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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC. (DBA APARTMENT ASSOCIATION OF GREATER LOS ANGELES),

Petitioner,

vs.

CITY OF LOS ANGELES; COUNCIL OF THE CITY OF LOS ANGELES AND DOES 1 TO 100, INCLUSIVE;

Respondents.

**Case No. 23STCP00720**
Assigned For All Purposes To:
Honorable Mitchell L. Beckloff
Department 86

**INTEVENORS' OPPOSITION TO OPENING BRIEF**

Date: November 8, 2023
Time: 9:30 a.m.
Dept: 86

Complaint Filed: March 3, 2023

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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Page(s)**

**Cases**

**Statutes**



**Constitional Provisions**



**Other Authorities**

## I. INTRODUCTION

Before the pandemic ushered in long overdue tenant protections in Los Angeles, tenants were routinely evicted for falling a few dollars short on their rent. Similarly, for decades before the pandemic, Los Angeles tenants who fell outside existing rent stabilization regimes could be forced out by large and unpredictable rent increases with little notice and without financial support to assist their transition to new housing. The result has been obvious: a massive spike in homelessness that, to date, has been impervious to the government's attempts at intervention. By February 2023, Angelenos—tenants and homeowners alike—demanded that their elected officials provide basic tenant protections to keep residents housed and off our streets. In a city currently under an Emergency Declaration on Homelessness, the City of Los Angeles ("City") has a strong interest in exercising its police power to protect tenants' livelihoods.[1] In response to this crisis, the City adopted the two tenant-protection ordinances challenged here: (1) the Relocation Ordinance (Los Angeles Municipal Code§ § 165.09) and the (2) Nonpayment Ordinance (*see* Los Angeles Municipal Code §§ 151.09.A.1 and 165.03.A).

The Relocation Ordinance extends the existing right to relocation assistance for no-fault evictions to properties in Los Angeles not already covered by rent stabilization regimes.[2] That ordinance, which was adopted by the Los Angeles City Council via Ordinance No. 187764 on February 13, 2023, requires the payment of relocation assistance to residential tenants who are forced to relinquish their tenancy because their landlord imposes a rent increase that exceeds a specified percentage.

The Nonpayment Ordinance targets situations where a tenant falls short on rent by a *de minimis* amount, providing that nonpayment evictions may be brought only when the amount due exceeds a specified threshold, i.e., one month of fair market rent ("FMR"), as set by the United States Department of Housing and Urban Development ("HUD") for the Los Angeles metro area for an equivalent sized unit. The Nonpayment Ordinance, which was adopted by the Los Angeles City

[1] https://clkrep.lacity.org/onlinedocs/2022/22-1545_rpt_mayor_a_12-12-22.pdf

[2] As a practical matter, the Relocation Ordinance applies to rental units that are not subject to the rent cap provisions of the Los Angeles Rent Stabilization Ordinance ("LARSO") or the state Tenant Protection Act ("TPA"), the latter of which limits annual rent increases to the lesser of 5% plus the change in CPI, or 10%. Civ. Code § 1947.12.

Council via Ordinance No. 187763 on February 13, 2023, applies to all residential rental units in the City of Los Angeles.

Both the Nonpayment Ordinance and the Relocation Ordinance are well within the City's police power to regulate evictions and combat homelessness in Los Angeles. State laws in this area expressly preserve local governments' authority to "regulate or monitor the grounds for eviction." Civ. Code §§ 1954.52(c), 1954.53(e). Contrary to Petitioner's assertions that the ordinances impermissibly regulate eviction procedure or penalize lawful rent increases, both ordinances are substantive eviction regulations duly enacted by a charter city, aimed at stemming rising homelessness. Neither is preempted by state law; in fact, they are explicitly authorized by both the text of the Costa-Hawkins Rental Housing Act itself and subsequent case law. That they may place temporary and incidental financial burdens on landlords does not controvert this simple fact.

## II. LEGAL STANDARD

"[A] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7.) Further, "[a] city, pursuant to its police power, may place substantive limitations on otherwise available grounds for eviction, but not procedural ones." (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 147–49.) "Absent a clear indication of preemptive intent from the Legislature, [courts] presume that local regulation in an area over which the local government traditionally has exercised control is not preempted by state law." (*Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1242 [internal quotation marks and citations omitted].) "The party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption." (*Big Creek Lumber*, 38 Cal. 4th at 1149.)

