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FILING FEE EXEMPT PURSUANT TO GOVERNMENT CODE § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

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

Plaintiffs,

v.

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

Defendants.

AND RELATED CONSOLIDATED CASE

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

Assigned for All Purposes to the Honorable Barbara Scheper; Department, 30

DEFENDANT CITY OF LOS ANGELES' REPLY TO NEWCASTLE COURTYARD, LLC ET AL.'S OPPOSITION TO CITY'S MOTION FOR JUDGMENT ON THE PLEADINGS; JOINDER IN INTERESTED PERSONS' REPLY

See 6.13.23 Order re Briefing Schedule; Prior Reservation IDs: 254311419406 (Lead Case) and 757938091417 (Consolidated Case) for

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Defendant City of Los Angeles ("City") hereby replies to Plaintiffs Newcastle Courtyards, LLC et al.'s (collectively, "Newcastle") two-volume Opposition to the City's Motion for Judgment on the Pleadings ("Opp'n Vol. I" and Opp'n Vol. II"), and joins the Reply filed by the Southern California Association of Non-Profit Housing, Inc. et al. ("Defendant-Supporters").[1]

I. INTRODUCTION

Newcastle seeks to convert its objections to the City voters' exercise of their legislative judgment into a legal claim to invalidate the voters' lawful exercise of their reserved, inherent, and constitutional power of initiative. Newcastle presents muddled, discursive arguments, and relies on a wild array of inapt cases and statutes that provide no support for any of its legal theories.

As the City demonstrated in its moving papers, and as the City and Defendant-Supporters who joined this action have further shown in their respective Replies, the City voters' lawfully adopted Measure ULA to impose taxes on conveyance of real property over $5 million to fund affordable housing and rental assistance programs.

This Court should grant the City's Motion, without leave to amend.

II. DISCUSSION

A. Newcastle Has Failed to Meet Its Burden in this Facial Challenge to Measure ULA.

Newcastle has failed to meet its obligation to demonstrate that Measure ULA is fatally defective, and there are no circumstances under which it is valid. (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084; *United States v. Salerno* (1987) 481 US 739, 745.) Instead, Newcastle improperly challenges Measure ULA based on posited hypotheticals as potential unique applications of Measure ULA. (*Tobe*, 9 Cal.4th at 1084.) Accordingly, this Court may summarily reject Newcastle's contentions. In any event, none has merit.

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[1] After discussion at the June 6, 2023, Case Management Conference, Judge Rolf M. Treu issued an order authorizing 35-page oppositions to the parties' respective Motions for Judgment on the Pleadings. In order to efficiently address Newcastle's overlong, two-volume opposition, the City and Defendant-Supporters have divided up responding in their respective Reply Briefs to the opposition arguments presented by Newcastle.

Following the filing of the City's and Defendant-Supporters' Replies to Newcastle's Opposition (and their contemporaneously-filed Replies to HJTA's Opposition), the City will address resetting the hearing on parties' Motions for Judgment on the Pleadings.

B. Newcastle Has Failed to State Causes of Action Under Cal. Const., Art. XIIIA or Government Code Section 53725, and Conceded It Has No Claim Under Arts. XIIIC or XIIID (Third, Fourth, Eleventh, Twelfth and Thirteenth Causes of Action).

The City's Motion established that Newcastle has not stated a cause of action either for violation of Article XIIIA, section 4 of the State Constitution (added by Prop. 13 in 1978) or Government Code section 53725 (added by Prop. 62 in 1986). (Motion, Sections IV-A and IV-B.) The City explained, inter alia, that on-point precedents dispositively establish that Article XIIIA, section 4 does not apply to citizen-sponsored initiatives,[2] and Measure ULA is a municipal affair within the City's constitutional, home rule authority. Newcastle responds to the latter argument only, with meritless points, and repeats contentions it makes in its Joinder in HJTA's Opposition to the City's Motion. (Opp'n Vol. II at 22:3 – 33:23; Joinder at 1:13 – 19:25, 25:14 – 28-14.)

As the City has also briefed in its contemporaneous Reply to HJTA's Opposition and Newcastle's Joinder, no state law preempts Measure ULA, including because (1) the imposition of real property transfer taxes to fund affordable housing and rental assistance programs is within charter city authority; (2) there is no genuine, actual conflict between state law and Measure ULA; and (3) even if there were a conflict and arguably a State attempt to preempt, Newcastle has not shown the State would have any basis to supersede charter cities' home rule authority. Thus, Newcastle's random references to state laws regarding housing and homelessness, which do not concern transfer taxes to fund affordable housing and rental assistance programs, do not advance its preemption claim. (Reply to HJTA's Opposition and Newcastle Joinder, Section II-B-1.)

