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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE**

APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC. dba APARTMENT ASSOCIATION OF GREATER LOS ANGELES, Petitioner/Plaintiff, vs. CITY OF LOS ANGELES; COUNCIL OF THE CITY OF LOS ANGELES and DOES 1 through 100, inclusive, Defendants and Respondents.	Case No. 23STCP00720 Hon. Mitchell L. Beckloff, Department 86 **RESPONDENT CITY OF LOS ANGELES'S OPPOSITION TO PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES** *Filed concurrently with Request for Judicial Notice and Evidentiary Objections* Hearing Date: May 17, 2023 Time: 9:30 am Department: 86 Action filed: March 3, 2023 Trial date: None set

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I. INTRODUCTION

Anticipating the sunset of many COVID-19-pandemic tenant protections, the City of Los Angeles passed the two ordinances challenged in this lawsuit: Ordinance No. 187763 makes unpaid rent not a ground for eviction until the tenant accrues at least one month of overdue fair-market rent; Ordinance No. 187764 requires landlords to pay relocation assistance when tenants relinquish their tenancies because of rent increases greater than a specified percentage of their rent (this year, 10 percent). The City Council passed both ordinances after expressly finding that evictions cause profound damage to the City's residents and communities. The laws became operative on March 27, 2023.

Petitioner now asks the Court to enjoin these ordinances as preempted by state law, but it has offered no significant evidence of the kind of irreparable harm necessary to get preliminary relief against the City. A preliminary injunction would not preserve the status quo; it would roll back protections that have been in place for weeks and open the door to harmful evictions. While some tenants could lose their homes while this lawsuit is pending, Petitioner's alleged interim harms are monetary. Courts have long ruled that monetary harms are not "irreparable." Finally, Petitioner is unlikely to succeed on the merits. Both ordinances regulate evictions, a subject long the province of local authority. Neither is preempted by state law. The Court should deny Petitioner's motion.

II. FACTUAL AND LEGAL BACKGROUND

A. The City's Rent Stabilization Ordinance

California cities have long had the authority to regulate residential rents and evictions based on police powers granted by the California Constitution. *E.g.*, *Birkenfeld v. City of Berkeley*, 17 Cal.3d 129, 149 (1976) (prohibitions on evictions place "limitation[s] upon the landlord's property rights under the police power"); *Fisher v. City of Berkeley*, 37 Cal.3d 644, 706 (1984) (same); *see also Palos Verdes Shores Mobile Estates Ltd. v. City of L.A.*, 142 Cal. App. 3d 362, 365, 374 (1983) (California Mobilehome Residency Law does not preempt Los Angeles's Rent Stabilization Ordinance). For decades, the City has regulated residential rents and evictions through its Rent Stabilization Ordinance ("RSO"). The RSO protects tenants from excessive rent increases while simultaneously providing landlords with "just and reasonable" returns on their property. L.A. Mun. Code ("LAMC") § 151.01 (Request for Judicial Notice ("RJN") Ex. A). The RSO has two main features: it regulates rent

increases and requires evictions to be based on one of fourteen "just cause" reasons, which include "at-fault" reasons like causing a nuisance and "no fault" reasons like a landlord's exit from the rental business. LAMC §§ 151.04, 151.06 (restrictions on rent increases); 151.09.A (evictions). No-fault evictions typically require landlords to pay relocation assistance to help their tenants move. *Id.* § 151.09.G. The RSO applies to all "rental units" in the City, but generally excludes housing built after 1978. *Id.* § 151.02.

These "just cause" eviction protections are not unique. At least 20 California cities have similar renter protections. The Rutter Group, Cal. Prac. Guide Landlord-Tenant, Ch. 5-A, at 1. In 2019, California enacted statewide just cause protections, which expressly do not preempt stricter local regulations. Civ. Code § 1946.2(a), (b), (g)(1). To prevent rent gouging, the state law also generally prohibits rent increases greater than 10 percent for certain rental properties. *Id.* § 1947.12(a), (m).

B. The City's New Renter Protections Following the COVID-19 Pandemic

At the onset of the COVID-19 pandemic, like many governments, the City adopted temporary protections against evictions to prevent homelessness and the spread of disease. L.A. Ord. Nos. 186585; 186606. (RJN Ex. B, C). In all relevant respects, these renter protections ended by February 2023. L.A. Ord. No. 187736 (RJN Ex. D).