## III. ARGUMENT

### A. The Costa-Hawkins Act does not preempt the Relocation Ordinance.

Unlike the Costa-Hawkins Act, which regulates rental rates, the Relocation Ordinance is a substantive regulation on evictions that leaves landlords free to set rental rates wherever they please and is therefore not preempted. Courts have consistently upheld as valid exercises of cities' police powers municipal regulations that are substantially similar to the Relocation Ordinance, requiring

landlords to pay reasonable relocation assistance to displaced tenants. The Relocation Ordinance neither institutes a penalty for landlords who choose to raise rent by over a certain percentage, nor does it eliminate the economic benefit of doing so. Instead, the Ordinance provides tailored, critical assistance to displaced tenants in order to prevent them from ending up on the streets.

**1. The Relocation Ordinance is not preempted because it regulates evictions, not rental rates, as authorized by Costa-Hawkins itself.**

California enacted the Costa-Hawkins Rental Housing Act (the "Act") in 1995, which authorized landlords to "establish the initial and all subsequent rental rates" on certain categories of dwellings, "notwithstanding any other provision of law." (Civ. Code, §1954.52(a).) In passing the Act, the Legislature "was well aware, however, that such vacancy decontrol gave landlords an incentive to evict tenants that were paying rents below market rates." (*Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1237–38, [citing *Bullard v. San Francisco Residential Rent Stabilization Bd.* (2003) 106 Cal.App.4th 488, 492].) Accordingly, "Costa–Hawkins specifically provides that it does not 'affect the authority of a public entity that may otherwise exist to regulate or monitor the basis for eviction . . . .'" (*Apartment Assn. of Los Angeles County., Inc. v. City of Los Angeles* (2009) 173 Cal.App.4th 13, 18, [citing Civ. Code §1954.52(c)].) This is dispositive. Petitioner's entirely legal theory is premised on the idea that "the [Relocation] ordinance disregards the careful balance struck by the Legislature and undercuts the core purpose of the Costa-Hawkins Act." (Opening Br. at 14–15). But, in reality, the balance the Legislature struck was to allow landlords to set rental rates, *subject to* the power of municipalities, like the City, to regulate the permissible reasons for and timing of evictions.

Importantly, municipalities have long held authority to substantively regulate both actual and constructive evictions, which are distinguished primarily by the tenant's affirmative decision to surrender possession. "If the landlord ousts the tenant, there is an actual eviction. [Internal citations omitted]. If the landlord's acts or omissions affect the tenant's use of the property and compel the tenant to vacate, there is a constructive eviction." (*Ginsberg v. Gamson* (2012) 205 Cal.App.4th 873, 897.) "There is nothing more likely to lead to an actual or constructive eviction than an increase in rent." (*Freeman v. Vista de Santa Barbara Associates, LP* (2012) 207 Cal.App.4th 791, 798.)

In adopting the Relocation Ordinance, the City legislated in the area of constructive evictions in a manner expressly permitted by Costa-Hawkins. The Relocation Ordinance in fact has no effect on a landlord's ability to adjust rent up or down. Under the Relocation Ordinance, if a landlord raises rent, a tenant will either pay the higher rent or be forced to relocate. In that latter circumstance, all that the Relocation Ordinance requires is the provision of relocation benefits to certain departing tenants to mitigate the displacement impacts of the constructive eviction. A relocation assistance requirement falls squarely within the City's police power, whether it applies to a no-fault termination of tenancy under LARSO or the City's Just Cause Ordinance, or to a tenant forced to self-evict following a rent increase that exceeds the Ordinance's threshold. (See, e.g., *Kalaydjian v. City of L.A.* (1983) 149 Cal.App.3d 690 [upholding City law requiring relocation assistance to tenants displaced by condominium conversions and noting that the "[i]mposition of relocation fees is within the power of the city"].) Because the relocation assistance required here is narrowly tailored to offset the reasonable moving costs of displacement for tenants subject to constructive evictions, the Relocation Ordinance permissibly regulates the direct effects of eviction, as explicitly authorized by the text of Costa-Hawkins itself.