The City's contemporaneously-filed Reply to HJTA's Opposition and Newcastle's Joinder also establishes, at Section II-B-2, that Measure ULA does not conflict with the Documentary Transfer Tax Act (Rev. & Tax. Code § 11901 et seq.), as is also discussed below at Section II-E.

The City's Motion also established that Newcastle failed in its attempts to allege violations of Articles XIIIC and XIIID – which allegations Newcastle embedded within its Third, Eleventh,

[2] *City and County of San Francisco v. All Persons Interested in the Matter of Proposition G* (2021) 66 Cal.App.5th 1058, 1070-72 ("*All Persons re Prop G*"); *Howard Jarvis Taxpayers Association v. City and County of San Francisco* (2021) 60 Cal.App.5th 227, 242 ("*HJTA v. CCSF*"); *City of Fresno v. Fresno Building Healthy Communities* (2020) 59 Cal.App.5th 220, 234-35 ("*City of Fresno*"); *City and County of San Francisco v. All Persons Interested in Matter of Proposition C* (2020) 51 Cal.App.5th 703, 714-18 ("*All Persons re Prop C*").

Twelfth and Thirteenth Causes of Action. (Motion, Section IV-C.) Newcastle has not endeavored to refute the City's Motion as to these claims. Thus, Newcastle has forfeited them. (*Cahill v. San Diego Gas & Electric Co*. (2011) 194 Cal.App.4th 939, 956.)

C. Newcastle Has Not Alleged Cognizable Equal Protection or Substantive Due Process Claims (First, Second, and Fourteenth Causes of Action).

Where a party presents equal protection and substantive due process challenges to economic legislation, the standards of review are equivalent. (*Morning Star Co. v. Board of Equalization* (2011) 201 Cal.App.4th 737, 756 [collecting cases].) Thus, where an equal protection claim fails, so does a substantive due process claim. (*Ibid.*)

Here, the rational basis standard applies, and the claims fail.

1. The Rational Basis Test Applies.

Newcastle contends strict scrutiny applies to its equal protection and substantive due process claims. (Opp'n Vol. I at 2:15 – 4:5.) Newcastle is mistaken.

As the City's Motion established, rational basis review applies to challenges to tax and other economic legislation, and a statutory classification "must be upheld … *if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.*" (*California Grocers Assn. v. City of Los Angeles* (2011) 52 Cal.4th 177, 209, citations and internal quotation marks omitted; italics in original). Thus, a tax law " 'is not arbitrary although it discriminate(s) in favor of a certain class … if the discrimination is founded upon a reasonable distinction, or difference in state policy.' " (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 234, citation omitted.) Pursuant thereto, the California Supreme Court rejected an equal protection challenge to Proposition 13's imposition of an ad valorem (value-based) property tax system that favors existing owners (by rolling back ad valorem taxes and limiting increases to 2%, irrespective of actual value) over new owners of similar properties (by allowing ad valorem taxes to be imposed based on acquisition value). It was "arguably reasonable" for the state electorate to decide, as a matter of policy that favored existing and long-time owners, to impose disparate value-based taxes on similar properties, year-after-year, based not on actual value, but acquisition value. (*Id.* at 233, 235; see also *Nordlinger v. Hahn*

(1992) 505 U.S. 1 [similarly rejecting an as applied equal protection challenge to Proposition 13's ad valorem property tax system]; *Kahn v. Shevin* (1974) 416 U.S. 351, 355 [rational basis standard applied to equal protection challenge to property tax exemption that applied to widows, but not widowers; claim rejected based on rationality of offsetting sex discrimination].)

Newcastle claims rational basis review does not apply, but it cites inapt cases. For example, Newcastle cites cases regarding criminal probation conditions that impaired individuals' rights to associate with others, travel, and own property, but which did not involve equal or substantive due process challenges to legislation. (*People v. Beach* (1983) 147 Cal.App.3d 612, 621-22; *People v. Leon* (2010) 181 Cal.App.4th 943, 946, 951.) Newcastle also cites a U.S. Supreme Court case invalidating poll taxes as violative of equal protection, which concerned voting rights, not economic legislation as is at issue here. (*Harper v. Virginia State Bd. of Elections* (1966) 383 U.S. 663, 665-67.) Newcastle also cites a California Supreme Court case that declared, in the special context of children's fundamental interest in education, that school-funding classifications based on the wealth of a school district are suspect. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 600.) However, as the Second District ruled, *Serrano v. Priest* is "inapposite" with respect to equal protection challenges to tax legislation, as the Supreme Court did "not purport to identify the wealthy as a protected class;" thus, as the cases have uniformly held, the rational basis test applies. (*Jensen v. Franchise Tax Bd.* (2009) 178 Cal.App.4th 426, 435-36.) Accordingly, Newcastle has no basis to refute the applicability of the rational basis test with respect to legislative classifications for tax and other economic legislation.

