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on behalf of The Mani Benabou Family Trust

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF LOS ANGELES**

13 HOWARD JARVIS TAXPAYERS  
14 ASSOCIATION and APARTMENT  
ASSOCIATION OF GREATER LOS  
15 ANGELES,

16 Plaintiffs,

17 v.

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

22 Defendants.

23 NEWCASTLE COURTYARDS, LLC, a  
24 California limited liability company;  
JONATHAN BENABOU, as Trustee on  
25 behalf of THE MANI BENABOU FAMILY  
TRUST; and ROES 1 through 500,

26 Plaintiffs and Petitioners,

27 v.

28 CITY OF LOS ANGELES; COUNTY OF  
LOS ANGELES; COUNTY OF LOS

Case No. 22STCV39662  
(Consolidated with No. 23STCV00352)

*[Assigned for all purposes to Hon. Joseph Lipner, Dept. 72]*

**AMENDED OPPOSITION OF PLAINTIFFS AND  
PETITIONERS NEWCASTLE COURTYARDS,  
LLC AND JONATHAN BENABOU TO MOTION  
FOR JUDGMENT ON THE PLEADINGS BY  
DEFENDANT CITY OF LOS ANGELES AND  
INTERESTED PARTIES (Vol II)**

Date: September 26, 2023

Time: 8:30 a.m.

Dept: 72

Complaint Filed: Dec. 21, 2022/Jan. 6, 2023

Trial Date: Not Set

1 ANGELES RECORDER'S OFFICE; ROES  
2 1 through 500, and ALL PERSONS  
3 INTERESTED IN THE MATTER of the  
4 ULA and all proceedings related thereto,

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Defendants and Respondents.

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1 Plaintiffs and Petitioners Newcastle Courtyards, LLC, and Jonathan Benabou, as Trustee on  
2 behalf of the Mani Benabou Family Trust (collectively, "Plaintiffs"), hereby submit their Opposition Vol.  
3 II to the Motion for Judgment on the Pleadings filed by the Defendants as follows:

4 **X. PLAINTIFFS' NINTH CAUSE OF ACTION FOR VIOLATION OF FREEDOM**  
5 **OF SPEECH THROUGH IMPOSITION OF AN UNREASONABLE BURDEN**  
6 **TO EXERCISE CONSTITUTIONAL RIGHT STATES A VALID CAUSE OF**  
7 **ACTION FOR WHICH THE STRICT SCRUTINY STANDARD APPLIES**

8 Defendants claim that Measure ULA does not violate the First Amendment, because, according  
9 to Defendants, this kind of tax on the sale of property does not target an expressive act protected by the  
10 First Amendment (Int. Parties MJOP, p.25:13-26:7). They contend that neither the act of selling property,  
11 the recordation of a deed, nor the imposition of a transfer tax are expressive conduct (Int. Parties MJOP,  
12 p. 25:23-26:7). They further argue that even if it were expressive speech, there would still not be any  
13 free speech violation because any abridgment of such conduct would be "incidental to the legitimate  
14 exercise of taxing land sales" (MJOP p.26:8-17). Additionally, they assert that the ULA's transfer tax  
15 would apply regardless of whether the deed is recorded with the sale (Int. Parties MJOP, FN 11), thereby  
16 conceding that the restriction on speech engendered by the prohibition of recordation and publication of  
17 the deed, without paying an exorbitant assessment of at least \$200,000, was never necessary for the  
18 purposes of the ULA to begin with, thus, failing the strict scrutiny test applicable to this content based  
19 infringement of freedom of speech which is presumptively invalid and subject to the strict scrutiny test.

20 The short answer to Defendants arguments is that they are wrong on each and every point because:  
21 (a) the contents of deeds convey a great deal of expressive information (e.g. the description of the  
22 property, its dimensions, its location, its buyer, its seller, the date it was sold, the price for which it was  
23 sold, what interests are being conveyed, what interests are being reserved, what restrictions exist on the  
24 use of the property, what adverse interests may exist, and much more) and are, therefore, protected speech  
25 under the First Amendment and corresponding provision of the California state Constitution ("**words**  
26 **communicating information are "speech" within the meaning of the First Amendment, whether or**  
27 **not the words convey important ideas"** [citing *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484,  
28 516, 116 S.Ct. 1495 (1996)] *Giebel v. Sylvester* (9th Cir. 2001) 244 F.3d 1182, 1186-87; (b) the restriction  
on speech engendered by the imposition of an enormous assessment to record a deed whose content

1 discloses (1) that the Property was located in the City of Los Angeles (and not elsewhere in the County  
2 of Los Angeles), (2) that the sales price was more than \$5,000,000 (not \$5,000,000 or less), and (3) that  
3 the sale took place after April 1, 2023, (as compared to deeds that do not convey such content) (e.g. deeds  
4 that show that the property is not in the City of Los Angeles, or was not sold for more than \$5,000,000  
5 or was sold before April 1, 2023) is **“content based” regulation** and is **presumptively invalid and**  
6 **subject to the “strict scrutiny” test**, (e.g. *Reed v. Town of Gilbert* (2015) 576 U.S. 155, 163-64<sup>1</sup>, (3)  
7 because Interested Parties have conceded that the restriction on speech engendered by the prohibition of  
8 recordation was never necessary to further the ULA’s purpose to begin with, they also concede that it  
9 cannot possibly satisfy the “strict scrutiny” test, because:

10 Under the strict standard applied in such cases, the state bears the burden of establishing not only  
11 that it has a compelling interest which justifies the **law but that the distinctions drawn by the**  
12 **law are necessary to further its purpose.**”

13 *Westbrook v. Mihaly* (1970) 2 Cal.3d 765, 784-785 , vacated on other grounds (1971) 403 U.S.  
14 915; *In re Antazo* (1970) 3 Cal.3d 100, 110-111; see *Purdy Fitzpatrick v. State of California* (1969) 71  
15 Cal.2d 566, 578-579; and (4) the “incidental restriction” doctrine does not apply to “content based”  
16

17  
18 <sup>1</sup> The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the  
19 enactment of laws “abridging the freedom of speech.” U.S. Const., Amdt. 1. Under that Clause, a  
20 government, including a municipal government vested with state authority, “has no power to restrict  
21 expression because of its **message**, its ideas, **its subject matter**, or its **content.**” *Police Dept. of Chicago*  
22 *v. Mosley*, 408 U.S. 92, 95, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972). Content-based laws—those that target  
23 speech based on its communicative content—are **presumptively unconstitutional** and may be justified  
24 only if the government proves that they are narrowly tailored to serve compelling state interests.  
25 [Citations] **Government regulation of speech is content based if a law applies to particular speech**  
26 **because of the topic discussed or the idea or message expressed.** [Citations] This commonsense  
27 meaning of the phrase “content based” requires a court to consider whether a regulation of speech “on its  
28 face” draws distinctions based on the message a speaker conveys. *Sorrell, supra*, at —, 131 S.Ct., at  
2664. **Some facial distinctions based on a message are obvious, defining regulated speech by**  
**particular subject matter**, and others are more subtle, defining regulated speech by its **function or**  
**purpose.** Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject  
to strict scrutiny.

27 *Reed v. Town of Gilbert*, (2015) 76 U.S. 155, 163-64 [emph. added].

1 discrimination, which is presumptively invalid, which is what we have in this case. The “incidental  
2 restriction” doctrine only applies to “content neutral” discrimination (*People v. Morera-Munoz* (2016) 5  
3 Cal.App.5th 838, 854).

4 But even in respect to “content neutral” regulation (not applicable herein) **the ULA would still**  
5 **fail the applicable “intermediate scrutiny” test**, because, as conceded by Defendants, the “incidental  
6 restriction” **was never necessary to begin with**, so it cannot possibly be said to be “no greater than is  
7 essential to the furtherance of” the ULA’s purpose.

8  
9 **When a regulation is content neutral, imposing only an incidental burden on speech, the**  
10 **intermediate level of scrutiny is applicable.** (*Turner, supra*, 512 U.S. at p. 662, 114 S.Ct.  
11 2445.) Under this test, a restriction on expressive activity will be deemed valid if “ ‘it furthers  
12 an important or substantial governmental interest; if the governmental interest is unrelated to  
13 the suppression of free expression; **and if the incidental restriction on alleged First**  
14 **Amendment freedoms is no greater than is essential to the furtherance of that interest.**’  
15 [Citation.] [¶]

16 *People v. Morera-Munoz* (2016) 5 Cal.App.5th 838, 854.

17 Therefore, the short answer is that Defendants’ arguments that ULA does not unconstitutionally  
18 violate Plaintiffs’ rights to freedom of speech all fail.

19 As to the long answer:

20 Defendants encourage this Court to look at the face of the ULA in determining the freedom of  
21 speech issue (Int. Parties MJOP p.25:18-19). Both the Ordinance, at Sec. 21.9.2 on its face, states, and  
22 the VC (VC ¶¶ 1, ¶ 17, ¶ 18)<sup>2</sup> pleads that the ULA prohibits the Los Angeles County Recorder’s Office

23 <sup>2</sup> SEC. 21.9.2. TAX IMPOSED. (a) **There is hereby imposed on each deed, instrument or writing** by  
24 which any lands, tenements, or other realty sold within the City of Los Angeles shall be granted, assigned,  
25 transferred or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or  
26 persons, by his or their direction, when the consideration or value of the interest or property conveyed  
27 (exclusive of the value of any lien or encumbrance remaining thereon at the time of sale) exceeds \$100.00,  
28 a tax at the rate of \$2.25 for each \$500.00 or fractional part thereof. (b) In addition to and separate from  
any tax imposed under Subsection (a) of this section, starting on April 1, 2023, there is hereby imposed  
a tax known as the “Homelessness and Housing Solutions Tax” on each deed, instrument or writing by  
which any lands, tenements, or other realty sold within the City of Los Angeles shall be granted, assigned,  
transferred or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or  
persons, by his or their direction, when the consideration or value of the interest or property conveyed

1 from recording any deed of sale whose contents disclose that: (a) the real property sold is located in the  
2 City of Los Angeles, (b) the consideration for the sale is over \$5,000,000, and (c) the date of sale is April  
3 1, 2023 or later, unless the County Recorder has collected an assessment equal to four percent (4%) of  
4 the gross sales proceeds for sales of over \$5,000,000 but less than \$10,000,000, and an assessment equal  
5 to five and one half percent (5.5%) for sales of real properties in the City of Los Angeles for sales of  
6 \$10,000,000 or more.

7 The VC at ¶ 147 and ¶ 148 alleges that, without the registration of the deed of transfer, the  
8 transferor cannot rid himself of encumbrances of record on his property and the transferee cannot  
9 effectively make use of the property (e.g. obtain mortgage financing, obtain building permits, title  
10 insurance, etc.).

11 The ULA, on its face, at “SEC. 21.9.2. TAX IMPOSED. (a) **There is hereby imposed on each**  
12 **deed, instrument or writing...**” is explicit that the restriction (i.e. monetary charge and/or refusal to  
13 record) is imposed on the **deed, written instrument or writing** (i.e. a written document, just like a book,  
14 leaflet or newspaper article, that conveys expressive content based information about the nature of a  
15 property, e.g. the identities of buyers and sellers, the price of the property, what city it is located in, how  
16 large it is, its dimensions, what rights are included, what restrictions are on it, when it was sold and much  
17 other expressive content) and its recordation (i.e. the publication in the public records of the County  
18 recorder, in every way analogous to the publication of a book, newspaper, magazine or website).