Tenants' experiences emphasize the harsh reality of constructive evictions and underscore the necessity of providing relocation assistance to tenants in need. (See generally Declaration of Silvia Anguiano.) For example, Ms. Anguiano relies on social security benefits and part-time work to make ends meet. (*Id.*, at ¶5.) Currently, she faces a substantial 15% rent increase imposed by her landlord. (*Id.*, at ¶4.) Even before this increase, her finances were precarious, making paying rent a constant challenge. (*Id.*, at ¶5.) This impending rent hike places her current home beyond financial reach, potentially forcing her and her son to leave their community. (*Id.*) The Relocation Ordinance recognizes the hardships tenants like Ms. Anguiano encounter in the face of excessive rent increases and extends essential support through mandated relocation assistance. (Declaration of Silvia Anguiano ¶8.) This assistance serves as a lifeline for tenants.

**2. Relocation assistance ordinances are a valid exercise of a municipality's police power.**

Recognizing the legitimate interest of cities to support displaced tenants and mitigate

increasing homelessness, courts have repeatedly upheld ordinances requiring landlords to pay reasonable relocation benefits to tenants facing eviction, even when those ordinances have an incidental impact on a right granted by another provision of law. The dispositive issue in this line of cases is whether the impact amounts to a *de facto* prohibition on rental increases or is instead a reasonable regulation of displacement impacts that arise therefrom. The Relocation Ordinance clearly falls in the latter category.

In *Pieri v. City and County of San Francisco*, a facial challenge to San Francisco's relocation assistance ordinance, the court upheld a requirement that landlords pay relocation assistance up to a maximum payment of $13,500 per rental unit to tenants being evicted under the Ellis Act. The petitioners in *Pieri*, two residential landlords and a landlords' organization, argued "that the City's relocation ordinance violate[d] the Ellis Act by placing a prohibitive price on a landlord's decision to go out of business." (*Pieri v. City & County of San Francisco* (2006) 137 Cal.App.4th 886.) However, the Court concluded that "a requirement of reasonable relocation assistance compensation for displaced tenants" was authorized by the state statute, and further held that the $13,500 relocation payment did not amount to an undue penalty on the exercise of a landlord's rights. (*Id*.)

Relocation assistance ordinances have also been upheld in a variety of other circumstances. For example, in *Kalaydjian v. City of Los Angeles* the court found that a Los Angeles city ordinance that required landlords who converted apartments to condominium use to pay relocation assistance to displaced tenants was a valid exercise of the city's police power. (*Kalaydjian v. City of Los Angeles* (1983) 149 Cal.App.3d 690, 692, 197 Cal.Rptr. 149). The court in *People v. H & H Properties* reached the same conclusion in another case regarding the conversion of housing to condominiums. (*People v. H & H Properties* (1984) 154 Cal.App.3d 894, 897–898 & fn. 1, 901, 201 Cal.Rptr. 687). (See also, e.g., *2710 Sutter Ventures, LLC v. Millis* (2022) 82 Cal.App.5th 842, 855 ("[The] requirement that landlords pay reasonable relocation assistance benefits is a 'valid and appropriate exercise[] of a public entity's power to mitigate adverse impacts on displaced tenants . . . '") [internal citation omitted].) *Pieri*, its predecessors, and its progeny are clear: a requirement to pay reasonable relocation assistance is well within a municipality's police power and is not preempted by state law when the requirement does not amount to a prohibition on the exercise of the right.