2. Measure ULA Easily Meets Equal Protection and Due Process Standards.

Newcastle never applies the rational basis test, staking its equal protection and due process claims on the inappliable strict strutiny standard. Thus, Newcastle has foreited any contention that Meausre ULA is patentally irrational and cannot satisfy rational basis review. (*Cahill*, 194 Cal.App.4th at 956 ["absence of cogent legal argument or citation to authority allows this court to treat the contention as waived," citations and internal quotation marks omitted].) And, as the City established in its motion, Measure ULA easily satisfies rational basis standards.

Nevertheless, we refute Newcastle's efforts to counter the City's points and authorities.

Newcastle seeks to distinguish two on-point cases that rejected equal protection challenges to taxes imposed based on income thresholds (*Jensen*) and sales-price tiers (*Ashford*). It fails.

In *Jensen*, the Court upheld orders sustaining demurrers to a complaint challenging a personal income tax imposed only on persons earning over $1 million annually, despite allegations that the taxpayers were "victims of a populist movement to 'soak the rich.' " (*Jensen*, 178 Cal.App.4th at 439-40.) Newcastle claims that, here, it has "clear evidence of such animus," and thus *Jensen* does not apply. (Opp'n Vol. I at 6:9.) But Newcastle's purported "evidence" of animus does not support its claim, as Newcastle bears a "very heavy burden" to "negate any conceivable basis [that] might support the classification." (*Borikas v. Alameda Unified School Dist.* (2013) 214 Cal.App.4th 135, 149; see also *California Grocers*, 52 Cal.4th at 209.) Newcastle could not meet this burden, including because the legislative findings regarding the purposes and bases for the challenged transfer taxes clearly support its rationality, including the need for tax revenues to fund programs to assist the over 40,000 City residents experiencing homelessness and the 30,000 City residents facing eviction annually. (Measure ULA, Section 1, e.g., subds. (a), (b), (f), (g), (h), (j), (k), (l), (o), (p), (u), (v)].)

Further, progressive or tiered tax rates "have been an accepted fixture since the early history of the country, and it does not offend constitutional principles to tax people unequally." (*Jensen*, 178 Cal.App.4th at 439, citing *Knowlton v. Moore* (1900) 178 U.S. 41, 109, which rejected claims that graduated inheritance tax violated rights to equal protection and due process).

In *Ashford Hospitality*, the Court upheld tiered real property transfer taxes. The Court explained, discussing U.S. Supreme Court precedent, that the issue is whether taxpayers within the same tier are treated equally, and not disparate treatment between taxpayers in different tiers. (*Ashford Hospitality v. City and County of San Francisco* (2021) 61 Cal.App.5th 498, 506-07, discussing *Magoun v. Illinois Trust & Savings Bank* (1898) 170 U.S. 283, 299.) Since Newcastle's claims are based on cross-tier differences, they fail.

Nonetheless, Newcastle seeks to distinguish *Ashford Hospitality* on the ground that it was decided after a bench trial. (Opp'n Vol. I at 5:27-28.) But *Ashford Hospitality* did not turn on evidentiary issues; it turned on the legality of the stautory classifications, under the rational basis

standard, and the applicability of U.S. Supreme Court precedents addressing marginal and tiered tax rates. (*Ashford Hospitality*, 61 Cal.App.5th at 503-07.) Since there were conceivably rational bases for the tiered transfer taxes, the Court rejected the taxpayers' challenge. (*Id.* at 506-07.)

Nnumerous other cases have rejected equal protection challenges to tax legislation based on allegedly arbitary triggering thresholds and exemptions, as the courts defer to even relatively random or thinly-supported legislative policy choices that allocate the burdens and benefits of taxes between groups. (E.g., *Nordlinger*, 505 U.S. at 15-17 [rejecting challenge to Proposition 13 reassement exemptions for intra-family transfers and persons aged 55 and older, as voters conceivably had rational bases to facilitate such low-cost transfers for benefit of existing homeowners and neighborhoods, despite negative impacts on younger and less wealthy would-be buyers]; *Allied Stores of Ohio v. Bowers* (1972) 358 U.S. 522, 528 [rejecting challenge to taxes imposed on property held in storage by resident owner, but exempting nonresident owners, because legislators could chose to support development of storage market for nonresidents]; *Carmichael v. Southern Coal & Coke Co*. (1937) 301 U.S. 495, 2011-12 [rejecting challenge to tax that exempted employers of fewer than eight workers, even though reason for distinction was merely administrative convenience]; *Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (1977) 75 Cal.App.3d 13, 15-16 [upholding ordinance imposing sewer service charges only on multi-family buildings of five or more units, even though multi-family buildings of four or fewer units had similar impacts, because it was administratively easier to implement].