19 Thus, **the restriction is explicitly, and, “on its face”, imposed upon the protected expressive**  
20 **speech**, and, not, as Defendants contend, merely the “sale” of the property. That is one of its fatal flaws,  
21 the admittedly unnecessary and unduly restrictive mechanism by which the City (and County) seek to  
22 collect the ULA assessment infringes content based expressive speech and is, therefore, presumptively  
23 unconstitutional and invalid. In other words, if, as Defendants contend, they could have implemented  
24 the ULA without placing content-based restrictions on the publication of written instruments such as  
25

26 \_\_\_\_\_  
27 (including the value of any lien or encumbrance remaining thereon at the time of sale) exceeds: (1)  
28 \$5,000,000 but is less than \$10,000,000, a tax at the rate of 4% of the consideration or value; or (2)  
\$10,000,000 or greater, a tax at the rate of 5.5% of the consideration or value. [emph. added]

1 deeds, then they should have. Instead, they chose to violate Plaintiffs’ constitutional rights to freedom of  
2 speech and, thereby, invalidated the ULA.

3 The VC at ¶¶ 206 through ¶ 213 alleges that the ULA violates the freedom of speech guarantees  
4 in both the United States Constitution and the California Constitution because it imposes an unreasonable  
5 burden (i.e. a payment of at least \$200,000 and possibly millions of dollars) on some property owners’  
6 rights to express themselves by giving public notice of the title to their property and the contents of their  
7 deeds of sale to all the world. The VC also alleges that the ULA issues exemptions for certain transferors  
8 of properties for more than \$5,000,000, which are favored by the ULA, such as those who have sold their  
9 properties to certain non-profit companies and other favored transferees. (VC ¶¶ 144, 145, 146, 153).

10  
11 **A. The Contents of a Deed of Sale Is Expressive Communicative Speech that is**  
12 **Protected by the First Amendment**

13 As stated in the VC ¶ 207, the main purpose of recording of deeds is to give public notice of the  
14 ownership of properties to all of the world. The recording of a deed is a published statement, in writing,  
15 by its owner to all the world that “I own this property” or that “I transferred this property to this person”.

16 The Court may take judicial notice, however, that a deed of sale contains much more  
17 communicative information, particularly about the intentions of the parties listed in the deed, than simply  
18 that “I own this property” or that “I transferred this property to this person”.<sup>3</sup>

19  
20 <sup>3</sup> Such information can include: (a) the names of the grantor and grantee, (b) the marital status of the  
21 parties e.g. single, married, unmarried, divorced, married as community property, married but separate  
22 property (c) the property description which may be in the form of a lot and block description, a  
23 condominium number on a recorded condominium map, a metes and bounds description if the property  
24 is not in a platted area, it may also include the property’s physical address and/or its assessor’s parcel  
25 number; (d) the type of deed e.g.: various types of deeds that can be recorded in the County Recorder’s  
26 Office include: (1) Warranty Deeds, (2) Special Warranty Deeds, (3) Quitclaim Deeds, (4) Deeds of  
27 Trust, (5) Deeds of Reconveyance, (6) Grant Deeds, (7) Bargain and Sale Deeds (8) Life Estate Deeds,  
28 (9) Correction or Confirmatory Deeds, (10) Easement Deeds; (e) the date of the transaction (f) the  
consideration for the transaction, including, but not limited to the purchase price or whether the transfer  
was part of a trade and not a sale, (g) the signatures of the parties, (h) a notarial acknowledgment which  
verifies the identity of the signers and confirms that they understand what they are signing and where the  
document was signed, (i) the Grantee’s address, (j) the name and address of the person who prepared the  
deed, (k) the recording information on the deed, e.g. the date and time of recording, the document number,



1 See, for example, RJN 24, Ex 24; RJN 25, Ex 25, and RJN 26, Ex 26, which are real deeds for  
2 properties in the City of Los Angeles which were actually recorded in the Los Angeles County Recorder's  
3 Office, and are, thus, public records. One of them is for Dodger Stadium (1000 Vin Scully Way) (RJN  
4 26, Ex 26) and the two others are for high-rise office buildings in Downtown Los Angeles, one at 777 S.  
5 Figueroa Street (RJN 24, Ex 24) and one at 550 W. 5th Street (RJN 25, Ex 25), all of which properties,  
6 if they had been sold after April 1, 2023 (but which we can see by examining their deeds' contents that  
7 they were not) would be subject to the ULA.

8 The contents of the Deed for the Property at 777 S. Figueroa (RJN 24, Ex 24), expresses to all the  
9 world the communicative information that it is a Grant Deed (as distinguished from (1) Warranty Deeds,  
10 (2) Special Warranty Deeds, (3) Quitclaim Deeds, (4) Deeds of Trust, (5) Deeds of Reconveyance, (6)  
11 Grant Deeds, (7) Bargain and Sale Deeds (8) Life Estate Deeds, (9) Correction or Confirmatory Deeds,  
12 (10) Easement Deeds).

13 It also expresses to all the world that: (a) it has five (5) assessors' parcel numbers, disclosing that  
14 it is not just one, but is in fact five (5) properties, and that those assessor's parcel numbers are 5144-009-  
15 047; 5144-009-086; 5144-009-080; 5144-009-087 and 5144-009-088; (b) it was sold by 777 South Fig,  
16 LLC, a Delaware Company to Maguire Properties 777 Tower, LLC, a Delaware limited liability  
17 company, (c) the law firm Latham and Watkins requested the recording of the deed, (d) the sale took  
18 place when it was recorded on March 17, 2005; (e) Fidelity National Title handled the escrow and/or title  
19 insurance, (f) the signatory of 777 South Fig, LLC was CWP Capital Management, LLC, a Delaware  
20 limited liability company whose manager was Brett J. Munger; (g) the notary who witnessed the signing  
21 of the deed was Hector Cordova and he did so on March 14, 2005; (h) the Deed expresses on its Exhibit

22 \_\_\_\_\_  
23 the book and page number and the recorder's signature, stamp or initials, (l) transfer tax information e.g.  
24 the amount of transfer tax, (m) whether the deed is exempt from transfer tax and the reasons, (n) liens or  
25 encumbrances against the property such as a mortgage or tax lien, (o) whether the property is subject to  
26 a land sale contract and, therefore, subject to an equity of redemption, (p) whether the property is subject  
27 to rights of survivorship in the case of multiple transferees (e.g. joint tenancy), (q) whether the grantor  
28 has reserved certain rights, e.g. mineral or water rights, air rights, crop rights, riparian rights, rights to  
profits a prendre, right to surface entry, (r) exhibits, such as a map, with the boundaries and easements  
depicted.

1 “A” that the property conveyed includes two parcels, 1 and 2; (i) Parcel 1 includes lots 2, 8, 9 and ten of  
2 a map that was amended of Tract No. 32622, in the City of Los Angeles, County of Los Angeles, (j) that  
3 such map was recorded in Book 1098, (k) on pages 83 through 86 inclusive, (l) of maps, (m) in the office  
4 of the County Recorder of (Los Angeles County), (n) that it does not include the conveyance from Lots  
5 2 and 8 of all oil, gas and mineral substances, (o) it excludes the right to explore for and extract such  
6 substances, (p) it expresses that whoever does have those rights to explore for and extract such substances  
7 does not have the right to any surface opening of any well, hole, shaft or other means of exploring for,  
8 reaching or extracting such substances within the central business district redevelopment project area as  
9 recorded in Book M5007, Page 588 of Los Angeles County Records, within 500 feet of the surface; (q)  
10 the deed, in respect to Parcel 2, expresses that it conveys easements for (i) parking, (ii) ingress and  
11 easement for pedestrians and automobiles, utilities, support, construction, loading docks and various  
12 other rights listed in various other documents whose identities are disclosed on such Deed.

13 In summary, this Deed, (of which this Court is requested to take judicial notice) which the ULA  
14 would restrict from recordation and publication without the payment of an assessment of at least \$200,000  
15 (and probably millions of dollars, in the case of this high-rise office building, upon its sale for probably  
16 over \$100,000,000), contains and communicates a veritable library of expressive information and is,  
17 therefore, unquestionably protected expressive speech.

18 The U.S. Supreme Court has even held that a sign that merely contained two words “For Sale”  
19 contained sufficient expressive speech to be protected under the Constitution.

20 In *Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85, 92 (1977) the U.S. Supreme Court made  
21 clear that even a two-word message, in the form of a “for sale” sign, which conveyed far less  
22 information than a deed of sale which the ULA prohibits from being recorded in the County Recorder’s  
23 office without the ULA’s pre-requisite payment of at least \$200,000 (i.e. 4% of sales of over \$5,000,000  
24 to \$10,000,000 and 5.5% of sales over \$10,000,000), is protected speech under the First Amendment  
25 and is content based:

26 Our commercial speech cases have recognized the dangers that attend governmental attempts to  
27 single out certain messages for suppression. For example, in *Linmark*, 431 U.S., at 92-94, we  
28 concluded that a ban on “For Sale” signs was “content based” and failed to leave open  
“satisfactory” alternative channels of communication; [citation].

1 *44 Liquormart, Inc. v. Rhode Island* (1996) 517 U.S. 484, 501-02.

2 Deeds of sale contain far more expressive information than do two (2) word “for sale” signs.

3 As demonstrated in respect to the Deed for 777 S. Figueroa, above, they specify the municipal  
4 address, assessor’s parcel number and/or legal description of the property so that any interested party  
5 may locate the property, know which municipality provides its municipal services, whether the resident  
6 is eligible to vote in certain elections or whether the owner’s children can attend certain schools.

7 The deed includes the dimensions and boundaries of the property, and may even include a map  
8 with specific dimensions on it, so that an owner or buyer may know where he or she can plant a garden  
9 or construct a “granny flat” for a relative, or whether a specific tree is or is not part of such owner’s  
10 property, how much square footage the property contains, how much square footage of improvements  
11 can be built on the property, the identity of the parties who were the transferor and the transferee, how  
12 the owners hold title, e.g. tenants in common, joint tenancy, life estate, in trust, whether the transfer was  
13 the result of a sale, an inheritance, street vacation, divorce (inter-spousal transfer deed), foreclosure of a  
14 deed of trust or other means of transfer, the sales price of the property, the date the property was  
15 transferred, what type of a deed<sup>4</sup> it is, e.g. whether the deed is a grant deed, a quit claim deed, inter-  
16 spousal transfer deed, warranty deed or other kind of deed and what guarantees from the transferee are  
17 associated with each such type of deed, how much transfer tax was paid, the history of the property (e.g.  
18 whether it was part of a Spanish land grant) what restrictions or reservations may exist on the property  
19 such as a reservation of mineral rights or a prohibition of surface entry for drilling for mineral rights,  
20 easements, air rights or that the property is subject to a condominium map and/or to a set of conditions,  
21 covenants and restrictions (“CC & R’s”).

22 Such CC & R’s may reference architectural restrictions comprising regulations as to what changes  
23 can be made to the property from major renovations to changes in exterior paint color, land use  
24 restrictions on what the property can be used for, for example, running a business from a residential

25  
26 \_\_\_\_\_  
27 <sup>4</sup> Various types of deeds that can be recorded in the County Recorder’s Office include: (1) Warranty  
28 Deeds, (2) Special Warranty Deeds, (3) Quitclaim Deeds, (4) Deeds of Trust, (5) Deeds of Reconveyance,  
(6) Grant Deeds, (7) Bargain and Sale Deeds (8) Life Estate Deeds, (9) Correction or Confirmatory  
Deeds, (10) Easement Deeds, (11) Interspousal Transfer Deeds.

1 property, maintenance obligations comprising requirements for the upkeep of the property, e.g.  
2 maintaining lawns, roofs, fences, or other aspects of the property, noise restrictions comprising rules  
3 about noise, such as quiet hours or limits on types of noise (e.g. dogs barking), restrictions on pets  
4 comprising rules regarding the type, size, or number of pets that can be kept on the property, parking and  
5 vehicle restrictions comprising rules regarding where vehicles can be parked and what types and sizes of  
6 vehicles are allowed.