Similarly, a review of cases where courts have actually struck down relocation assistance ordinances further demonstrates the reasonableness of the City's Ordinance here. For example, in *Coyne v. City and County of San Francisco*, the Court considered an ordinance that entitled a tenant evicted under the Ellis Act "to an increased relocation payment set as the greater of the existing relocation payment . . . or the new, enhanced amount: 'the difference between the tenant's current rent and the prevailing rent for a comparable apartment in San Francisco over a two-year period.'" (*Coyne v. City & County of San Francisco* (2017) 9 Cal.App.5th 1215, 1219.) The Superior Court found, and the Court of Appeal agreed, that "the enhanced relocation assistance amount in the ordinance was not 'reasonable' because it '[was] not directed at the adverse *impacts* caused by a landlord's decision (i.e. the need to pay first/last months' rent and a security deposit and to incur moving expenses), but [was] instead explicitly implemented to subsidize the payment of rent that a displaced tenant will face on the open market, regardless of income, and it requires this subsidy for two years." (*Id*. [emphasis added].) Unlike in *Coyne*, the Relocation Ordinance at issue in this case is reasonable because it is a one-time fee for an amount intended to approximate the actual cost of relocation—which usually includes the first and last months' rent, a security deposit, and moving expenses—as opposed to a subsidy to cover the tenant's future rent for *two years*. (See Gonzalez Decl. at ¶¶ 6–9 [describing Gonzalez's experience of becoming homeless following eviction due to the financial barriers to secure new housing]; Sam Decl. at ¶¶ 5, 7 [noting that "[m]any places asked for two months of rent upfront in addition to a security deposit equal to one month s rent" and that Sam's family spent $10,150 total on temporary housing, application fees, and the security deposit following displacement].)

Similarly, *Johnson v. City and County of San Francisco* is also inapposite. In *Johnson*, a portion of the San Francisco Administrative code was invalidated because it required landlords evicting tenants under the Ellis Act to notify the tenants about the amount of payment which the landlord *believed* to be due to the tenants. This "belief requirement" was preempted because it placed the burden on the landlord to state his or her belief about the tenant's entitlement to assistance without first requiring the tenant to offer some showing of entitlement, thereby placing a prohibitive price on a landlord's right to exit the rental market. (*Johnson v. City & County of San Francisco* (2006) 137

Cal.App.4th 7.) Unlike the court in *Coyne*, the *Johnson* court did not focus on the relocation *amount,* but on the burden placed on the landlord to determine the tenant's potential entitlement to an increased relocation amount. The Relocation Ordinance at issue here places no such burden on the landlord by fixing a relocation amount.

As such, Petitioner's argument that the City "simply does not have a valid interest in regulating so-called 'constructive evictions' that are the result of good-faith rent increases" is senseless. (Opening Brief. at p. 16.) No one can dispute that the City has an enormous stake in ameliorating the homelessness and housing insecurity crisis plaguing Los Angeles. Nor can it be disputed that massive rent increases force tenants to relocate—and often into homelessness or less secure housing. See generally Anguiano Decl.; Declaration of Anabella Sam at ¶ 3–4; Declaration of Heidi Gonzalez at ¶ 9.) In fact, the state legislature has recognized that rental rate increases over ten percent are harmful in many contexts and can be subject to municipal intervention. Simply put, state law leaves no room for dispute that the City has a legitimate interest in regulating constructive evictions that result from these rent increases. (See *Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1244 (finding that "protecting the City's residents from abuse by landlords" is a legitimate government purpose).)

**3. The Relocation Ordinance does not eliminate economic benefit to landlords.**

Petitioner cannot show that the Relocation Ordinance prohibits—either explicitly or *de facto*—landlords from exercising their right to establish rental rates under Costa-Hawkins, so instead they argue that the relocation assistance required by the Ordinance is tantamount to a penalty, as it allegedly eliminates the economic benefit to landlords of raising rent by over ten percent. (Opening Brief. at pp.13–14). However, Petitioner fails to explain why the City would narrowly tailor a "penalty" to specifically cover a displaced tenant's first and last month's rent plus a security deposit and moving expenses (all of which are costs commonly borne by renters seeking a new apartment), so Petitioner instead relies on dubious arithmetic to argue that the Relocation Ordinance deprives from landlords of all economic benefit of rent increases.

There are multiple fatal flaws in the Petitioner's "simple arithmetic." (Opening Brief at pp.

13–14). First and most fundamentally, Petitioner assumes that a landlord whose tenant self-evicted after a proposed ten percent rent increase would keep that same proposed rate for the subsequent new tenant (Opening Brief at pp. 13-14). However, after a tenant has moved out and relocation benefits are paid, a landlord is free to set the new rental rate at whatever amount they please. While Petitioner states that market forces "constrain" potential rent increases (Opening Brief at pp. 14), such forces do not legally prohibit a landlord from proposing grossly unreasonable rent increases to current tenants as a pretext to constructively evict them, and then installing a new tenant at a rental rate below the pretextual rental rate but still well above rent of the displaced tenant. In short, even with the Relocation Ordinance, landlords have an unrestrained ability to propose acutely high rent increases in order to constructively evict a tenant and thereafter raise the rent to whatever they please.