Newcastle also contends its Complaint sufficiently alleges the voters adopted Measure ULA for irrational reasons, e.g., animus towards the wealthy, such that they are entitled to discovery and an evidentiary hearing or trial. No so.

First, Newcastle cites cases that do not involve legislation classifications, but rather are about alleged animus in the workplace (*Mondero v. Salt River Project* (9th Cir. 2005) 400 F.3d 1207, 1213), malicious prosecution (*Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 874), and other inapt situations.

Second, the legislative classification cases Newcastle cites are readily distinguished.

For example, Newcastle cites a recent Ninth Circuit case that reversed a motion to dismiss an

equal protection challenge to new state legislation distinguishing between employees and independent contractors. The Court reversed based on allegations that a state legislator who sponsored the bill expressed animus against the plaintiff gig-economy companies (e.g., ride-share companies), and that the Legislature irrationally exempted similarly situated companies in response to " 'lobbying' and 'backroom dealing' as opposed to adherence to the stated purpose of the legislation." (*Olson v. California* (9th Cir. 2023) 62 F.4th 1206, 1216, 1219-20.)

Olson is easily distinguished, as the Second District explained when it evaluated a related, similar statute: "The *Olson* decision seemed to make one legislator's statement a basis for doubting a law," and has no applicability where there are countervailing rational bases for the law. (*Quinn v. LPL Financial LLC* (2023) 91 Cal.App.5th 370, 382.) Here, there are numerous rational bases supporting Measure ULA, its progressive tax structure, and its exemptions. For example, the City has a tremendous need for funds and programs to support affordable housing and rental assistance programs; sellers and buyers of high-value property are better positioned to pay the taxes; and exempting conveyances for affordable housing-related purposes advances Measure ULA's objectives to fund, facilitate, and support development of affordable housing.[3]

In addition, Plaintiffs have no plausible or justifiable way to question the motivations of the legislators here – the voters who approved Measure ULA – in contrast to *Olson* where the plaintiffs could seek to prove irrationality based, for example, on legislators' conduct and lobbying records. Moreover, *Olson* conflicts with a Ninth Circuit decision affirming a motion to dismiss a challenge to the same statute. (*American Society of Journalists and Authors, Inc. v. Bonta* (9th Cir. 2021) 15 F.4th 954, 965-66.) Accordingly, *Olson* is inapt.

Newcastle also cites a 1934 case regarding minimum milk prices set by an administrative agency based on a legislative classification that had no apparent rational basis (but was instead

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[3] As discussed above, the rational bases need not have actually been expressed in findings, as it is the challengers' obligation to establish the absence of any conceivable rational basis. Nonetheless, Measure ULA includes extensive, supportive findings (Measure ULA, Section 1, subds. (a)-(v)), and the cases such as *Jensen* and *Ashford Hospitality* explains that imposing tiered and progressive taxation is rational.

Moreover, since it is well-accepted that taxing sales of personal property (from essentials like clothing to luxury items like yachts), no doubt it is rational to tax sales of real property.

based on whether the producers had a "well advertised trade name"). (*Borden's Farm Products Co. v. Baldwin* (1934) 293 U.S. 194, 210.) Here, by contrast, the courts have ruled that tier or graduated taxes, imposed based on wealth or income thresholds, are rational, as discussed *Jensen*, *Ashford Hospitality*, and other cases. Thus, *Borden's Farm* is of no assistance to Newcastle.

Newcastle's unequal apportionment claim misses the mark, as apportionment concerns allocation of business activity between jurisdictions, to decide the amount of taxes owed to each jurisdiction. Newcastle does not refute this point, but instead confirms the explanation in the City's Motion, by citing a case about the lawfulness of apportionment with respect to business activity inside and outside of California. (*NetJets Aviation, Inc. v. Guillory* (2012) 207 Cal.App.4th 26, 49.)

Finally, Newcastle contends that Measure ULA is not general legislation, but is instead "special legislation" that irrationally targets "millionaires and billionaires." Newcastle is wrong.