To prevent a subsequent surge of evictions, the City Council adopted a series of ordinances expanding existing renter protections. It found that "[d]isplacement through arbitrary evictions affects the public health, safety and welfare of Los Angeles residents. Evictions destabilize communities by disrupting longstanding community networks, uprooting children from their schools, forcing low-income residents to pay unaffordable relocation costs, and pushing City residents away from important public services. Additionally, arbitrary evictions are a key driver of homelessness." L.A. Ord. No. 187737, at 1 (RJN Ex. E). On January 20, 2023, the City Council passed the "Just Cause for Eviction Ordinance of the City of Los Angeles" ("Just Cause Ordinance") to prohibit evictions without a just-cause reason. *Id.* at 3. These protections are similar to those provided by the RSO, but apply to a wider range of rental units in the City. LAMC §§ 165.00, 165.02, 165.03 (RJN Ex. F).

C. The Ordinances Challenged in this Lawsuit

The City Council followed the Just Cause Ordinance in early February 2023 with the two ordinances at issue here. They have been effective since March 27, 2023.

Ordinance No. 187763 (RJN Ex. G) amended the RSO and the Just Cause Ordinance to make owing rent not a ground for eviction until the tenant owes more than "one month of fair market rent for the Los Angeles metro area set annually by the U.S. Department of Housing and Urban Development for an equivalent sized rental unit as that occupied by the tenant." LAMC §§ 151.09.A.1; 165.03.A.

The City's Housing Department ("LAHD") recommended Ordinance No. 187763 because evictions cause significant harm to the City. "[E]victions for non-payment of rent can take place for minor amounts of past due rent, even as little as one dollar. Evictions are extremely painful and disruptive to an individual, family, and community." RJN Ex. J, at 6. Evictions are "an extraordinary legal remedy that should not be used as a debt collection tool to recover relatively small sums." *Id.* LAHD also recognized that tenants sometimes experience sudden losses in income and should not be displaced while waiting for government assistance; "[i]f a renter loses their employment and applies for unemployment benefits, on average it takes six weeks to receive the assistance, by which time the eviction process may be underway." *Id.*; *see also* RJN K at 53 ("Over a third of adults . . . report that they would need to borrow money or sell something in order to cover an unexpected $400 expense."). Tenants still owe rent, collectible in a civil action, but the policy would prevent the failure to "pay relatively small amounts" from resulting in those tenants losing their homes. RJN Ex. J at 6.

Ordinance No. 187764 (RJN Ex. H) amended the Just Cause Ordinance to require payment of relocation assistance when a tenant "elects to relinquish their tenancy" following a proposed rental increase "that exceeds the lesser of (1) the Consumer Price Index – All Urban Consumers, plus five percent, or (2) ten percent." This year, no payment is necessary for rent increases of up to 10 percent. RJN Ex. I at 2. The ordinance does not apply to properties already covered by the RSO (LAMC § 165.04.A), and says nothing about what the landlord may charge the next tenant if a vacancy exists. The relocation assistance owed is "three times the fair market rent in the Los Angeles Metro area for a rental unit of a similar size as established by the United States Department of Housing and Urban Development plus $1,411 in moving costs," LAMC § 165.09.C, or one month of rent when (a) the rental

unit is a single-family residence, and the landlord (b) is a natural person or owns property through a legal entity controlled by the landlord, and (c) owns no more than five dwellings in the City, *id.* § 165.09.D.

LAHD recommended Ordinance No. 187764 because "[a]dditional protections are needed to close a loophole that allows tenants in non-RSO units to be forced out through large rent increases amounting to a constructive eviction of the tenant, with no allowance for relocation." RJN Ex. J at 5. The ordinance "would provide renters who are not protected by the RSO or State law with the financial means to secure alternative housing when forced to relocate due to high rent increases[.]" *Id*. Relocation assistance will help tenants "pay for moving expenses and move-in costs such as the first and last months' rent and a security deposit." *Id.*

Petitioner then sued the City challenging these two ordinances as preempted under state law: Ordinance No. 187763 by the state's unlawful detainer statute (Code Civ. Proc. §§ 1159 *et seq.*), and Ordinance No. 187764 by the Costa-Hawkins Rental Housing Act (Civ. Code §§ 1954.50 *et seq.*).