7 Defendants argue, just as Defendants argued unsuccessfully in *Giebel v. Sylvester* (9th Cir. 2001)  
8 244 F.3d 1182, 1186-87 (concerning posted handbills that merely announced an upcoming speech) that  
9 the contents of deeds of sale are not “speech” because, Defendants allege, they lack “expressiveness of  
10 content” and merely convey “information”.

11 The *Giebel* Court held that **“words communicating information are “speech” within the**  
12 **meaning of the First Amendment, whether or not the words convey important ideas”** (citing 44  
13 *Liquormart, Inc. v. Rhode Island* (1996) 17 U.S. 484, 516):

14  
15 Sylvester argues that *Giebel*'s handbills were not speech, claiming that they lacked “expressiveness  
16 of content,” and going so far as to label them “nonverbal conduct.” Because the handbills merely  
“announce[d] a speech,” he reasons, they are not entitled to First Amendment protection.

17 The argument that handbills announcing a subsequent speech are not, in and of themselves, speech  
18 protected by the First Amendment is patently wrong. Such handbills are posted for the purpose of  
conveying information and, to the extent that they are observed before being torn down, do so. **In**  
19 **general, words communicating information are “speech” within the meaning of the First**  
20 **Amendment, whether or not the words convey important ideas. See, e.g., 44 Liquormart, Inc.**  
21 **v. Rhode Island, 517 U.S. 484, 516, 116 S.Ct. 1495, 134 L.Ed.2d 711 (1996)** (holding that the First  
22 Amendment protects advertisement of liquor prices). While narrow categories of speech, such as  
obscenity, are wholly outside the First Amendment, no court has ever suggested that notices of  
23 upcoming speeches or events constitutes a category of speech not subject to First Amendment  
protection. *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 382-83, 112 S.Ct. 2538, 120 L.Ed.2d  
305 (1992) (listing categories of speech that are not protected by the First Amendment).

24 *Giebel v. Sylvester* (9th Cir. 2001) 244 F.3d 1182, 1186-87.

25 The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the  
26 enactment of laws “abridging the freedom of speech.” U.S. Const., Amdt. 1. Under that Clause, a  
27 government, including a municipal government vested with state authority, “has no power to restrict  
28 expression because of its **message**, its ideas, **its subject matter**, or its **content**.” *Police Dept. of*  
*Chicago v. Mosley*, 408 U.S. 92, 95, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972). Content-based laws—

1 those that target speech based on its communicative content—are presumptively unconstitutional  
2 and may be justified only if the government proves that they are narrowly tailored to serve  
3 compelling state interests. [Citations]. **Government regulation of speech is content based if a law**  
4 **applies to particular speech because of the topic discussed or the idea or message**  
5 **expressed. E.g., *Sorrell v. IMS Health, Inc.*, 564 U.S. —, — – —, 131 S.Ct. 2653, 2663–**  
6 **2664, 180 L.Ed.2d 544** (2011) [citations]. This commonsense meaning of the phrase “content based”  
7 requires a court to consider whether a regulation of speech “on its face” draws distinctions based on  
8 the message a speaker conveys. *Sorrell, supra*, at —, 131 S.Ct., at 2664. **Some facial distinctions**  
9 **based on a message are obvious, defining regulated speech by particular subject matter**, and  
10 others are more subtle, defining regulated speech by its function or purpose. Both are  
11 distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict  
12 scrutiny.

13 *Reed v. Town of Gilbert*, 576 U.S. 155, 163-64 (2015)

14 “Reasonable time, place and manner restrictions are allowed, but **any restriction based on content**  
15 **of the speech must satisfy strict scrutiny.**”

16 *Pleasant Grove City v. Sumnum* (2009) 555 U.S. 460, 129 S.Ct. 1125, 1132.

17 As demonstrated hereinabove, **deeds of sale contain far more information** than do the simple  
18 handbills in *Giebel* announcing an upcoming speech and certainly far more information than a two-word  
19 “for sale” sign which the U.S. Supreme Court found in *Linmark Associates, Inc. v. Willingboro*, 431 U.S.  
20 85) constituted not only protected speech but speech that was “content based”.

21 Clearly, if the owner of 777 S. Figueroa wished to stand in front of City Hall and make a speech  
22 reciting the exact information set forth above concerning the 777 S. Figueroa building, but was told by  
23 the City that he could do so only if he paid the City at least \$200,000 (and more likely millions of dollars),  
24 because his recitation of the address disclosed that his property was a skyscraper worth over \$5,000,000,  
25 while another speaker could speak there, for free, about the contents of the deed for his \$4,000,000  
26 property, nobody would doubt that the 777 S. Figueroa speaker’s freedom of speech was unconstitutionally  
27 impaired. The information and expressive content is exactly the same, the fee is exactly the same, only  
28 the forum for such speech is different here, i.e. open air in front of City Hall v. publication in the County  
Recorder’s Office.

Therefore, the contents of such deeds are constitutionally protected speech protected by the First  
Amendment of the United States Constitution and applied to the states by the Fourteenth Amendment  
and the corresponding provision of California’s Constitution, as alleged in VC ¶ 208.

1           **B.     The ULA Is A “Content Based” Regulation that Infringes Free Speech Which Is**  
2           **Presumptively Invalid and is Subject to “Strict Scrutiny”.**

3           Not only are the contents of deeds of sale protected speech under the First Amendment, but the  
4 ULA is a “content based” regulation that infringes free speech which is presumptively invalid and is  
5 subject to “strict scrutiny”.

6           The ULA is clearly “content based” and not “content neutral.” A content neutral regulation is one  
7 that is justified without reference to the content of the regulated speech:

8           “Thus, we conclude that the ordinance is content-neutral because it is justified without “reference to  
9 the content of the regulated speech.” *See Renton*, 106 S.Ct. at 929; *Virginia Pharmacy*, 425 U.S. at  
10 771, 96 S.Ct. at 1830.”

11 *Kev, Inc. v. Kitsap County* (9th Cir. 1986) 793 F.2d 1053, 1059.

12           A “content neutral” regulation of an instrument to be recorded in a recording office would be, for  
13 example, that all recordable instruments, whatever their content, must be on white paper and be 8.5” x  
14 11” in size. Such a regulation would be content neutral because it would apply to all recordable  
15 instruments irrespective of their content.

16           For example, in *Kovacs v. Cooper* (1949) 336 U.S. 77, 89 the U.S. Supreme Court held that an  
17 ordinance that barred sound trucks from broadcasting in a loud and raucous manner did not violate  
18 freedom of speech because it did not place any restriction upon the content of the broadcast, whereas the  
19 high court stated in *Barr v. American Assn. of Political Consultants, Inc.* (2020) \_\_\_ U.S. \_\_\_, 140 S.Ct.  
20 2335, 2346 that had that ordinance only applied to sound trucks broadcasting political speech, it would  
21 have been “content based” and presumptively invalid, even if it imposed no limits on the political  
22 viewpoints that could be expressed.

23           As relevant here, **a law is content-based if “a regulation of speech ‘on its face’ draws distinctions**  
24 **based on the message a speaker conveys.”** *Reed*, 576 U.S., at 163, 135 S.Ct. 2218. **That**  
25 **description applies to a law that “singles out specific subject matter for differential**  
26 **treatment.”** *Id.*, at 169, 135 S.Ct. 2218. For example, “a law banning the use of sound trucks for  
27 political speech—and only political speech—would be a content-based regulation, even if it imposed  
28 no limits on the political viewpoints that could be expressed.” *Ibid.*; see, e.g. [numerous citations  
omitted].

*Barr v. American Assn. of Political Consultants, Inc.* (2020) 140 S. Ct. 2335, 2346 [emph. added]

1 The ULA, however, is “content based” because, on its face, it only applies to (a) deeds of sale (b)  
2 for properties located in the City of Los Angeles, (c) having sales prices of over \$5,000,000, (d) which  
3 took place after April 1, 2023, and (e ) which are not sold to an exempt purchaser (e.g. a non-profit  
4 corporation that has characteristics specified in regulations that do not yet exist, (see e.g. VC ¶ 144  
5 through 151)

6 The ULA, on its face, requires the County Recorder’s office to examine the content of each  
7 instrument presented for recording to determine if a minimum assessment of at least \$200,000 must be  
8 paid before such instrument will be recorded.

9 In other words the ULA “singles out specific subject matter” (i.e. (1) deeds of sale, as opposed to  
10 many other types of recordable documents<sup>5</sup>, (2) for sales over \$5,000,000 (as opposed to sales of  
11 \$5,000,000 or under), (3) for property located within the City of Los Angeles (as opposed to property  
12 located elsewhere in the County of Los Angeles), (4) where the date of sale was April 1, 2023 or later (as  
13 opposed to earlier sales of property for more than \$5,000,000), and (5) whether the sale is exempt based  
14 on the identity and qualifications of the transferee according to, as yet, non-existent regulations.

15 The ULA is not content neutral, because the Los Angeles County Recorder cannot administer the  
16 ULA assessment nor even calculate it unless he/she first reads the contents of the deed of sale and satisfies  
17 himself/herself of at least five (5) things: (a) the instrument he is examining is a deed of sale (as opposed  
18 to any other type of recordable document, e.g. a deed of trust, deed of reconveyance, notice of mechanic’s  
19 lien, notice of pending litigation, etc.) (b) the property is located in the City of Los Angeles (as opposed  
20 to some other portion of the County of Los Angeles), (c) the sale took place on or after the effective date

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21  
22 <sup>5</sup> Recordable instruments, include, but are not limited to: many different types of deeds e.g. (1) Warranty  
23 Deeds, (2) Special Warranty Deeds, (3) Quitclaim Deeds, (4) Deeds of Trust, (5) Deeds of Reconveyance,  
24 (6) Grant Deeds, (7) Bargain and Sale Deeds (8) Life Estate Deeds, (9) Correction or Confirmatory  
25 Deeds, (10) Easement Deeds (11) Interspousal Transfer Deeds; They also include instruments that are  
26 not deeds of sale such as: Mortgages and Deeds of Trust, Mortgage Releases and Reconveyances,  
27 Easements, Plats and Surveys, Liens such as Mechanic’s Liens, judgment liens, or tax liens, Conditions,  
28 Covenants & Restrictions, Powers of Attorney, Marriage Licenses and Divorce Decrees, Death  
Certificates, Military Discharge Papers (i.e. DD-214 Forms), Land Contracts, Leases, Trust Documents,  
Affidavits, Option Agreements, Rights of First Refusal, Conservation Easements, Partnership  
Agreements, Articles of Incorporation and Business Licenses, UCC Financing Statements, Court  
Judgments.

1 of April 1, 2023 (as opposed to prior to that date), (d) the total consideration for the sale was more than  
2 \$5,000,000 (as opposed to \$5,000,000 or less), (e) the sale is not subject to an exemption based on the  
3 identity of the transferee according to regulations that do not yet exist.

4 He then has to further examine the contents of the deed to see if the consideration was \$10,000,000  
5 or more to determine whether the higher 5.5% rate applies, and, in each case he must examine the contents  
6 of the deed for the exact sales price to be able to accurately calculate the amount of the “transfer tax”, i.e.  
7 4% or 5.5%, as the case may be, of the gross sales price. Thus, the contents of the deed are indispensable  
8 for the ULA’s application, and it is, therefore, not “content neutral.”

9 In *Reed* (supra)<sup>6</sup>, the U.S. Supreme Court found that the Town of Gilbert’s Sign Code was content  
10 based on its face because it was based on the message on the face of each sign. Likewise, the City’s ULA  
11 is also content based because it imposes a restriction, on its face, on the contents of: (a) deeds of sale, (b)  
12 where the consideration is more than \$5,000,000, (c) the property is located in the City of Los Angeles,  
13 (d) the date of sale took place on or after April 1, 2023, and (e) the transaction is not subject to an  
14 exemption, e.g. based on the identity of the transferee according to, as yet, non-existent regulations.