"[A] law is a general one when it applies equally to all persons embraced in a class founded upon some natural, intrinsic, or constitutional distinction; on the other hand, it is special legislation if it confers particular privileges, or imposes peculiar disabilities or burdensome conditions, in the exercise of a common right, upon a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law." (*Law School Admission Council, Inc. v. State of California* (2014) 222 Cal.App.4th 1265, 1297–98.)[4] Measure ULA is not imposed on millionaires or billionaires who are in the same position as persons who are not taxed. Rather, it is an excise tax imposed equally on conveyances of property over certain price thresholds (irrespective of the seller's net worth). Thus, it is general, not special, legislation.[5]

D. Newcastle Has Not Alleged Cognizable Inverse Condemnation Claims (Fifth, Sixth, and Seventh Causes of Action).

Newcastle continues to assert it pleaded a cognizable takings claims based on theories that

[4] For example, legislation that applied only to the June 3, 1986 election of the San Mateo County Sheriff was considered special legislation, and invalidated for lack of rationality. (*White v. Church* (1986) 185 Cal.App.3d 627, 632-33.)

[5] And even if it were special legislation, it is well-established that progressive, tiered, and graduated taxes are rational, since "it does not offend constitutional principles to tax people unequally." (*Jensen*, 178 Cal.App.4th at 439, citing *Knowlton*, 178 U.S. at 109; see also *Amador Valley*. 22 Cal.3d at 233-35, *Kahn v. Shevin*, 416 U.S. at 355, and other cases discussed above.

the taxes are: (1) unlawful monetary exactions under *Nollan/Dolan* (Fifth Cause of Action); (2) unlawful special assessments under the California Constitution (Sixth Cause of Action); and (3) takings based on allegations of arbitrariness (Seventh Cause of Action). Each of these theories fail as Newcastle has not refuted dispositive grounds supporting the City's motion.

First, *Nollan/Dolan* takings claims may only be made to challenge adjudicative land use decisions. (Motion at 39:3 et seq., explaining, inter alia, that "discretionary deployment of the police power" in "the imposition of land-use conditions in individual cases" (*San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal.4th 643, 670). (See also *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 460-61 ("*CBIA v. San Jose*"); *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 869; *Action Apartment Assn. v. City of Santa Monica* (2008) 166 Cal.App.4th 456, 470; *McClung v. City of Sumner* (9th Cir. 2008) 548 F.3d 1219, 1227; *Garneau v. City of Seattle* (9th Cir. 1998) 147 F.3d 802, 811-12.)[6] By contrast, at issue here are taxes (specifically, excise taxes on conveyances), the imposition of which does not give rise to takings claims. (*Coleman v. C.I.R.* (7th Cir. 1986) 791 F.2d 68, 70.)[7]

Both *Nollan* and *Dolan* involved takings challenges to adjudicative land-use decisions in which the government demanded the applicant dedicate land in exchnge for, and as a conditon of, approval of a development permit. (*Nollan v. California Coastal Com'n* (1987) 483 U.S. 825, 828; *Dolan v. City of Tigard* (1994) 512 U.S. 374, 386.)[8] *Koontz* merley extended the *Nollan/Dolan* Doctrine to demands that the appllicant pay in-lieu fees in exchange for, and as a condition of,

[6] Police power is the power to regulate for the public welfare, whereas the taxation power is the power to raise revenue. (*Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 875, 878.)

[7] The City has consistently maintained that Measure ULA taxes are taxes (not land use regulations, exactions, or special assessments).

[8] As the Supreme Court later described its decisions: "Both *Nollan* and *Dolan* involved Fifth Amendment takings challenges to adjudicative land-use exactions – specifically, government demands that a landowner dedicate an easement allowing public access to her property as a condition of obtaining a development permit…. The question was whether the government could, without paying the compensation that would otherwise be required upon effecting such a taking, demand the easement as a condition for granting a development permit the government was entitled to deny." (*Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528, 536, 546-47.)

approval of a developmet permit. (*Koontz v. St. Johns River Water Mgmt. Dist.* (2013) 570 U.S. 595, 619.) Because such " 'in lieu of fees' … are functionally equivalent to other types of land use exactions," they too must satisfy the nexus and rough proportionality requirements of the *Nollan*/*Dolan* Doctrine. (*Id.* at 612.) Thus, these cases do not support Newcastle.

Newcastle also suggests *Ehrlich v. City of Culver City* supports its position under the *Nollan/Dolan* Doctrine. It does not. Instead, in that case, the California Supreme Court held that the *Nollan/Dolan* Doctrine applied with respect to adjudicatory land use decisions, not to the imposition of conditions or payments pursuant to generally-applicable legislation (*Ehrlich*, 12 Cal.4th at 869, 885-86), as the Court confirmed in *CBIA v. San Jose*, 61 Cal.4th at 474-75, 460-61.