III. APPLICABLE LEGAL STANDARDS

A. Preliminary Injunctions

To obtain a preliminary injunction, Petitioner must show (1) it will likely prevail on the merits at trial and (2) that in the absence of an injunction, it will suffer "irreparable harm" that is greater than the harm an injunction would cause the City. Code Civ. Proc. § 526(a)(1), (2); *People ex rel. Gallo v. Acuna*, 14 Cal.4th 1090, 1109 (1997). A preliminary injunction is a "summary, peculiar, and extraordinary" remedy and should not be issued except to prevent "great and irreparable injury." *Pellissier v. Whittier Water Co.*, 59 Cal. App. 1, 6 (1922). "The mere allegation that irreparable injury will result" is insufficient; "the facts must be stated, that the court may see that the apprehensions of irreparable mischief are well founded." *Golden Gate Sightseeing Tours, Inc. v. City & Cty. of S.F.*, 21 Cal. App. 2d 582, 585 (1937). There is a general rule against enjoining public agencies from performing their duties. *Tahoe Keys Prop. Owners' Ass'n v. State Water Res. Control Bd.*, 23 Cal. App. 4th 1459, 1471 (1994). Petitioner must make a "significant showing" of irreparable injury to support injunctive relief. *Id.*

B. Preemption Principles

Under the California Constitution, cities "may make and enforce" local legislation to protect health, safety, and welfare. Cal. Const. art. XI, § 7. Cities have "plenary authority to govern, subject only to the limitation that they exercise this power within their territorial limits and subordinate to state law." *Candid Enters., Inc. v. Grossmont Union H.S. Dist.*, 39 Cal.3d 878, 885 (1985). Apart from this limitation, the police power is "as broad as the police power exercisable by the Legislature itself." *Birkenfeld*, 17 Cal.3d at 140. Local regulation is not preempted by state law unless it conflicts with state law. *Rental Hous. Ass'n of N. Alameda Cty. v. City of Oakland*, 171 Cal. App. 4th 741, 752 (2009). "A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." *Id.* (cleaned up). State law does not preempt local legislation when they serve different purposes. *Birkenfeld*, 17 Cal.3d at 149.

There is generally a "strong presumption that legislative enactments 'must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears.'" *Rental Hous.*, 171 Cal. App. 4th at 752. "Absent a clear indication of preemptive intent from the Legislature," courts presume that local regulation in an area over "which [local government] traditionally has exercised control" is not preempted. *Id.* The party claiming that state law preempts a local ordinance has the burden of demonstrating preemption. *Big Creek Lumber Co. v. Cty. of Santa Cruz*, 38 Cal.4th 1139, 1149 (2006).

C. Facial Challenges

Because Petitioner does not appear to challenge any particular application of the two ordinances, its challenge is a facial one. "To support a determination of facial unconstitutionality," Petitioner "cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular *application* of [the laws]. . . Rather, [it] must demonstrate that the [laws] inevitably pose a present total and fatal conflict with applicable constitutional prohibitions." *Tobe v. City of Santa Ana*, 9 Cal.4th 1069, 1084 (1995).

IV. ARGUMENT

A. Petitioner Fails to Demonstrate Irreparable Harm Absent Preliminary Relief

The Court should deny Petitioner's motion because it has not demonstrated the "significant," "irreparable" harm required for an injunction against the City. Petitioner's purported harm—based on

speculative, inadmissible opinions about some possible income forgone by its members—is not irreparable harm. In any event, speculative economic injury does not outweigh the harm to the City if the motion were granted—evictions and their cascading effects.