In addition, Petitioner's "simple arithmetic" is built on self-selected numbers and unreliable and unrealistic assumptions. Critically, Petitioner assumes only a one-year timeline and a base rent already near market rent to illustrate their point. For example, Petitioner asserts that a 2-bedroom unit's $8,077 relocation payment dwarfs the $1,200 incremental benefit a landlord would receive from a fifteen percent rent increase versus a ten percent increase. To reach this figure, Petitioner assumes a base rent of $2,000 (merely ten percent below fair market rent) and a 12-month period in order for landlords to recoup the relocation payment expense. However, in many cases the tenancies being protected by this Ordinance are significantly below the market rent rent, creating a much more significant return for the landlord. For example, if one assumes a base rent of $1,500 (*i.e.*, thirty percent below market rent) and a rent increase sufficient to set the new rent at the Petitioner's proposed $2,300 rate, a landlord would receive enough additional income to recoup the cost of the relocation payment in 13 months, without even counting the first ten percent of increased rental income. Moreover, the economic benefits to the landlord would only continue to grow into the future if the new tenant remained in the property beyond that time period and could grow exponentially with future rent increases. As shown here, Petitioner's malleable and overly narrow arithmetic should be viewed with caution.

Further, Petitioner argues that the Relocation Ordinance should be struck down because it is "both under- and over-inclusive" and "does not apply to a tenant who chooses to leave because they

cannot afford an increase below the cap, yet does apply where a tenant can afford an increase above the cap, but chooses to leave in order to receive the benefits (or for some other unrelated reason)." (Opening Brief at pp.15). But far from providing a basis for striking down the ordinance, Petitioner's argument actually reinforces the notion that the ordinance targets *evictions*, not rental rates. While rental rates even on rent-controlled units are inherently subject to modest increases over time due to inflation, constructive evictions occur due to *acutely high* rent increases. Thus, an ordinance requiring relocation benefits only following *acutely high* increases rather than *all* increases is reasonably intended to offset the effects of *evictions*, not just any financial hardship caused by a more modest increase in rent.

Additionally, Petitioner's argument (without evidence) that the Ordinance is overinclusive by offering relocation assistance to tenants that can afford the increase but nonetheless choose "to leave in order to receive the benefits" betrays a fundamental misunderstanding of why relocation payments are set at three months' fair market rent plus moving expenses. Relocation payment amounts are narrowly tailored to compensate tenants for their actual moving expenses: first and last month's rent, a security deposit payment, and costs associated with the move itself. Tenants require this minimum amount to actually transition to other housing, a process that regularly demands tenants pay rent for two units at the same time and payment of a security deposit prior to receiving a return of their (often deducted) security deposit from their current landlord. Contrary to the Petitioner's argument, no rational tenant would opt to self-evict purely for the benefit of the relocation assistance, which would almost certainly be entirely consumed by their subsequent move.

Finally, Petitioners' argument that the Relocation Ordinance does not regulate evictions because it "applies only where a tenant 'elects to relinquish their tenancy' following a rent increase" is inapposite. (Opening Brief at pp. 15.) As argued *supra*, a tenant who "elects" to relinquish their tenancy following an excessive rent hike has been subjected to a *constructive* eviction, regardless of whether they were forced to relocate for financial versus purely legal reasons. It is clear that "public entities have some . . . power under existing law… to mitigate adverse impacts on displaced tenants," and the City properly exercised that power through passage of the Relocation Ordinance. (See *Pieri*, 137 Cal.App.4th at 892.)

### B. The Nonpayment Ordinance is not preempted because it is a substantive, not procedural, regulation on evictions.

"[A] city, pursuant to its police power, may place substantive limitations on otherwise available grounds for eviction, but not procedural ones." (*Birkenfeld*, *supra*, 17 Cal.3d at pp. 147–49.) Pursuant to its police power, the City of Los Angeles regulates residential evictions through LARSO and the Just Cause Ordinance, which establish the permissible substantive grounds for unlawful detainer. (L.A. Mun. Code, §§ 151.09, 165.03.) The Nonpayment Ordinance at issue here, which permits landlords to initiate an unlawful detainer action when a tenant's past due rent "exceeds one month of fair market rent for the Los Angeles metro area" for an equivalent sized rental unit, is a valid exercise of the City's authority.