15 **The ULA imposes no such restriction on any other deeds**, nor, indeed, upon any other recordable  
16 documents, such as deeds of trust, deeds of reconveyance, quit claim deeds, mechanic’s liens, notices of  
17 pending litigation, or, for that matter deeds for sales of property for more than \$5,000,000 that are located  
18 in the County of Los Angeles, but not in the City of Los Angeles or where the date of sale preceded April  
19 1, 2023.

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23 <sup>6</sup> The Town's Sign Code is content based on its face. It defines “Temporary Directional Signs” on the  
24 basis of whether a sign conveys the message of directing the public to church or some other “qualifying  
25 event.” Glossary 25. It defines “Political Signs” on the basis of whether a sign's message is “designed to  
26 influence the outcome of an election.” *Id.*, at 24. And it defines “Ideological Signs” on the basis of  
27 whether a sign “communicat [es] a message or ideas” that do not fit within the Code's other  
28 categories. *Id.*, at 23. It then subjects each of these categories to different restrictions.

*Reed v. Town of Gilbert, supra*, at 164.



1 Thus, unquestionably, the restrictions on the ULA Sellers’ freedom of speech is content based.  
2 Clearly the County Recorder must examine the content of the deed or indeed, the recordable instrument,  
3 deed or not, to determine whether it falls within the scope of the ULA restriction.

4 Also, according to the stated intent of the ULA, the distinction between deeds for over \$5,000,000  
5 and \$5,000,000 or under is not content neutral because, as per the specific statements in the ULA VIP  
6 they say that deeds for sales of over \$5,000,000 are intended to identify the properties of only  
7 “millionaires and billionaires” who, according to the VIP, have failed to pay their “fair share”, while the  
8 other deeds having a consideration of less than \$5,000,000, according to the ULA, belong to persons who  
9 are not “millionaires and billionaires” and do pay their fair share.

10 Thus, the provision is not only discriminatory and infringes on those Sellers’ first amendment  
11 rights, but it does so motivated by *animus* towards a politically disfavored group, i.e. supposed  
12 “millionaires and billionaires”. The ULA, by permitting the deeds for sales of \$5,000,000 or less to be  
13 recorded without charge, while sales for more than \$5,000,000, because such sales are by “millionaires  
14 and billionaires” must pay at least \$200,000 to record their deeds, discriminates on the basis of a “specific  
15 motivating ideology...or perspective of the speaker” (i.e. “millionaire or billionaire” v. “non-  
16 millionaire”, and is considered an even “more blatant” and more “egregious form of content  
17 discrimination:

18 Government discrimination among viewpoints—or the regulation of speech based on “the specific  
19 motivating ideology or the opinion or perspective of the speaker”—is a “more blatant” and  
20 “egregious form of content discrimination.” *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515  
21 U.S. 819, 829, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995). But it is well established that “[t]he First  
22 Amendment's hostility to content-based regulation extends not only to restrictions on particular  
23 viewpoints, but also to prohibition of public discussion of an entire topic.” *Consolidated Edison Co.*  
24 *of N.Y. v. Public Serv. Comm'n of N. Y.*, 447 U.S. 530, 537, 100 S.Ct. 2326, 65 L.Ed.2d 319 (1980).

25 *Reed, supra*, at 168-69.<sup>7</sup>

26 <sup>7</sup> Our precedents have also recognized a separate and additional category of laws that, though facially  
27 content neutral, will be considered content-based regulations of speech: laws that cannot be “‘justified  
28 without reference to the content of the regulated speech,’ “ or that were adopted by the government  
“because of disagreement with the message [the speech] conveys,” *Ward v. Rock Against Racism*, 491  
U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989). Those laws, like those that are content based on  
their face, must also satisfy strict scrutiny.

1 Content based laws, like the ULA, are subject to “strict scrutiny”:

2 In short, the robocall restriction with the government-debt exception is content-based. Under the  
3 Court's precedents, a “law that is content based” is “subject to strict scrutiny.” *Reed*, 576 U.S., at  
4 165, 135 S.Ct. 2218.”

5 *Barr, supra*, at 2347.

6 Defendants seem to claim (City’s MJOP p.43:6-11; 18-24) that *Sorrell v. IMS Health Inc.*, 564  
7 U.S. 552, a case that was decided by the U.S. Supreme Court **after a bench trial<sup>8</sup> and not a demurrer**  
8 **or motion for judgment on the pleadings**, supports their claim that heightened judicial scrutiny is  
9 unwarranted because its law is a mere commercial regulation and that, according to Defendants, the First  
10 Amendment does not prevent restrictions directed at commerce or conduct from imposing “incidental  
11 burdens on speech” (City’s MJOP, p.44:1-2).

12 Firstly, and dispositively, *Sorrell* is inapplicable because it only applied to “content neutral”  
13 speech (which still requires “intermediate scrutiny” and still fails because, according to defendants it was  
14 never necessary for ULA’s purposes to place any restriction on the recording of deeds), and, as  
15 demonstrated above, the ULA’s restrictions are clearly “content based” and thus, presumptively invalid.

16 **When a regulation is content neutral, imposing only an incidental burden on speech, the**  
17 **intermediate level of scrutiny is applicable.** (*Turner, supra*, 512 U.S. at p. 662, 114 S.Ct.  
18 2445.) Under this test, a restriction on expressive activity will be deemed valid if “ ‘it furthers  
19 an important or substantial governmental interest; if the governmental interest is unrelated to  
the suppression of free expression; and if the incidental restriction on alleged First Amendment  
freedoms is no greater than is essential to the furtherance of that interest.’ [Citation.]

20 *People v. Morera-Munoz* (2016) 5 Cal.App.5th 838, 854.

21 Moreover, Defendants should have read the next paragraph of *Sorrell* because like the restriction on  
22 speech found unconstitutional in *Sorrell*, the ULA, in imposing charges of a minimum of \$200,000 and  
23 possibly millions more in order to express protected speech of recording and publishing a deed of sale,  
24 imposes far more than an “incidental burden” on protected expression, it makes it prohibitively costly:

25 \_\_\_\_\_  
26 *Reed v. Town of Gilbert, supra*, at 164.

27 <sup>8</sup> “after a bench trial, the United States District Court for the District of Vermont denied relief. 631  
28 F.Supp.2d 434 (2009). ” *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 561-62 (2011)

1 **But § 4631(d) imposes more than an incidental burden on protected expression. Both on its**  
2 **face and in its practical operation, Vermont's law imposes a burden based on the content of**  
3 **speech and the identity of the speaker.** See *supra*, at 2663 – 2665. While the burdened speech  
4 results from an economic motive, so too does a great deal of vital expression. See *Bigelow v.*  
5 *Virginia*, 421 U.S. 809, 818, 95 S.Ct. 2222, 44 L.Ed.2d 600 (1975); *New York Times Co. v. Sullivan*,  
6 376 U.S. 254, 266, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964); see also *United States v. United Foods,*  
7 *Inc.*, 533 U.S. 405, 410–411, 121 S.Ct. 2334, 150 L.Ed.2d 438 (2001) (applying “First Amendment  
8 scrutiny” where speech effects were not incidental and noting that “those whose business and  
9 livelihood depend in some way upon the product involved no doubt deem First Amendment  
10 protection to be just as important for them as it is for other discrete, little noticed groups”). Vermont's  
11 law does not simply have an effect on speech, but is directed at certain content and is aimed at  
12 particular speakers. The Constitution “does not enact Mr. Herbert Spencer's Social Statics.” *Lochner*  
13 *v. New York*, 198 U.S. 45, 75, 25 S.Ct. 539, 49 L.Ed. 937 (1905) (Holmes, J., dissenting). It does  
14 enact the First Amendment.

15 *Sorrell v. IMS Health Inc.* (2011) 564 U.S. 552, 567.

16 In short, the “incidental burden on speech” doctrine does not apply here to this content-based  
17 restriction to which the strict scrutiny standard applies and the imposition of hundreds of thousands of  
18 dollars in assessments cannot, under any circumstances be considered an “incidental burden”. The VC  
19 sufficiently pleads that the ULA is invalid because it violates Plaintiffs’ constitutional rights to freedom  
20 of speech.

21 **XI. THE FIFTEENTH CAUSE OF ACTION FOR UNLAWFUL DELEGATION OF**  
22 **AUTHORITY IS SUFFICIENTLY PLEADED – MEASURE ULA**  
23 **UNLAWFULLY DELEGATES FUNDAMENTAL POLICY DECISIONS AND**  
24 **ALSO UNLAWFULLY DELEGATES TO THE COUNTY POWERS THE CITY**  
25 **DOES NOT HAVE TO DO ACTS THAT CONTRAVENE STATE LAW**

26 **A. The ULA Has Unlawfully Delegated to Undefined Persons Undefined Obligations**  
27 **Concerning Undefined Exemptions**

28 As noted in the Interested Parties’ MPA, a delegation of power is unlawful “when a legislative  
body...leaves the resolution of a fundamental policy issue to others...”. *Gerawan Farming, Inc. v.*  
*Agriculture Labor Relations Board* (2017) 3 Cal.5th 1118, 1150, see also *Kugler v. Yocum* (1968) 69  
Cal.2d 371, 375) (legislature cannot delegate to any other agency its primary and exclusive power to  
make laws); *Southern Cal. Jockey Club v. California Horse Racing Bd.* (1950) 36 Cal.2d 167, 171, 2  
*California Jurisprudence Administrative Law § 186 Delegation of Power to Agency* (2023; 13 *California*

1 *Jurisprudence* 3d Constitutional Law § 130, Delegation of Legislative Power (2023) (“nor may the  
2 people, in enacting a law through the passage of an initiative measure, delegate their legislative power”).

3 As alleged in the VC, ¶¶ 144-150, Measure ULA does exactly that which these authorities barred  
4 – leave fundamental policy decisions to “others.” Exemption from the dictates of Measure ULA is not a  
5 mere “detail” to be filled in. As admitted by the Motions, and alleged in VC, ¶¶ 144-146, Measure ULA  
6 purports to give the power of exemption to an unelected, appointed Housing Department to promulgate  
7 and implement, to date, non-existent regulations and to act upon undefined and vague guidelines as  
8 “history of affordable housing” or “affordable housing management experience;” together with the ability  
9 to promulgate what those terms mean and how exemptions apply (VC, ¶¶ 144-146).

10 Defendants claim the Housing Department, under Measure ULA may “determine some fact or  
11 state of things upon which the law makes or intends to make its own action depend.” Interested Parties  
12 MPA, at 28:17-18. A “history of affordable housing” or “affordable management housing experience”  
13 are not a “fact” or a “state of things”, they are an undefined spectrum across which the Measure is  
14 unconstitutionally vague. One affordable home, or three, or three hundred? What is a “history”? Does  
15 someone who has had experience managing an affordable apartment building have sufficient experience  
16 to build one or several? Measure ULA improperly fails to define how these terms impact landowners.  
17 The ULA has been effect since April 1, 2023 and not one property seller has been able to benefit from  
18 an exemption because nobody is empowered to confer one and there are no regulations whatsoever by  
19 which they could do so, even if someone were so empowered. In this case, not only has there been an  
20 unlawful “delegation” but the delegatee is completely without power or guidance to even perform the  
21 task supposedly delegated to him/it. There is simply nobody there. The task has been delegated to  
22 “nowhere man” making all his “nowhere plans” with “nobody”, with no identity, no regulations and no  
23 authority, as of yet, to do *anything*.