Neither does *Ballinger v. City of Oakland* support Newcastle. *Ballinger* concerned whether the district court properly dismissed property owners' claim that to require them to pay their tenants money for relocation assistance, before they could move back into their home at the end of the lease, constituted a physical taking. (*Ballinger v. City of Oakland* (9th Cir. 2022) 24 F.4th 1287, 1290.) No takings claim was stated because the ordinance mandating payment of relocation " 'merely regulate[s] [the Ballingers'] *use* of their land by regulating the relationship between landlord and tenant.' " (*Id.* at 1293 (italics in original), quoting *Yee v. City of Escondido, Cal.* (1992) 503 U.S. 519, 528.) Further, the Ninth Circuit explained that "a monetary obligation triggered by a property owner's actions with respect to the use of their property[] [is] not a burden on the property owner's interest in the property," which other federal Courts of Appeals also "held were not takings." (*Id.* at 1297.) Similarly here, Measure ULA is at most "a monetary obligation triggered by a property owner's actions" to convey property (*ibid.*) and is thus not a taking.

Second, since Measure ULA imposes taxes, there is no requirements for either any nexus or rough proportionality, as applies under the *Nollan/Dolan* Doctrine, nor any basis to claim the taxes are unlawful special assessments under the California Constitution.

"[A] tax can be levied without reference to peculiar benefits to particular individuals or property," and "[n]othing is more familiar in taxation than the imposition of a tax upon a class or upon individuals who enjoy no direct benefit from its expenditure, and who are not responsible for the condition to be remedied." (*Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open*

Space Authority (2008) 44 Cal.4th 431, 442.) Newcastle's claim that there are nexus and rough proportionality requirements is diametrically opposed to this taxation rule.

The California Supreme Court further explained that a special assessment is charged to pay for "a special benefit upon the property assessed beyond that conferred generally." (*Ibid.*) The sole case cited by Newcastle on this issue, *Solvang Mun. Improvement Dist. v. Board of Supervisors* (1980) 112 Cal.App.3d 545, 553-54, is consistent, explaining that unlike taxes, special assessments are levied against property to pay for public improvements that benefit the property.

Here, special assessments imposed on property are not at issue. Rather, excise taxes imposed on transactions are, as established in the City's Motion (including at Section IV-C-1, page 29, citing *Fielder*, 14 Cal.App.4th at 145, and other authorities.) Accordingly, Newcastle has no basis to claim the taxes are unlawful special assessments, whether under a takings theory or otherwise (e.g., as violative of Article XIIID of the California Constitution).

Third, Newcastle's contentions that Measure ULA arbitrarily confiscates property, and the cases upon which Newcastle relies, provide it no support.

Taxes, including taxes on property itself, "are not themselves a taking under the Fifth Amendment, but are a mandated contribution from individuals for the support of the government." (*Tyler v. Hennepin County, Minnesota* (2023) 598 U.S. 631, 637.) Thus, Newcastle's claim is dead on arrival. Newcastle's contrary theories and cases do not revive its claim.

Neither *Varjabedian v. City of Madera* (1977) 20 Cal.3d 285, *U.S. v. Sperry Corp.* (1989) 493 U.S. 52, nor *Phillips v. Washington Legal Foundation* (1998) 524 U.S. 156, concerned taxes. Rather, *Varjabedian* concerned a claim of damage to property caused by public works (see p. 288); *U.S. v. Sperry Corp.* concerned deductions for the government's assistance to recover property confiscated by a foreign government and that ruled monetary deductions are not takings (see p. 62 and fn. 9); and *Phillips* held that appropriation of the interest earned in an attorney's client trust fund account was potentially a taking of the client's property (see p. 172). Not only are these not tax cases, none has any language suggesting that taxing transactions could be a taking.

Other cases cited by Newcastle are similarly inapt. *Horne v. Department of Agriculture* (2015) 576 U.S. 350, 361, concerned a regulation by which the government appropriated a

percentage of the challengers' crops, without compensation, and *Dickman v. C.I.R.* (1984) 465 U.S. 330, is not a takings case.

Which brings us to *Brushaber v. Union Pac. R.R. Co.* (1916) 240 U.S. 1, the only case that could arguably support Newcastle. But as the City explained in its moving papers, *Brushaber* actually concerns the Due Process Clause, not the Takings Clause. (*Id.* at 24; *McCreery v. McColgan* (1941) 17 Cal.2d 555, 561.) And the Supreme Court has since clarified that whether the government acted arbitrarily is means-ends analysis that does not actually have any significance in takings jurisprudence. (*Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528, 544-45; see also *Allegretti & Co. v. County of Imperial* (2006) 138 Cal.App.4th 1261, 1280.)