#### 1. Cities have due authority to regulate substantive bases of eviction.

The permitted grounds for eviction under City law include tenant-fault reasons, such as nonpayment of rent, lease violation, or nuisance, as well as no-fault reasons, such as owner move-in and removal of the rental unit from the rental market (i.e., Ellis Act). In numerous instances, the City has put substantive limitations on what would otherwise be a sufficient reason to evict a residential tenant under the state's unlawful detainer statute (Code Civ. Proc., 1161 et seq.). For example, a tenant who violates a lease provision restricting occupancy may not be evicted under LARSO if the additional occupant is either the first or second dependent child to join the existing tenancy. (L.A. Mun. Code, § 151.09.A.2.(b).) In a jurisdiction without this substantive limitation, the landlord could evict such a tenant under § 1161(4) of the Civil Code. Courts have repeatedly and unfailingly upheld cities' authority to regulate the specific, substantive bases for eviction. (See, e.g., *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 706–09, *aff'd sub nom. Fisher v. City of Berkeley, Cal.* (1986) 475 U.S. 260.)

Petitioner's contention that the Nonpayment Ordinance is preempted by the state unlawful detainer statute is misguided. In contrast to rent stabilization ordinances that regulate the substantive grounds for eviction, "the purpose of the unlawful detainer statutes is *procedural*." (*Id*. (emphasis added).) While rent stabilization ordinances are municipal legislation, unlawful detainer procedure is governed by state law. (*Larson v. City & County of S.F.* (2011) 192 Cal.App.4th 1263, 1297.) The

unlawful detainer statute "implement[s] the landlord's property rights by permitting him to recover possession once the consensual basis for the tenant's occupancy is at an end." (*Fisher v. City of Berkeley, supra,* 37 Cal.3d at p. 706.). Therefore, only "locally imposed *procedural* constraints" (original emphasis) are preempted by the unlawful detainer statute; substantive restrictions on evictions fall squarely within the municipal police power and are not preempted. (*Larson v. City & Count. of S.F., supra,* 192 Cal.App.4th at p. 1298–99).

**2. Mere incidental delay does not render an eviction regulation procedural.**

Petitioner contends that the Nonpayment Ordinance could "delay the commencement of evictions based on nonpayment, in order to give tenants more time to avoid eviction." (Opening Br. at 18 [emphasis removed].) Even if true, this would be insufficient to render the Ordinance preempted as a procedural constraint. California courts have repeatedly upheld similar substantive limitations on evictions that, like the Nonpayment Ordinance, could have an incidental impact of delaying the initiation of unlawful detainer proceedings. For example, in *San Francisco Apartment Association v. City and County of San Francisco*, the court upheld an ordinance barring no-fault evictions of families with children and educators during the school, ruling it was not preempted by the unlawful detainer statute. (*San Francisco Apartment Assn. v. City & County of San Francisco* (2018) 20 Cal.App.5th 510.) The court reasoned that even though the ordinance had an incidental impact on the timing of certain evictions—since they could not occur until after the school year--the ordinance was not preempted, in part because it did not impose any *procedural* requirements for the ultimate unlawful detainer action. Rather, the ordinance had only an incidental procedural impact which was necessary to regulate the substantive grounds of the defense that the ordinance created. (*Id*., at 518.) The incidental delay resulting from the Nonpayment Ordinance at issue here—likely a month or two at most for even units well below market rate—would be far less than the delay resulting from the ordinance at issue in *San Francisco*, which prohibited whole categories of evictions during nine months out of the calendar year.

Moreover, because Petitioners concede that the City could have set a nonpayment threshold based on a "material" amount of back rent owed (Opening Brief at p. 19), they are forced to

mischaracterize the Nonpayment Ordinance as a temporal threshold. It is not. The Ordinance simply uses one month of HUD's Fair Market Rent Calculation as an objective, indexed standard for what amounts to a "material" amount of money.