24 In fact, the Interested Parties’ MJOP proves the unlawful delegation and vagueness of Measure  
25 ULA, as Defendants then cite considerations of “increasing the supply of affordable housing served by  
26 transit” and “in a way that addressed racial segregation and racial discrimination.” (Interested Parties  
27 MPA, at 29:2-4). These standards are not even in the sections quoted in the VC ¶¶ 144-146, and in fact  
28 only render the Measure vaguer and more improper in its purported delegation of legislative power.

1 This unfettered discretion, while at the same time lacking the (non-existent) regulations that  
2 supposedly empower and instruct such delegates as to how to exercise such discretion, violates  
3 *Gerawan*. Plaintiffs have properly alleged unlawful delegation, and the Motions should be denied.

4  
5 **B. The City Illegally Delegated to the County the Obligation to Collect and Remit the**  
6 **ULA Funds to the City and the County Has Been Illegally Remitting Funds to the**  
7 **City**

8 There is yet a further way in which ULA has illegally delegated authority and that is that it  
9 purported to delegate to the County of Los Angeles the authority to collect and remit the ULA  
10 assessments to the City. But nothing in the governing statute, the state Documentary Transfer Tax Act,  
11 provides such authority to the City to delegate to the County and nothing in such state statute authorizes  
12 the County to accept and act upon such delegation by the City. The City certainly has no authority (under  
13 Home Rule or any other source) to order the County to take directions from it and remit the ULA funds  
14 to the City.

15 The collection of documentary transfer taxes is governed by the Documentary Transfer Tax Act,  
16 a state statute dealing with a matter of undoubted statewide concern the collection by all the counties in  
17 the state of California of documentary transfer taxes.

18 *Rev. and Tax Code* § 11911 provides for the collection by the County of the pre-existing  
19 Documentary Transfer Tax and provides for an allocation of one-half to such city and one-half to the  
20 county.

21 In respect, however, to amounts that do not conform to the limitations of the pre-existing  
22 documentary transfer tax, such as the enormous “taxes” demanded under the ULA which are about ten  
23 (10) times what the pre-existing transfer tax is, under §11911 “(3) All money which relates to transfers  
24 of real property located in a city which imposes a tax on transfers of real property not in conformity with  
25 this part shall not be credited against the county tax and the entire amount collected by the county shall  
26 be allocated to the county”.

27 In other words, under the statute, **when the County collects the ULA tax, because it does not**  
28 **conform to the limitations of the pre-existing transfer tax, all of that money, by state law, is**

1 **allocated to the County and none of it is allocable to the City and the City is not entitled to any of**  
2 **it.** (This is in direct conflict with the provisions of the ULA which say that the City gets it all.)

3 The City has no authority under the state statute, under Home Rule, under the Constitution or  
4 under any other law or authority, to order the County to collect that ULA money and then remit it to the  
5 City.

6 The County, on the other hand, by collecting such non-conforming monies and remitting them to  
7 the City, is illegally converting monies which, by statute, essentially belong to County taxpayers and,  
8 without any legal authority whatsoever, giving such “stolen” monies to the City. The County is,  
9 therefore, liable to its own taxpayers (including Plaintiffs herein) for all of the ULA monies that it has  
10 remitted to the City and will continue to be so liable until it stops doing so and recovers from the City all  
11 such monies to the County.

12 The ULA’s refund procedure also directly conflicts with Cal. Rev. & Tax Code §11933 over the  
13 same monies as well as § 11935 concerning the administrative appeal process concerning the same  
14 monies.

15 Thus, the ULA directly conflicts with state law in matters of statewide concern on the collection,  
16 remission, refund and administrative appeals concerning the ULA “taxes” and, therefore, the ULA must  
17 cede to the state law, because, both homelessness for which the ULA monies are supposedly collected  
18 and the collection, remission, refunding and administrative appeals of documentary transfer taxes  
19 collected by the counties throughout California are clearly matters of statewide concern that both pre-  
20 empt and directly conflict with the ULA.

21 The ULA is not in conformity with state law because of the discrepancy between the tax rates.  
22 According to §11911 and §11931 of the California Revenue and Tax Code, a city may impose a  
23 documentary transfer tax at a rate equal to one-half the amount specified by the County. However, the  
24 City of Los Angeles is attempting to impose a tax at a rate of at least 4% of the gross sales price and, in  
25 the case of sales of \$10,000,000 or more, 5.5%. This is approximately 2000% or more of the one-half  
26 the amount specified by the county. As per §11931(3), when the City imposed a tax on transfers of real  
27 property not in conformity with this part, the tax is not to be credited against the county tax and the entire  
28 amount collected is required by the statute to be allocated entirely to the county. Thus, based on this non-

1 conformity with the state law, not only is the County not required to collect or remit the ULA 4% to 5.5%  
2 of the gross proceeds to the City, but, by statute, that money belongs to the County and the County is  
3 essentially “stealing” it from its own taxpayers by remitting it to the City. The County’s taxpayers,  
4 including Plaintiffs herein, have a right to demand and do demand that such funds be retrieved from the  
5 City and returned to the County.

6 There is an additional illegal delegation and, in fact, conflict between the ULA with state law.

7 The City, by its unlawful delegation to the County of collection of the ULA and remission to the  
8 City of such funds, in violation of the Documentary Transfer Tax Act, also illegally delegates to and  
9 imposes an obligation on the County to comply with differing regulations, i.e. when the City imposes a  
10 tax that is significantly higher than the one-half rate prescribed by the state, it has created a scenario  
11 where the County, at its own cost to its own county taxpayers, needs to enforce two different tax rates-  
12 one for properties within the city, and another for properties outside the city. This dual system imposes  
13 an unauthorized obligation, financial burden and legal liability upon the County which will not only cause  
14 confusion, errors and inconsistencies in implementation, but will also subject the County to millions (or  
15 perhaps billions) of dollars of liability for remitting the “County’s” monies to the City, without any legal  
16 authority to do so, and, in fact, in express violation of the Documentary Transfer Tax Act.

17 Further, the County is only obligated and, indeed, only authorized to collect and remit monies to  
18 the City which the state statute expressly confers upon the County. The City has no power to confer any  
19 such authority upon the County to pay the ULA monies to the City, particularly since, such remission is  
20 in direct violation of the provisions of the state statute, the Documentary Transfer Tax Act.

21 There is the further issue of enforcement. The state statute provides no legal authority upon the  
22 County to collect the City’s ULA monies and the City has no legal authority to confer any such authority  
23 upon the County to do so either. Therefore, the County has no legal authority to enforce the payment of  
24 the ULA taxes but it is obligated to enforce the normal documentary transfer tax. §11932 and §11933  
25 provide that the county recorder should not record any deed or instrument unless the documentary transfer  
26 tax has been paid, and claims for refunds shall be governed by Chapter 5 (commencing with Section  
27 5096) of Part 9 of Division 1. The ULA seeks to impose upon the County the same obligation to withhold  
28 recordation of the deed unless the City’s ULA assessment has also been paid, even though nothing in the

1 Documentary Transfer Tax Act authorizes the County to do so. The City’s imposition of the ULA tax at  
2 a rate that does not conform with state law, creates enforcement issues for the county recorder and  
3 complicates the process of claiming refunds. Therefore, there is a direct conflict between the ULA and  
4 state law and the County is unlawfully delegated by the City to be dragged into such conflict, to violate  
5 state law and to assume liability, potentially in the billions of dollars, for such violations.

6           There are yet further conflicts.

7           **(1)Challenges in Documentation:** §11931 and §11932 of the California Revenue and Tax Code  
8 stipulate that the tax due must be shown on the face of the document being recorded, and the recorder  
9 may only record the document if the tax has been paid. Because the City's tax does not conform to  
10 state law, it is unclear how to document the tax on deeds or other instruments, causing procedural  
difficulties for the County recorder's office.

11           **(2)Collection and Remittance Issues:** Because the City of Los Angeles imposes a tax rate that does  
12 not conform to state law, then according to §11931(3), the tax should not be credited against the  
13 county tax and the entire amount collected by the county should be allocated entirely to the County.  
14 However, if, as it has been doing, the County collects the City's non-conforming tax, the County now  
has to navigate the process of separating and remitting the correct amounts, and only the correct  
amounts, to the City, further complicating the collection and allocation process.

15           **(3)Refund Claims:** As per §11933, claims for refunds of taxes imposed should be governed by the  
16 provisions of Chapter 5 (commencing with Section 5096) of Part 9 of Division 1 of the code. The  
17 ULA, however, has its own refund procedure in ULA 21.18.12. There is a direct conflict between  
18 state law and the ULA between how monies collected by the County, both legally and illegally,  
19 should be refunded. This will inevitably lead to both duplicative and conflicting claims over the same  
20 money to be refunded, one claim through the state law process and the other through the ULA  
21 process, and, in turn, conflicting appeals procedures when either the City or the County denies such  
claims. Further, disputes about the taxes paid to the County due to the non-conformity with state  
law, will lead to more refund claims and litigation which will be time-consuming, expensive and  
administratively burdensome to process for the County.

22           **(4)Potential for Litigation:** If the County is forced to collect a non-conforming tax on behalf of the  
23 City, it will be exposed, as here, to legal action from taxpayers, including Plaintiffs herein, who  
24 dispute the legality of the tax. This will further drain resources and distract from other administrative  
duties of the County and its taxpayers.

25           In light of all the foregoing, the City has unlawfully delegated and imposed liabilities upon the  
26 County to do things that the City has no legal right to delegate to the County and the County has no legal  
27 right or obligation to perform. The ULA thus, both illegally delegates and is invalid because it is both  
28



1 pre-empted by state law in respect to matters of statewide concern and is in direct conflict with such state  
2 laws as to matters of statewide concern. It is, therefore, for all of those reasons, void.

3 **XII. THE THIRD CAUSE OF ACTION THAT THE ULA VIOLATES ARTICLE XIII**  
4 **A, SECTION 4 OF THE CALIFORNIA CONSTITUTION AND THE FOURTH**  
5 **CAUSE OF ACTION (Govt Code Section 53725) ARE SUFFICIENTLY PLEAD**

6 Plaintiffs agree with and, therefore, adopt in their entirety the arguments made by Howard Jarvis  
7 Taxpayers Association (“HJTA”) in its MJOP to be heard concurrently with the MJOPs of Defendants  
8 herein. Therefore, it would be pointless and redundant simply to repeat all of HJTA’s arguments in this  
9 brief, and Plaintiffs, therefore, join in and incorporate them by reference herein as Plaintiffs’ own  
10 arguments.

11 Concurrently herewith, Plaintiffs are also submitting their Memorandum in Support of HJTA’s  
12 MJOP which supplements HJTA’s arguments on this cause of action.

13 **A. The ULA Is Invalid Because the Reduction of Homelessness, the Collection of**  
14 **County Property Taxes and the Collection of Transfer Taxes by The County**  
15 **Recorders’ Office are All Matters of Statewide Concern Which Are Pre-Empted By**  
16 **State Statutes. Additionally, And Alternatively, The ULA Conflicts with State**  
17 **Statutes that Address Such Matters of Statewide Concern. As Such the City’s**  
18 **Home Rule Powers Must Cede to the State Statutes Which Pre-Empt Them**  
19 **And/Or with Which They Conflict**

20 **(1) The ULA is Pre-Empted and Trumped by Statewide Legislation because**  
21 **Homelessness and Its Reduction is a Matter of Statewide Concern Which Has Been**  
22 **Comprehensively and Cohesively Legislated by the State**

23 In its MJOP, HJTA argues that, by the City’s Charter, the City of Los Angeles (“City”) cannot do  
24 by voters’ initiative that which it could not do by action of its own City Council, and because the City  
25 Council could not contravene Prop. 13 and impose a special transfer tax, neither could the electorate (e.g.  
26 HJTA MJOP, p.12:21-17:5). Newcastle agrees with and echoes this argument.

