal rights, whether the claim is for damages or equitable relief. (*Monell v. Dep't of Soc. Servs. of City of New York* (1978) 436 U.S. 658, 690; see also *Ward v. Caulk* (9th Cir. 1981) 650 F.2d 1144, 1148.) Accordingly, because Newcastle has not alleged facts that could establish a violation of a substantive right protected by the U.S. Constitution, they have not stated a cognizable cause of action under 42 U.S.C. section 1983. (*Chapman*, 441 U.S. at 617 ["Even if claimants are correct in asserting that § 1983 provides a cause of action for all federal statutory claims, it remains true that one cannot go into court and claim a 'violation of § 1983' – for § 1983 by itself does not protect anyone against anything"].)

In addition, "section 1983 actions challenging state taxation are barred, whether the actions seek damages or equitable relief, and whether brought in federal or state court, provided an adequate state remedy exists." (*General Motors Corp. v. City & County of San Francisco* (1999) 69 Cal.App.4th 448, 460; see also *Union Oil Co. of Cal. v. City of Los Angeles* (2000) 79 Cal.App.4th 383, 394 [error to grant relief under Section 1983 because refund claim was adequate remedy].)

Here, an adequate state remedy exists: the prosecution of a reverse validation action alleging Measure ULA must be declared invalid, as Newcastle pursues.[30]

[30] Moreover, the Challengers have not paid Measure ULA taxes (which became effective after suit was filed). Accordingly, they could not contend that they are entitled to a refund. But if they could, the Los Angeles Municipal Code and state law provides processes for refund claims. (LAMC § 21.9.10 [RJN, Exh. E]; Rev. & Taxation Code § 5096 et seq.)

In addition, Newcastle pleads an Eleventh Cause of Action for writ of mandate under Code of Civil Procedure section 1085. (Newcastle Compl., ¶¶ 221-32.) Pursuant to the Validation Statutes, this is " 'a proceeding in rem.' " (*Davis v. Fresno Unified School District* (2023) 14 Cal.5th 671, 685, citing Code Civ. Proc. § 860.) A party may not seek in personam relief in a validation proceeding. (*Ibid.*) A writ of mandate claim "relies upon the court's in personam jurisdiction." (*Santa Clarita Organization for Planning & Environment v. Castaic Lake Water Agency* (2016) 1 Cal.App.5th 1084, 1101.) Thus, as the Supreme Court explained, such an in personam claim is prohibited.

Even if Newcastle could proceed by writ petition, the claim fails because Newcastle has not alleged facts showing the voters violated any law, nor does Newcastle have a clear and present right to compel the City to perform a duty enjoined by law. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442; *Sacks v. City of Oakland* (2010) 190 Cal.App.4th 1070, 1081.)

Finally, Newcastle pleads catch-all Twelfth and Thirteen Causes of Action for declaratory relief under Code of Civil Procedure section 1060 and the Validation Statutes. (Compl., ¶¶ 233-37, 238-41.) But the substantive bases for the purported declaratory relief claims are merely borrowed from their substantive claims, each of which fails. Thus, Newcastle's declaratory relief claims fail. (*Golden Gate Water Ski Club v. County of Contra Costa* (2008) 165 Cal.App.4th 249, 266; *Breslin v. City & County of San Francisco* (2007) 146 Cal.App.4th 1064, 1073-74.)

V. CONCLUSION

The defects in the Challengers' pleadings are pervasive and complete. This Court should grant the City's motion for judgment on the pleadings, without leave to amend.

Dated: June 23, 2023

BURKE, WILLIAMS & SORENSEN, LLP

By: _____

Kevin D. Siegel
J. Leah Castella
Eileen L. Ollivier
Attorneys for Defendant
CITY OF LOS ANGELES

PROOF OF SERVICE

Howard Jarvis Taxpayers Assoc., et al. v. City of Los Angeles, et al.
Los Angeles County Superior Court

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 1 California Street, Suite 3050, San Francisco, CA 94111-5432.

On June 23, 2023, I served true copies of the following document(s) described as

DEFENDANT CITY OF LOS ANGELES' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR JUDGMENT TO COMPLAINT FILED BY HOWARD JARVIS TAXPAYERS ASSOCIATION ET AL., COMPLAINT FILED BY NEWCASTLE COURTYARDS, LLC ET AL., AND ANSWER FILED BY SHAMA ENTERPRISES, LLC

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address pmruiz@bwslaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on June 23, 2023, at San Francisco, California.

Paola Mendez-Ruiz

SERVICE LIST
Howard Jarvis Taxpayers Assoc., et al. v. City of Los Angeles, et al.
Los Angeles County Superior Court
Lead Case No. 22STCV39662
(Consolidated with Case No.: 23STCV00352)

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