Accordingly, Newcastle has no basis to state a takings claim, on any theory. And to allow Newcastle to proceed with its unsupported, illogical, contrary-to-precedent contentions would suggest that sales taxes – which are imposed on conveyances of personal property at rates roughly double those of Measure ULA – also give rise to takings claims. Thus, this Court should conclusively reject Newcastle's contentions.

E. Newcastle's Unlawful Delegation Claim Fails (Fifteenth Cause of Action).

Newcastle reiterates its baseless assertion that Measure ULA unlawfully delegates to the City authority to adopt procedures for implementing Measure ULA's exemptions conveyances to qualified affordable housing developers. (Opp'n Vol. II at 16:16 et seq.)

Courts have routinely upheld legislative initiatives granting authority and direction to third parties to implement policy decisions. (*Monsanto Co. v. Off. of Env't Health Hazard Assessment* (2018) 22 Cal.App.5th 534, 551-52 [Proposition 65 did not unlawfully delegate authority to an international body to determine what chemicals to list as cancer-causing, as the voters had decided the fundamental policy issue and provided sufficient direction.); *Gerawan Farming, Inc. v. Agricultural Labor Relations Bd*. (2017) 3 Cal.5th 1118, 1151-52 [legislation did not unlawfully delegate authority to third party to mediate a labor dispute and render a decision for administrative agency to consider adopting].) Such a delegation of authority is permissible when the legislative body does not leave fundamental policy decisions to others, and provides adequate implementation of that policy. (*Monsanto,* 22 Cal.App.5th at 551.)

Here, the policy decision made by City voters is clear: exempt affordable housing projects and developers from Measure ULA. To implement its policy decision, City voters provided standards and direction to the City, i.e., adopt a procedure for determining the applicability of the exemptions for organizations with a history of affordable housing development and/or affordable housing property management experience, and authorize the Council to adopt consistent implementing ordinances, regulations, and procedures (at LAMC §§ 21.9.11, 21.9.14, 21.9.16.)

Newcastle also contends that the City has yet to apply the exemption, and that the legislation is therefore ipso facto unlawful. But this is a facial challenge, and any dispute regarding the validity of future regulations is not ripe and has no import on the validity of Measure ULA itself. (*Metro. Water Dist. of S. Cal. v. Winograd* (2018) 24 Cal.App.5th 881, 892-93 [controversy is ripe "when the facts have sufficiently congealed to permit an intelligent and useful decision to be made"]; *Stonehouse Homes LLC v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 540 [challenge to city council resolution directing planning commission to prepare recommendations for ordinance was not ripe because suit would require court to "speculate as to what legislation, if any, the City might adopt and whether and how that legislation might be applied"].)

In addition, Newcastle contends that Measure ULA conflicts with the Documentary Transfer Tax Act ("DTT Act") by unlawfully delegating to the County the authority to collect and remit transfer taxes to the City, and that the County is entitled to retain Measure ULA taxes pursuant to Revenue & Taxation Code sections 11911(c) and 11931(3). The contentions lack merit.

First, Newcastle's contentions about delegation and allocation under the DTT Act have no relevance to the issues action at hand: the validity of Measure ULA.

Second, Newcastle misconstrues the law. The DTT Act (Rev. & Taxation Code, Part 6.7 of Division 2, § 11901 et seq.) concerns transfer taxes adopted by cities and counties, pursuant thereto and at specified rates, and the allocation of those taxes as between the county and city. (*CIM Urban Reit 211 Main St. (SF), LP v. City and County of San Francisco* (2022) 75 Cal.App.5th 939, 948-49; Rev. & Taxation Code §§ 11901, 11911, 11931.) But charter cities have home rule authority independently to impose transfer taxes, neither pursuant to, nor in conformance with, the DTT Act. (*CIM Urban Reit*, 75 Cal.App.5th at 950.) As the First District

explained, when the Legislature adopted the DTT Act, it declared and recognized, in Section 2 of the adopting legislation, that charter cities have home rule authority to impose transfer taxes that do not conform to the DTT Act. (*Ibid.*, citing Section 2 of adopting legislation which states: "As used in this section, 'city' does not include a chartered city"]; see also Request for Judicial Notice filed and served herewith, Exh. A.)

Thus, when the voters adopted Measure ULA, they did so independently of the DTT Act, and not pursuant thereto. As such, Newcastle's has no basis to invoke DTT Act provisions regarding delegation and allocation of taxes imposed pursuant thereto (e.g., Rev. & Taxation Code §§ 11911(c) and 11931(3)).