27 City and Interested Parties in support of City argue in their respective MJOPs that City’s Initiative  
28 and Home Rule powers are not limited even by City’s Charter and, that, therefore, the electorate could  
impose the ULA even though City itself would be prohibited by Prop. 13 (and/or Gov. Code §53725)  
from doing so (e.g. City’s MJOP, p.22:9-23:15; Interested Parties’ MJOP, p.7:3-10:17). Newcastle  
disagrees with this argument.

1 A chartered City’s ordinance, in this case, the ULA, however, is void, notwithstanding (a) the  
2 City’s powers of Home Rule, (b) the provisions of its charter, and (c) whether such ordinance was passed  
3 by action of the City Council or by local voters’ initiative, where, as here, the local ordinance (in this  
4 case, the ULA) concerns a matter of statewide concern (such as homelessness, the collection of property  
5 taxes by counties, and/or the collection of documentary transfer taxes by county recorders’ offices) and,  
6 as here, either (a) is pre-empted by and/or (b) conflicts with one or more state statutes concerning such  
7 matter or matters of statewide concern:

8 **“As to matters which are of statewide concern, however, home rule charter cities remain**  
9 **subject to and controlled by applicable general state laws regardless of the provisions of their**  
10 **charters. . . .”** (*Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 61)

11 *Baggett v. Gates* (1982) 32 Cal.3d 128, 136 [emph. added]

12 **[I]t has been held that a ‘general law prevails over local enactments of a chartered city, even**  
13 **in regard to matters which would otherwise be deemed to be strictly municipal affairs, where the**  
14 **subject matter of the general law is of statewide concern.’** [Citation.]

15 *City of Huntington Beach v. Becerra* (2020) 44 Cal.App.5th 243, 261 [emph. added]

16 “If ... the subject of the state statute is one of statewide concern and ... the statute is reasonably  
17 related to its resolution, then the conflicting charter city measure ceases to be a ‘municipal affair’ pro  
18 tanto” and the Legislature may “address[ ] the statewide dimension by its own tailored enactments.”  
19 (*Ibid.*) **Where there is statewide preemption, “home rule charter cities remain subject to and**  
20 **controlled by applicable general state laws regardless of the provisions of their charters....”**

21 *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 61.

22 **The ULA, and its purported purposes, are not strictly “municipal affairs”** to which Home Rule  
23 applies which can, in some circumstances, contravene state law, but rather the ULA seeks to address a  
24 matter of **statewide concern**, i.e. the reduction of homelessness (see e.g. Newcastle Plaintiffs’ Verified  
25 Complaint (“VC”) VC¶¶ 26-36; 42; 111, 112, 115, 118, 127).

26  
27  
28  
**(2) Homelessness and Its Reduction Are Matters of Statewide Concern and Not  
Municipal Affairs. Whether A Subject is Of Statewide Concern is An Ad Hoc  
Inquiry That Poses a Question of Fact for Trial and Cannot be Ruled Out on a  
Motion for Judgment on the Pleadings.**

Whether an activity is a municipal affair or one of statewide concern is **an “ad hoc inquiry” that**  
**poses a question of fact for trial**, i.e. “a question which must be answered in light of the **facts and**

1 circumstances surrounding each case”, and, therefore, cannot be ruled out on a motion for judgment  
2 on the pleadings.

3 We have said that the task of determining whether a given activity is a “municipal affair” or  
4 one of statewide concern is an ad hoc inquiry; that “the constitutional concept of municipal affairs  
5 is not a fixed or static quantity” (*Pac. Tel. Tel. Co. v. City and County of S.F.* (1959) 51 Cal.2d 766,  
6 771 [ 336 P.2d 514]); and that the question “must be answered in light of  
7 the facts and circumstances surrounding each case” (*In re Hubbard* (1964) 62 Cal.2d 119,  
8 128 [ 41 Cal.Rptr. 393, 396 P.2d 809]).

9 *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 16 [emph. added]

10 Because the various sections of article XI fail to define municipal affairs, it becomes necessary for  
11 the courts to decide, under the facts of each case, whether the subject matter under discussion is of  
12 municipal or statewide concern.” (*Bishop v. City of San Jose, supra*, 1 Cal.3d at p. 62, quoting  
13 from *Professional Fire Fighters, Inc. v. City of Los Angeles* (1963) 60 Cal.2d 276, 294.

14 *Baggett v. Gates* (1982) 32 Cal.3d 128, 136 n.10 [emph. added]

15 Newcastle’s VC at ¶119 recites the law correctly:

16 “119. The Court of Appeal has stated that:

17 The determination of whether an activity is a municipal affair or one of statewide concern  
18 “is an ad hoc inquiry; ... ‘the constitutional concept of municipal affairs is not a fixed or static  
19 quantity.’” Rather, it poses a question which “must be answered in light of the facts and  
20 circumstances surrounding each case.” (*California Fed. Savings & Loan Assn. v. City of Los*  
21 *Angeles, supra*, 54 Cal.3d at p. 16, 283 Cal.Rptr. 569, 812 P.2d 916.) Initially, “a court asked to  
22 resolve a putative conflict between a state statute and a charter city measure ... must satisfy itself  
23 that the case presents an actual conflict between the two.” (*Ibid.*) That element is present here; there  
24 is a clear, unmistakable conflict between subdivision (a) of Government Code section 53725 and  
25 ordinance No. 166976. Hence, “... the question of statewide concern is [a] bedrock inquiry through  
26 which the conflict between state and local interests is adjusted.” (54 Cal.3d at p. 17, 283 Cal.Rptr.  
27 569, 812 P.2d 916). If the subject is not one of statewide concern, the charter city measure lies  
28 “beyond the reach of legislative enactment.” (*Felder, supra*, 14 Cal.App.4th at 143.) [emph.  
added].”

29 The landmark case on this issue *California Fed. Savings & Loan Assn. v. City of Los Angeles*,  
30 (supra) was decided after a full trial comprising several days of testimony by experts in the fields of  
31 economics and banking regulation as well as congressional reports and studies. The Court considered a  
32 “large volume of evidence in the record” before deciding whether the challenged legislation involved a  
33 matter of statewide concern:

34 Second, the court noted that the trial court had considered several days of testimony by experts in  
35 the fields of economics and banking regulation as well as a considerable number of congressional  
36 reports and studies which set forth the then evolving economic and regulatory environment affecting

1 the savings and loan industry. ( *California Federal, supra*, 54 Cal.3d at pp. 20-22.) The court found that  
2 the large volume of evidence in the record fully supported the Legislature's conclusion that the well-being  
of the state's savings and loan industry depended upon a uniform system of taxation. ( *Ibid.*)

3 *State Bldg. and Const. Trades Council of California, Afl-Cio v. City of Vista* (2009) 173 Cal.App.4th 567,  
4 581 [emph. added]

5 In this ad hoc inquiry, the “courts accord great weight to the **factual record**” “compiled by the  
6 Legislature or **established in trial court proceedings**”. ( *Anderson v. City of San Jose*, (2019) 42  
7 Cal.App.5th 683, 702).

8 Clearly such material **factual issues** concerning the “**facts and circumstances**” of this particular  
9 case that require evidentiary resolution **established in trial court proceedings** is also entitled to an “ad  
10 hoc” determination **at trial** and cannot be ruled out on a motion for judgment on the pleadings. A  
11 “**judgment on the pleadings must be denied where there are material factual issues that require**  
12 **evidentiary resolution.**” *Bach v. McNelis* (1989) 207 Cal.App.3d 852, 865-866; *Schabarum v.*  
13 *California Legislature* (1998) 60 Cal.App.4th 1205, 1216 [emph. added]

14 Newcastle’s VC pleads that the subject matter of the ULA, *i.e.* homelessness, is a matter of  
15 statewide concern (e.g. VC ¶¶ 26, 33, 42, 111, 112, 115, 118, 127), and because whether or not  
16 homelessness is a matter of statewide concern is a question of fact, Newcastle’s pleading in its VC of  
17 such fact, for the purpose of Defendants’ MJOP, is deemed to be true (*People ex rel. Harris v. PAC*  
18 *Anchor Transportation, Inc.*, (2014) 59 Cal.4th 772, 777)<sup>9</sup>. That should be the end of the inquiry for  
19 purposes of the City’s and its supporters’ MJOPs on the issue of whether Prop. 13 invalidates the ULA  
20 as contended by HJTA in its MJOP and the Newcastle in its VC. That is, either HJTA’s MJOP should  
21 be granted as a matter of law, or the MJOPs of the City and its supporters should be denied on the Prop.  
22 13, statewide concern and pre-emption issues, because they involve questions of fact that cannot be

23 \_\_\_\_\_  
24 <sup>9</sup>“A judgment on the pleadings in favor of the defendant is appropriate when the complaint fails to allege  
25 facts sufficient to state a cause of action. ( Code Civ. Proc., § 438, subd. (c)(3)(B)(ii).) A motion for  
26 judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of  
27 review.” (*Kapsimallis v. Allstate Ins. Co.* (2002) 104 Cal.App.4th 667, 672, 128 Cal.Rptr.2d 358.) ”**All**  
28 **properly pleaded, material facts are deemed true,** but not contentions, deductions, or conclusions of  
fact or law....” (*Ibid.* ) Courts may consider judicially noticeable matters in the motion as well. (*Ibid.* )

*People ex rel. Harris v. PAC Anchor Transportation, Inc.* (2014) 59 Cal.4th 772, 777

1 determined on a MJOP.

2 Therefore, if this Court does not find in favor of HJTA in its MJOP on the pleadings, which,  
3 respectfully, it should, *this Court certainly cannot find in favor of the City or its supporters against*  
4 *HJTA or the Newcastle Plaintiffs, in a motion for judgment on the pleadings*, that the ULA is not a  
5 matter of statewide concern and that it is not pre-empted by controlling and/or conflicting state  
6 legislation.

7 **(3) Homelessness is a Matter of Statewide Concern – The Statutes Say So, The Cases**  
8 **Say So, The Politicians Say So, Proposed Statutes Say So, the Verified Complaint**  
9 **Which is Deemed for this Motion to be True, Says So, and the City’s Own Answer**  
10 **Says So.**

11 While, as set forth above, Newcastle’s VC’s allegation that homelessness is a matter of statewide  
12 concern is deemed to be true, and, in any event is a question of fact for trial, among the many ways Courts  
13 have determined, in their “ad hoc” inquiries, at trial, whether a subject is a matter of statewide concern  
14 are the following:

15 (a) pronouncements in state statutes themselves that such subject is a matter of statewide  
16 concern (e.g. Gov. Code §65589.4; Health and Safety Code §50001: “The Legislature finds and declares  
17 that *the subject of housing is of vital statewide importance to the health, safety, and welfare of the*  
18 *residents of this state*...”; The Surplus Land Act (the Act) ( Gov. Code, §§ 54220 - 54233 ) states: *that*  
19 *housing is of vital statewide importance to the health, safety, and welfare of the residents of this*  
20 *state* and that provision of a decent home and a suitable living environment for every Californian is a  
21 priority of the highest order.” (§ 54220, subd. (a).); Government Code section 65580; Health and Safety  
22 Code §35801)) and such state pronouncements are accorded “great weight” by the courts (*e.g. Bishop v.*  
23 *City of San Jose*, (1969) 1 Cal.3d 56, 62-63)<sup>10</sup>;

24 <sup>10</sup> In exercising the judicial function of deciding whether a matter is a municipal affair or of statewide  
25 concern, the courts will of course give great weight to the purpose of the Legislature in enacting general  
26 laws which disclose an intent to preempt the field to the exclusion of local regulation (see *Ex parte*  
27 *Daniels* (1920) 183 Cal. 636, 639-640 [ 192 P. 442, 21 A.L.R. 1172]), and it may well occur that in some  
28 cases the factors which influenced the Legislature to adopt the general laws may likewise lead the courts  
to the conclusion that the matter is of statewide rather than merely local concern.

*Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 62-63

1 (b) holdings in published cases that state that the matter is of statewide concern are *stare decisis*  
2 on this Superior Court (e.g. the following cases, among others, have all said that housing and/or  
3 homelessness is a matter of statewide concern: *Ruegg & Ellsworth v. City of Berkeley*, (2021) 63  
4 Cal.App.5th 277, 312-13; *Coalition Advocating Legal Housing Options v. City of Santa*  
5 *Monica* (2001) 88 Cal.App.4th 451, 458 [noting **the Legislature and courts have declared housing to**  
6 **be a matter of statewide concern**].)”; *Bruce v. City of Alameda* (1985) 166 Cal.App.3d 18, 22 [‘locally  
7 unrestricted development of low cost housing is a matter of vital state concern’]; **“the Legislature**  
8 **declared the availability of housing is a matter of “vital statewide importance”** (*Buena Vista Gardens*  
9 *v. City* (1985) 175 Cal.App.3d 289, 295)<sup>11</sup>;

10 (c) public statements by the Governor, legislators, public officials and other relevant politicians  
11 (see references to RJN), for example, that homelessness is a matter of statewide concern and working to  
12 reduce homelessness is an effort that must be undertaken by all cities and counties in California working  
13 in cooperation with one another. Governor Gavin Newsom has spoken extensively on the need for local  
14 officials throughout California to adequately address homelessness and has vowed to provide 1,200 tiny  
15 homes throughout California to achieve a 15% reduction in homelessness by 2025. (RJN 8, Ex. 8). During  
16 her State of the City Address, Mayor Karen Bass stated that, in addition to Los Angeles, “other cities and  
17 the County [of Los Angeles] itself have declared a State of Emergency.” (RJN 9, Ex. 9). Mayor Bass  
18 added that **“City and County cooperation is essential to our success” in working to end the**

19  
20  
21 <sup>11</sup> In enacting Government Code, article 10.6 (§§ 65580-65589.8), detailing requirements for the  
22 mandatory housing element, **the Legislature declared the availability of housing is a matter of “vital**  
23 **statewide importance”** and “the early attainment of decent housing and a suitable living environment  
24 for every California family is a priority of the highest order.” (§ 65580, subd. (a).) To attain the  
25 state housing goal, the Legislature found, requires **“cooperative participation” between government**  
26 **and the private sector (§ 65580, subd. (b)), cooperation among all levels of government (§ 65580,**  
27 **subd. (c)), and use of state and local governmental power “to facilitate the improvement and**  
28 **development of housing” for “all economic segments of the community”** (§ 65580, subd. (d)). The  
Legislature recognized each local government in adopting a housing element must also consider  
economic, environmental and fiscal factors as well as community goals set forth in the general plan. (§  
65580, subd. (e).)

*Buena Vista Gardens v. City* (1985) 175 Cal.App.3d 289, 295 [emph. added]

1 **homelessness crisis. (Id.) Accordingly, the State's government had dedicated significant resources**  
2 **to helping reduce homelessness throughout its cities and counties. For example, under Governor**  
3 **Gavin Newsom's leadership, \$20.6 billion was allocated toward housing and homelessness since**  
4 **2018-19.** (RJN 10, Ex. 10; RJN 12, Ex. 12). For the State budget which started in July 2023, Newsom  
5 proposed another \$3.7 billion to combat homelessness. (RJN, 11; Ex. 11.)

6 (d) judicial admissions, discovery responses and witness testimony by relevant government  
7 officials (RJN),

8 (e) expert testimony at trial (*Cal Fed (supra)*) and

9 (f) government reports and studies (*Cal Fed (supra)*).

10 By every applicable criterion, as well as alleged and deemed true in Newcastle's VC (e.g. VC ¶¶  
11 26, 33, 42, 111, 112, 115, 118, 127), homelessness and the reduction of homelessness are matters of  
12 statewide concern and are not simply a matter of strictly municipal concern for the City of Los Angeles.  
13 In any event, it is a question of fact to be determined at trial and cannot be ruled out in a MJOP.

14 **(4) Numerous Statutes Expressly State that the Matter of Homelessness is Of**  
15 **Statewide Concern and Not a Municipal Affair**

16 Numerous statutes expressly state that the matter of **homelessness is of statewide concern and is**  
17 **not a municipal affair.** For example, Gov. Code § 65656 expressly finds and declares that: "alleviating  
18 the homelessness crisis in this state..**are a matter of statewide concern and not a municipal affair as**  
19 **that term is used in Section 5 of Article XI of the California Constitution.** Therefore, this article shall  
20 apply to all cities, including charter cities."<sup>12</sup>.

21  
22 <sup>12</sup> The following statutes, among others, expressly state that homelessness is a matter of statewide  
23 concern: Gov. Code § 65656 declares that homelessness is a matter of statewide concern **and is not a**  
24 **municipal affair:**

25 "The Legislature finds and declares that, by adoption of Proposition 2 at the November 6, 2018, statewide  
26 general election, the voters expressly approved of the development of permanent supportive housing  
27 pursuant to the No Place Like Home Program (Part 3.9 (commencing with Section 5849.1) of Division 5  
28 of the Welfare and Institutions Code). **The Legislature further finds and declares that the provision**  
**of adequate supportive housing to help alleviate the severe shortage of housing opportunities for**  
**people experiencing homelessness in this state** and of necessary services to the target population  
described in Section 50675.14 of the Health and Safety Code, and that ensuring the development of  
permanent supportive housing in accordance with programs such as the No Place Like Home Program

1 Likewise, Gov. Code § 65589.4 expressly finds that **the lack of affordable housing is of vital**  
2 **statewide importance, and thus a matter of statewide concern.**

3 Health and Safety Code §50001 states: “The Legislature finds and declares that **the subject of**  
4 **housing is of vital statewide importance to the health, safety, and welfare of the residents of this**  
5 **state...**”

6 The Surplus Land Act (the Act) ( Gov. Code, §§ 54220 - 54233 ) as amended in 2014 declares:  
7 **“that housing is of vital statewide importance to the health, safety, and welfare of the**  
8 **residents of this state** and that provision of a decent home and a suitable living environment for  
every Californian is a priority of the highest order.” ( § 54220, subd. (a).)

9 Government Code section 65580, enacted in 1980, declares:

10 The Legislature finds and declares as follows:

11 **(a) The availability of housing is of vital statewide importance, and the early attainment of**  
12 **decent housing and a suitable living environment for every Californian, including**  
13 **farmworkers, is a priority of the highest order.** [emph. added]

14  
15  
16 (Part 3.9 (commencing with Section 5849.1) of Division 5 of the Welfare and Institutions Code) by  
17 removing zoning barriers that would otherwise inhibit that development, **are matters of statewide**  
18 **concern and are not municipal affairs as that term is used in Section 5 of Article XI of the California**  
19 **Constitution. Therefore, this article applies to all cities, including charter cities. Ca. Gov. Code §**  
20 **65656 Amended by Stats 2019 ch 346 (SB 744),s 4, eff. 1/1/2020. Added by Stats 2018 ch 753 (AB**  
21 **2162),s 3, eff. 1/1/2019.”**

22 Gov. Code § 65666:

23 “The Legislature finds and declares that Low Barrier Navigation Center developments are essential tools  
24 for **alleviating the homelessness crisis** in this state and **are a matter of statewide concern and not a**  
25 **municipal affair as that term is used in Section 5 of Article XI of the California Constitution.** Therefore,  
26 this article shall apply to all cities, including charter cities. Ca. Gov. Code § 65666 Added by Stats 2019  
27 ch 159 (AB 101),s 7, eff. 7/31/2019.”

28 This section is applicable to all cities and counties, including charter cities, **because the Legislature**  
**finds that the lack of affordable housing is of vital statewide importance, and thus a matter of**  
**statewide concern.** Cal. Gov. Code § 65666 [emph. added]

Gov. Code Section 65589.4 explicitly states:

**“Legislature finds that the lack of affordable housing is of vital statewide importance, and thus a**  
**matter of statewide concern.”** [emph. added]



1 Health and Section Code §35801: Legislative findings and declarations, Cal. Health & Saf. Code  
2 § 35801:

3 **The Legislature finds and declares: (a) The subject of housing is of vital statewide importance**  
4 **to the health, safety, and welfare of the residents of the state.** [emph. added]

5 It is beyond any reasonable dispute that, from the standpoint of the California legislature, which  
6 is to be given great weight by this Court (*Bishop v. City of San Jose*, (supra) 62-63), “homelessness” and  
7 its alleviation is a matter of statewide concern and not a municipal affair.

8 **(5) Numerous Published Cases Binding by Stare Decisis on this Court Also Have Held**  
9 **that Homelessness is a Matter of Statewide Concern**

10 The cases have also reiterated that the “need to provide adequate housing” is a matter of statewide  
11 concern. For example, in *Ruegg & Ellsworth v. City of Berkeley*, (2021) 63 Cal.App.5th 277 the Court  
12 cited the conclusion of numerous concordant cases, which have also expressly stated that housing is a  
13 matter of statewide concern, and the manner in which the Legislature has attempted to address it in  
14 coming to such conclusion:

15 [J]udicial decisions have long “recognized the statewide dimension of the affordable housing  
16 shortage in relation to various impositions by the state into the realm of local affairs. (See *Green v.*  
17 *Superior Court* (1974) 10 Cal.3d 616, 625 [111 Cal.Rptr. 704, 517 P.2d 1168], [citing ‘enormous  
18 transformation in the contemporary housing market, creating a scarcity of adequate low cost housing  
19 in virtually every urban setting’]; *Buena Vista* [(1985)] 175 Cal.App.3d [289,] 306 , [finding ‘**need**  
20 **to provide adequate housing’ is a statewide concern and rejecting home rule challenge to state**  
21 **provision that mandated charter city to include certain actionable components in its ‘housing**  
22 **element’]; *Bruce v. City of Alameda* (1985) 166 Cal.App.3d 18, 22 [‘locally unrestricted  
23 development of low cost housing is a matter of vital state concern’]; *Coalition Advocating Legal*  
24 *Housing Options v. City of Santa Monica* (2001) 88 Cal.App.4th 451, 458 ( *City of Santa Monica* )  
25 [noting **the Legislature and courts have declared housing to be a matter of statewide concern**].)’”  
26 **The statewide nature of the issue is reflected in the manner by which the Legislature has**  
27 **attempted to address it.** [ . . . ]**

28 **Section 65913.4 addresses the crisis level statewide lack of affordable housing** [...] It is difficult  
to think of any way the subject and purpose of this statute could be seen as anything other than a  
matter of statewide concern.

*Ruegg & Ellsworth v. City of Berkeley*, (2021) 63 Cal.App.5th 277, 312-13 [emph. added]

In enacting Government Code, article 10.6 (§§ 65580-65589.8), detailing requirements for the  
mandatory housing element, **the Legislature declared the availability of housing is a matter of**  
26 **“vital statewide importance” and “the early attainment of decent housing and a suitable living**  
27 **environment for every California family is a priority of the highest order.” (§ 65580, subd. (a).)**  
28 **To attain the state housing goal, the Legislature found, requires “cooperative participation”**  
**between government and the private sector (§ 65580, subd. (b)), cooperation among all levels**

1 **of government (§ 65580, subd. (c)), and use of state and local governmental power “to facilitate**  
2 **the improvement and development of housing” for “all economic segments of the community”**  
3 **(§ 65580, subd. (d)).**

4 *Buena Vista Gardens v. City of San Diego* (1985) 175 Cal.App.3d 289 [emph. added].