1. Petitioner has not made a "significant" showing of irreparable harm; its members' alleged harm is monetary

To get a preliminary injunction, Petitioner must show "irreparable harm"—the absence of an adequate damages remedy at law. Code Civ. Proc. § 526(a)(2), (4). Harm is not irreparable if damages will compensate an injured plaintiff adequately. *E.g.*, *Dep't Fish & Game v. Anderson-Cottonwood Irrigation Dist.*, 8 Cal. App. 4th 1554, 1565 (1992); *Tahoe Keys*, 23 Cal. App. 4th at 1472; *see also L.A. Mem'l Coliseum Comm'n v. NFL*, 634 F.2d 1197, 1202 (9th Cir. 1980) ("lost revenues" considered "monetary injury" not "normally considered irreparable"); *Rent-A-Ctr., Inc. v. Canyon Tele. & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991) (recognizing that "economic injury alone does not support a finding of irreparable harm"). Petitioner has not made this showing.

Petitioner's evidence is that its members' alleged harm during the pendency of this lawsuit will be diminished revenue. One declarant, for example, generally asserts that her company will be unable to make a "decent" return on its investments. Amareld Decl. ¶ 11. This is not irreparable harm. Specifically as to Ordinance No. 187763, pertaining to evictions for nonpayment of rent, Petitioner provides declarations from three out of 10,000 members asserting that between 2 to 5 percent of their tenants are behind on rent because of the ordinance. Amareld Decl. ¶ 5 (157 tenants out of 5,463 owe rent); Gurfinkel Decl. ¶ 3 (18 out of 700); Gorokhovsky ¶ 5 (1 out of 20). The Amareld and Gurfinkel Declarations allege rental arrears of hundreds of thousands of dollars, yet their companies either manage or own hundreds or thousands more other revenue-generating rental units.[1] No declarant explains how

[1] While the City does not wish to diminish the declarants' alleged losses, they do not rise to the level of irreparable harm. It is also unclear that the harms alleged in the declarations are attributable to the City's ordinance, as opposed to other regulations or business decisions made by the declarants. For example, two declarants attempt to use alleged harms apparently caused by the COVID-19 pandemic to bolster their claims of irreparable harm here, but neither law regulates COVID-19-related debt. *E.g.*, Amareld Decl. ¶ 7. One alleges that her management company, which does not appear to own the rental

much rental revenue has been collected otherwise. None assert any imminent danger of being unable to pay the bills or their mortgages. *See Korean Phil. Presbyterian Church v. Cal. Presbytery*, 77 Cal. App. 4th 1069, 1084 (2000) (harm must be imminent as opposed to a possibility sometime "in the future"). No declarant explains how the law could diminish their profits in a way that is "irreparable," or explains how these alleged injuries are materially different from the kinds of business risks and losses Petitioner's members usually incur. And again, the City ordinance does not prevent landlords from collecting rent; for example, landlords may recover rent in a civil action. The availability of that remedy alone shows the absence of irreparable harm.

Petitioner's evidence as to Ordinance No. 187764, pertaining to relocation assistance, also shows the alleged harm is monetary, and not irreparable. One declarant says her company wants to raise rents by as much as 12, as opposed to 10, percent because it did not raise rents in the three prior years and says it will suffer "irreparable harm" because it would not be "economically feasible" to pay relocation benefits. Amareld Decl. ¶¶ 3, 4. At footnote 1 of its motion, Petitioner asserts that "a property owner that raises rent from $2,000 to $2,220 (an 11% increase) would be required to pay relocation benefits of $8,077. . . The extra $20 per month a property owner might realize by raising rent 11% instead of 10% . . . is obviously not worth the risk a tenant will take the benefits and rent elsewhere." Mot. at 12, n.1. Setting aside that in both situations tenants might accept rent increases rather than incur the hassle of moving, all Petitioner has shown is that some members might forego some additional rent (in footnote 1, $20 a month) while the lawsuit is pending, or pay some money for tenants to move. Meanwhile, if tenants do move, the City does not prevent landlords from charging the next tenant whatever the market will bear. This, too, cannot be irreparable harm.