Newcastle also misconstrues the DTT Act. First, Measure ULA did not create County authority to collect City transfer taxes. Rather, County authority exists independent thereof, including by (1) Revenue & Taxation Code section 11911, which authorizes counties to collect city transfer taxes, and (2) Los Angeles County Code of Ordinances section 4.60.110 ("LACC Section 4.60.110"), which requires the County registrar-recorder to "administer any ordinance adopted by any city in the county pursuant to Part 6.7 (commencing with Section 11901 of Division 2 of the Revenue and Taxation Code imposing a tax for which credit is allowed by this chapter." (https://library.municode.com/ca/los_angeles_county/codes/code_of_ordinances?nodeId=TIT4REFI_CH4.60DOTRTA_4.60.180OPDA [visited Aug. 31, 2023].)

Second, Newcastle misinterprets the DTT Act's allocation provisions. Where a county and a city both impose transfer taxes pursuant to, and in conformance with, the DTT Act, they equally share the taxes. However, where a city's "the legislative body" imposes a transfer tax pursuant to the DTT Act, but the city council-imposed tax is non-conforming, that tax is not credited against the County's tax. (Rev. & Taxation Code § 11911, subd. (c), and § 11931, subds. (2) and (3).) Here, Measure ULA was imposed by the City's voters, and amended the City's existing transfer tax ordinance adopted pursuant to its charter city authority, not pursuant to the DTT Act and Revenue & Taxation Code sections upon which Newcastle mistakenly relies (§§ 11911(c) and 11931(3)). Moreover, because Measure ULA taxes are not imposed pursuant to the DTT Act, there is no basis

for Newcastle to claim the County keeps the transfer taxes pursuant to Sections 11911 and 11931.[9]

For each of these reasons, Newcastle's unlawful delegation claims fail.

F. The City Joins Defendant-Supporters' Reply as to the Balance of Newcastle's Causes of Action, and Adds that Each of Newcastle's Catch-All Claims Fails (Tenth Through Thirteenth Causes of Action for Damages, Writ, and Declaratory Relief).

The City joins the reply brief contemporaneously submitted by Defendant-Supporters as to the balance of Newcastle's causes of action (Eighth Cause of Action re Ex Post Facto Law, Ninth Cause of Action re Free Speech, Sixteenth Cause of Action re Void for Vagueness.

In addition, Newcastle's Tenth through Thirteenth Causes of Action are not substantive claims, but are instead shells into which Newcastle seeks to incorporates substantive claims and seek remedies (damages under 42 U.S.C. section 1983, writ of mandate under Code Civ. Proc. § 1085, declaratory relief under Code Civ. Proc. § 1060, and determination of invalidity under Code Civ. Proc. § 860 et seq.). But Newcastle has not endeavored to refute the points and authorities in the City's moving papers, which established that Newcastle lacks any cognizable claim or basis to proceed under these purported causes of action. (City's Motion, Section IV-E.) Thus, Newcastle has forfeited any opposition to the City's Motion for Judgment on the Pleadings as to the Tenth through Thirteenth Causes of Action. (*Cahill*, 194 Cal.App.4th at 956.)

G. The Court Should Deny Leave to Amend.

Newcastle has not identified any material allegations it could add to its complaint. Thus, this Court should deny leave to amend. (*Lowry v. Port San Luis Harbor District* (2020) 56 Cal.App.5th 211, 221.)

III. CONCLUSION

This Court should grant the City's Motion, and enter Judgment for the City.

[9] And even if Measure ULA did violate Revenue & Taxation Code section 11911, Measure ULA overrides conflicting law under the Home Rule Doctrine because "the imposition of a local transfer tax is a municipal affair that does not implicate significant state interests." (*CIM Urban Reit*, 75 Cal.App.5th at 956; see also *CSHV 1999 Harrison, LLC v. County of Alameda* (2023) 92 Cal.App.5th 117, 124, review filed (July 10, 2023).)

Dated: September 8, 2023

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By: 

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PROOF OF SERVICE

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

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

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

On September 8, 2023, I served true copies of the following document(s) described as **DEFENDANT CITY OF LOS ANGELES' REPLY TO NEWCASTLE COURTYARD, LLC ET AL.'S OPPOSITION TO CITY'S MOTION FOR JUDGMENT ON THE PLEADINGS; JOINDER IN INTERESTED PERSONS' REPLY** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

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

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

Executed on September 8, 2023, at San Francisco, California.

Theresa V. Henry

Theresa Henry

SERVICE LIST
Howard Jarvis Taxpayers Assoc., et al. v. City of Los Angeles, et al.
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