Petitioners also make a strawman argument that "if the City has the authority to prohibit evictions where no more than one month's rent is overdue, there is no obvious reason why it could not set a higher threshold or decide to prohibit evictions for non-payment altogether." (Opening Brief at p. 20.) As an initial matter, the Court need not slide down that slippery slope because that issue is not before the Court. With respect to the ordinance actually at issue here, the law is clear: "municipalities may by ordinance limit the substantive grounds for eviction by specifying that a landlord may gain possession of a rental unit only on certain limited grounds." (*San Francisco Apartment Assn*., *supra*, at p. 128.) That Petitioners do not like the state of the law does not render it preempted. Further, contrary to petitioners' assertion that a hypothetical elimination of the nonpayment basis for eviction "would eviscerate the unlawful detainer statutes and render the summary process established by the Legislature meaningless," (Opening Br. At 20), in such a scenario, there would nonetheless continue to be numerous other bases for eviction for which the unlawful detainer statutes would still provide a remedy. The statutes would hardly be "eviscerated" or rendered "meaningless."

**3. Eviction is a severe remedy, and the City is legally entitled to regulate its bases amid a severe housing crisis.**

For low-income tenants with tight, fixed budgets, even modest rent increases can have catastrophic consequences. For example, for Takeyshia Flemings, a Section 8 voucher recipient and sole provider for her two children and niece, a recent increase from $400 to $1067 in her portion of the rent left her unable to make rent for October. (See Declaration of Takeyshia Flemings at ¶¶ 1–3.) Flemings, like countless low-income tenants across the City of Los Angeles, is now relying on the Nonpayment Ordinance to keep her family from becoming homeless due to nominal amounts of back rent owed. (*Id*., at ¶¶ 6–8.)

Eviction is a serious remedy with potentially grave impacts on the health and livelihoods of individuals and families alike. It is far from the only remedy available to landlords when tenants do

not pay rent. Moreover, its primary intended purpose is allowing landlords to regain possession of their units rather than to enable the collection of back rent. That cities can specify, constrain, and give nuance to the permissible bases for evictions within their boundaries is well-established in law and well-justified in the reality of homelessness and housing insecurity, especially in Los Angeles. The City of Los Angeles has decided that a dollar of unpaid rent does not constitute an eviction-worthy offense—nor should it, particularly when landlords are free to sue for back rent in civil court at any time. By contrast, a tenant's eviction can lead to displacement from their community, work, school, and families, or even to homelessness. The Nonpayment Ordinance ensures that a remedy as severe as eviction can only be accessed when certain pre-conditions are met, and it is a fair and valid exercise of the City's power to regulate the substantive grounds for eviction.

## IV. CONCLUSION

For the foregoing reasons, Intervenors respectfully request the Court find that the Ordinances are not preempted and enter judgment for the City of Los Angeles.

Dated: October 9, 2023

**SUSMAN GODFREY L.L.P.**

By: */s/ Ellie Dupler*

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**PROOF OF SERVICE**

I, the undersigned, declare:

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 1900 Avenue of the Stars, Suite 1400, Los Angeles, California 90067-6029.

On October 9, 2023, I served the foregoing document(s) described as follows:

**INTERVENTORS' OPPOSITION TO OPENING BRIEF**

on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached service list, as follows:

SEE ATTACHED SERVICE LIST

☐ BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ BY PERSONAL SERVICE:
I caused to be delivered such envelope by hand to the offices of the addressee.

☐ BY FEDERAL EXPRESS OR OVERNIGHT COURIER

☒ BY ELECTRONIC MAIL
I caused said documents to be prepared in portable document format (PDF) for e-mailing and uploading the document listed above to the Court's Electronic Filing Service Provider (First Legal https://www.firstlegal.com/or One Legal https://www.onelegal.com/) for e-service to the email address(es) set forth on the attached service list. To my knowledge, the e-service was reported as complete and without error. See Cal. R. Ct. R. 2.251 and CCP § 1010.6.

Executed on October 9, 2023, Los Angeles, California.

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

Ellie Dupler
Typed Name

/s/ *Ellie Dupler*
Signature

**SERVICE LIST**

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