2. <u>The harms evictions cause the City weigh against preliminary relief</u>

The City has made numerous findings about the harm to its neighborhoods, residents, and quality of life if evictions are unregulated. *E.g.*, LAMC § 165.01 ("Displacement through arbitrary evictions

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property identified in her declaration, spent "more than $1.7 million on maintenance and upkeep costs," while experiencing a "lack of revenue" (yet was able to take out a quarter-million dollar line of credit). Gurfinkel ¶¶ 6, 7.

affects the public health, safety and welfare of Los Angeles residents."). The City Council and California Legislature have repeatedly deemed our residential housing shortage a crisis. *E.g.*, LAMC § 151.01 ("There is a shortage of decent, safe and sanitary housing in the City of Los Angeles resulting in a critically low vacancy factor."); Gov't. Code § 65009(a)(1) ("The Legislature finds and declares that there currently is a housing crisis in California[.]"); Civ. Code § 1947.12(m)(1) ("The Legislature finds and declares that the unique circumstances of the current housing crisis require a statewide response to address rent gouging by establishing statewide limitations on gross rental rate increases."). Homelessness has caused an ongoing state of emergency in the City. RJN Exs. L; M. Should the Court issue a preliminary injunction, the City would risk additional evictions and their cascading harms during a well-recognized housing shortage and homelessness crisis. Tenants could stand to lose their homes because Petitioner has already identified 176 tenants whom its members would evict. Amareld Decl. ¶ 5; Gurfinkel Decl. ¶ 3; Gorokhovsky ¶ 5. A preliminary injunction would not maintain the "status quo" (Mot. at 17); the status quo is that tenants are housed. When considering the effects of evictions and homelessness on the City, the balance of harms weighs overwhelmingly in the City's favor.

B. Petitioner Is Unlikely to Succeed on the Merits

Petitioner's motion must also be denied because it has not demonstrated it would likely prevail at trial. Neither law is preempted. Ordinance No. 187763, pertaining to evictions for nonpayment of rent, is a substantive limit on evictions—like other laws requiring "good cause" for evictions that courts have repeatedly upheld. Ordinance No. 187764, pertaining to relocation assistance, does not prohibit rent increases; it likewise operates like an eviction regulation. And the Costa-Hawkins Act, which Petitioner contends preempts the law, expressly allows local governments to regulate evictions.

1. <u>The unlawful detainer statute does not preempt Ordinance No. 187763</u>

a. California cities may regulate the substantive grounds for evictions

"[M]unicipalities 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." *Rental Hous.*, 171 Cal. App. 4th at 754. California courts have repeatedly upheld this authority against assertions that the state's unlawful detainer statute, Code of Civil Procedure §§ 1159 *et seq*., preempted local eviction regulations. *E.g.*, *Fisher*, 37 Cal.3d at 706; *Birkenfeld*, 17 Cal.3d at 148–49; *Rental Hous.*, 171 Cal.

App. 4th at 763. Because a local government's "elimination of particular grounds for eviction . . . giv[es] rise to a substantive ground of defense in unlawful detainer proceedings," "[t]he mere fact that a city's exercise of the police power creates such a defense does not bring it into conflict with the state's statutory scheme" for unlawful detainer. *Birkenfeld*, 17 Cal.3d at 149. The unlawful detainer statute and local eviction regulations serve different purposes: "The purpose of the unlawful detainer statutes is procedural," while eviction regulations limit "the landlord's property rights under the police power, giving rise to a substantive ground of defense in unlawful detainer proceedings." *Id.*

Thus, in *Birkenfeld* and *Fisher*, Berkeley's "good cause" eviction regulations were not preempted, even though they restricted evictions in circumstances that the state unlawful detainer statute expressly allows. In *Birkenfeld*, voters passed a charter amendment that limited the grounds upon which a landlord may bring an action to repossess rent-controlled units, such as failure to pay rent, committing a nuisance, demolition, or conversion to non-rental housing. 17 Cal.3d at 147. Landlords asserted that Berkeley's regulations conflict with Code of Civil Procedure section 1161 because that section specifies that a tenant's continued possession of the premises after the tenancy expires is an "unlawful detainer," while the local regulations do not. *Id.* at 148. The California Supreme Court found no conflict. *Id.* The Court distinguished substantive limitations on evictions like Berkeley's regulations, which are created through the police power, and the unlawful detainer process, which allows landlords to recover possession of rental property through the courts. *Id.* at 149. In doing so, the Court identified other substantive defenses to evictions, such as the breach of warranty of habitability, that also otherwise bar summary evictions for nonpayment of rent, when the unlawful detainer statute provides that as a ground of eviction. *Id*.