5 **(1) The ULA Is Pre-Empted by State Legislation**

6 A city’s ordinance, such as the ULA, is invalid and pre-empted where, as here, it attempts to  
7 impose additional requirements in a field which is fully occupied by statute (*Tolman v.*  
8 *Underhill* (1952) 39 Cal.2d 708, 712; *American Financial Services Assn. v. City of Oakland* (2005) 34  
9 Cal.4th 1239, 1252).

10 **“Where the Legislature has adopted statutes governing a particular subject matter, its intent**  
11 **with regard to occupying the field to the exclusion of all local regulation is not to be measured**  
12 **alone by the language used but by the whole purpose and scope of the legislative scheme.”**  
13 [Citations] **“State regulation of a subject may be so complete and detailed as to indicate an**  
14 **intent to preclude local regulation. [Citations.] In this connection it may be significant that the**  
15 **subject is one which . . . requires uniform treatment throughout the state.”** [Citations]

16 *American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1252-53 [emph. added]

17 As demonstrated in the state statutes cited concerning homelessness as a matter of statewide  
18 concern and in the VC and its Exhibits which cited over twenty seven (27) state statutes and bills covering  
19 every conceivable aspect of homelessness and such statutes as the Health and Safety Code §50000 et seq.  
20 (*infra*) which expressly establish a comprehensive state-wide scheme to reduce homelessness, (as well  
21 as a search of the Legislature’s website which identifies *two hundred three (203)* different bills and  
22 statutes which include the word “homelessness”) “state regulation of a subject [homelessness] is so  
23 complete and detailed as to indicate an intent to preclude local regulation” and “the subject  
24 [homelessness] is one which requires uniform treatment throughout the state” (*American Financial*  
25 *Services* (*supra*) 1252-53. The state has pre-empted the field of that matter of statewide concern, the  
26 reduction of homelessness, and for that reason alone, the ULA is void. Likewise, the state has also pre-  
27 empted the matter of statewide concern of the collection, allocation and enforcement of transfer taxes, as  
28 set forth above, in the Documentary Transfer Tax Act and with which the ULA directly and irreconcilably  
conflicts.

29 **(2) The ULA Also Conflicts with State Statutes on Matters of Statewide Concern and is for**  
30 **that Additional Reason, Invalidated.**

31 The ULA conflicts with numerous state statutes concerning matters of statewide concern.

1 “A conflict exists if the local legislation duplicates, *contradicts*, or enters an area fully occupied by  
2 general law, either expressly or by legislative implication.” (*Ibid.*, italics added, internal quotation  
3 marks omitted.) A local ordinance contradicts state law when it is inimical to or cannot be reconciled  
4 with state law. (*Id.* at p. 898, 16 Cal.Rptr.2d 215, 844 P.2d 534.) A local ordinance that prohibits  
5 what a statute authorizes, or authorizes what the statute prohibits, is inimical to the statute.

6 *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1161.

7 **(a) The ULA Conflicts with the Documentary Transfer Tax Act**

8 As demonstrated above, in the discussion on Unlawful Delegation, the ULA, in numerous and  
9 irreconcilable ways, duplicates, contradicts and enters an area fully occupied by the Documentary  
10 Transfer Tax Act which is unquestionably a statute of statewide concern, i.e. the means by which all of  
11 the counties of the state collect taxes for documentary transfer taxes, process refunds, conduct  
12 administrative appeals and distribute such funds. The ULA wreaks havoc with the County by requiring  
13 the County to violate the Documentary Transfer Tax Act in order to comply with the City’s unlawful  
14 demands to collect the ULA assessments and remit them to the City. Thus, the ULA does exactly what it  
15 is forbidden to do.

16 Thus, on this basis alone, the ULA conflicts with a state statute concerning matters of  
17 statewide concern and is, therefore, void. This is dispositive. This, however, is far from the only state  
18 statute of statewide concern with which the ULA conflicts.

19 **(b) The ULA Conflicts with the Operation of the California Revenue and Taxation  
20 Code in Respect to Collection by the County of Los Angeles of Real Property  
21 Taxes. The ULA is Wreaking Havoc Upon the County’s Ability to Raise and Rely  
22 Upon Income Streams from County Property Taxes Because the ULA Has  
23 Essentially Stopped Dead the Sale in the City of Los Angeles of High Value  
24 Properties and Reassessing them Upon Sale at Higher Values**

25 The ULA is also wreaking havoc on the County in other ways and is in further practical conflict  
26 with the California Revenue and Taxation Code, a statute dealing with matters of statewide concern, i.e.  
27 the funding of all the counties in the state.

28 It is widely reported that since the ULA went into effect, the sales of properties in the City of Los  
Angeles of over \$5,000,000 have essentially ground to a halt. (*See, e.g.* RJN 11, Ex 11, “L.A.’s luxury  
real estate market freezes” and RJN 19, Ex 19 “Tax Effect: Luxury Home Sales Stall in Los Angeles”).

The conflict arises as the ULA transfer tax, whose practical effect is to discourage \$5,000,000+  
property transfers in the City of Los Angeles, indirectly conflicts with the California Revenue and

1 Taxation Code, the statute that permits property reassessment upon sale which, prior to the ULA, thrived  
2 on a greater volume of sales on higher valuations.

3 Because under Prop. 13, properties are only reassessed upon sale, the sudden cessation or  
4 reduction of new sales of high-priced properties such as office buildings, shopping centers, industrial  
5 complexes etc. means that those properties, many of which have not turned over for years, will not turn  
6 over and be reassessed at much higher assessed values as prior to the ULA. Projected increases in  
7 property taxes from such reassessments, upon which the County has heretofore relied to fund County  
8 functions, will not materialize, thus directly damaging the County’s financial health. Thus, the ULA is  
9 killing the high value real estate market in Los Angeles resulting in very little ULA revenue while also  
10 damaging the County’s fiscal health. This is another direct conflict by the ULA with state statutes of  
11 statewide concern, which is yet an additional ground upon which the ULA is invalid.

12 **(3) Measure ULA Conflicts with Health and Safety Code § 50000 et seq.**

13 ULA conflicts with Health and Safety Code § 50000 et seq., a statewide program designed to  
14 address, as a comprehensive statewide plan, that matter of statewide concern, the reduction of  
15 homelessness. *Health & Safety Code* § 50000 et seq states that “[t]he Legislature finds and declares that  
16 the subject of housing is of vital statewide importance” and goes on to state numerous Legislative findings  
17 and actions in direct conflict with Measure ULA.<sup>13</sup>

18 Again, these targeted statutes and enactments are *specifically* aimed at the same areas and  
19 populations that Measure ULA claims to address, homeless, elderly, and low income “**by providing a**  
20 **comprehensive and balanced approach to the solution of housing problems of very low income**  
21 **households and persons and families of low or moderate income in the state.**” *Health & Safety Code*  
22 § 50006. Thus, the ULA both conflicts with and is pre-empted by the Health and Safety Code and, for  
23 this additional reason, is void.

24 **XIII. CONCLUSION**

25 Plaintiffs have filed three (3) briefs in connection with the pending Motions – two briefs in  
26 Opposition to the Motions filed by Defendants, and one filed in joinder of the Motion filed by HJTA.

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27 <sup>13</sup> *Health & Safety Code* § 50000 et seq’s conflict with Measure ULA is more fully detailed in the  
28 accompanying joinder to the Motion for Judgment on the Pleadings filed by Plaintiff Howard Jarvis  
Taxpayer’s Association, at pp. 27-30.

1 Due to the voluminous moving papers and the substantial overlap between Defendants' Motions,  
2 Plaintiffs have attempted to respond to all arguments across the two Opposition briefs, and incorporate  
3 by reference all arguments made in all three briefs in connection with the Motions.

4 If this Court deems it necessary for any of the Plaintiffs to amend their complaint to more  
5 particularly plead such state pre-emption and/or conflicts with state law, based on all of those many state  
6 statutes and bills cited herein that demonstrate the state's full occupancy of the field of homelessness  
7 and/or which are in conflict with the ULA, then the Newcastle Plaintiffs herein request leave to make  
8 such an amendment and, presumably, so would HJTA.

9 Respectfully, this Court should grant HJTA's MJOP and deny the MJOPs of the Defendants. If  
10 the Court deems it necessary, the Court should grant all Plaintiffs leave to amend their Complaints to  
11 more thoroughly plead that, irrespective of the City's home rule powers and irrespective of the fact that  
12 the ULA was passed by initiative, it is still void because the field of homelessness reduction has been  
13 pre-empted by the state concerning such matter of statewide concern and/or that the ULA conflicts with  
14 state statutes concerning matters of statewide concern.

15 Respectfully submitted,

16 Dated: August 11, 2023

LAW OFFICES OF KEITH M. FROMM

17  
18 By 

19 Keith M. Fromm  
20 Co-Counsel for Plaintiffs and Petitioners  
21 Newcastle Courtyards, LLC, and Jonathan  
Benabou, as Trustee on behalf of The Mani  
Benabou Family Trust

22 COSTELL & ADELSON LAW CORPORATION

23  
24 By 

25 Jeffrey L. Costell  
26 Co-Counsel for Plaintiffs and Petitioners  
27 Newcastle Courtyards, LLC, and Jonathan  
28 Benabou, as Trustee on behalf of The Mani  
revBenabou Family Trust

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**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 20969 Ventura Boulevard, Suite 230, Woodland Hills, CA 91364. My email address is kcech@costell-law.com.

On August 13, 2023, I served the foregoing document(s) described as **AMENDED OPPOSITION OF PLAINTIFFS AND PETITIONERS NEWCASTLE COURTYARDS, LLC AND JONATHAN BENABOU TO MOTION FOR JUDGMENT ON THE PLEADINGS BY DEFENDANT CITY OF LOS ANGELES AND INTERESTED PARTIES (Vol II)** on the interested parties to this action by delivering a true and correct copy thereof addressed to each of said interested parties at the following address(es):

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**SEE ATTACHED SERVICE LIST**

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- ( ) **BY FIRST CLASS MAIL POSTAGE PREPAID:** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our Firm’s office address in Santa Monica, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.
  - ( ) **BY ELECTRONIC SERVICE:** By causing the foregoing document(s) to be electronically filed using the court’s Electronic Filing System which constitutes service of the filed document(s) on the individual(s) listed on the attached mailing list.
  - (X) **BY EMAIL SERVICE:** I caused such document(s) to be delivered electronically via e-mail to the e-mail address of the addressee(s) set forth in the attached service list.
  - ( ) **BY OVERNIGHT DELIVERY:** I served the foregoing document(s) by an express service carrier which provides overnight delivery, as follows: I placed copies of the foregoing document(s) in a sealed envelope or package designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.
  - (X) **ONLY BY ELECTRONIC TRANSMISSION:** I electronically served the document(s) listed above by emailing the document(s) to the email address of each addressee on the attached service list. Only electronic service was provided. This is necessitated during the declared National Emergency due to the Coronavirus (COVID-19) pandemic because this office will be working remotely, is not able to send physical mail as usual, and we are therefore using only electronic mail. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission. We will provide a physical copy, upon request only, when we return to the office at the conclusion of the national emergency.

26  
27  
28

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 13, 2023, at Woodland Hills, CA.

/s/ Karen Cech  
Karen Cech

**SERVICE LIST- CONSOLIDATED CASE**

***Howard Jarvis Taxpayers Association v. City of Los Angeles, et. al.***  
**LASC Case No. 22STCV39662**

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22 *Koreatown Immigrant Workers Alliance; Service*  
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**SERVICE LIST – CONSOLIDATED CASE**

***Newcastle Courtyards, LLC., et.al. v. City of Los Angeles, et al.***

**LASC Case No. 23STCV00352**

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