Likewise, in *Fisher*, the Court upheld a provision allowing tenants to withhold rent in response to a landlord's violation of local rent ceilings or failure to register its rental units with the local rent board. 37 Cal.3d at 705. Even though Section 1161 expressly allows a landlord to evict for nonpayment of rent, and the local law thus "effectively eliminates one ground for eviction" provided by state law, the Court held that the local law did not "directly conflict with" the state statute. *Id*. at 707. Reiterating its reasoning in *Birkenfeld*, the Court explained that these local exercises of police power do not conflict with state law "because the statutory remedy for recovery of possession does not preclude limitations on

grounds for eviction for the purpose of enforcing a local rent control regulation." *Id*. "[M]erely because [the] ordinance 'imposes restraints which the State law does not, does not spell out a conflict between State and local law. On the contrary the absence of a statutory restraint is the very occasion for municipal initiative." *Id.* The police power is vested in local government to restrain property rights "because of a sufficient local need." *Id*.

Lower courts have applied *Birkenfeld* and *Fisher* to uphold, against preemption challenges, local regulations that place "substantive limits on otherwise available grounds for eviction under section 1161," including eviction regulations that impact *when* a landlord may pursue an unlawful detainer action. *Rental Hous.*, 171 Cal. App. 4th at 765. For example, the unlawful detainer statute does not preempt an Oakland ordinance requiring landlords to provide "notice and an opportunity to cure any offending conduct" before resorting to an unlawful detainer action. *Id.* at 762. Under the Oakland law, when an eviction is based on a tenant's substantial violation of a material term of the tenancy, damage to the premises, disorderly conduct, or refusal to allow the landlord access to the rental unit, the landlord must provide the tenant a "written notice to cease the offending behavior." *Id.* The landlord must serve the notice to cease before serving any "notice to terminate tenancy" required to initiate an unlawful detainer proceeding. *Id. Rental Housing* rejected the argument that the law raised "procedural barriers" to an eviction: the "warning notice requirements limit a landlord's right to initiate an eviction due to certain tenant conduct by requiring that the specified conduct continue after the landlord provides the tenant written notice to cease." *Id.* at 762–63. If the tenant ceases the offending conduct, there is no good cause to evict. *Id.*

For similar reasons, a San Francisco law is not preempted, although it prohibits no-fault evictions of tenant households with a child or an "educator" during the school year. *S.F. Apt. Ass'n v. City & Cty. of S.F.*, 20 Cal. App. 5th 510, 516–17 (2018) ("*SFAA*"). Its purpose "is to protect children from the disruptive impact of moving during the school year or losing a relationship with a school employee who moves during the school year." *Id.* at 518. Although the law "restricts the timing of evictions of children and educators," when tenants "belong to this protected group, they have a substantive defense to eviction." *Id.* at 517, 518. When tenants "no longer belong to the group," for example because the regular school year has ended, "they no longer have a substantive defense." *Id.* at 518. Then landlords

"may avail themselves of the unlawful detainer procedures." *Id.* The ordinance is a permissible "limitation upon the landlord's property rights under the police power," rather than an "impermissible infringement on the landlord's unlawful detainer remedy." *Id.*

b. Ordinance No. 187763 is not preempted because it regulates evictions

On its face, Ordinance No. 187763 creates a substantive limitation on evictions for nonpayment of rent and so does not conflict with the state unlawful detainer statute. As in the *Birkenfeld* line of cases, a "just cause" does not exist to evict a tenant for owing rent until a monetary threshold, as specified in the ordinance, is met. This limitation is analogous to other just-cause reasons that already exist in the City's RSO, the Just Cause Ordinance, and dozens of other local eviction regulations, including those upheld in *Birkenfeld* and *Fisher*. The ordinance does not alter the procedural aspects of the unlawful detainer statute, but rather defines the substantive conditions that must exist for the unlawful detainer remedy to be available. If a landlord attempts to evict a tenant for nonpayment of rent before the monetary threshold is met, then the ordinance provides the tenant with a substantive defense to that attempted eviction. If the tenant owes more than the applicable monetary threshold, then the defense fails. That is not an "impermissible infringement on the landlord's unlawful detainer remedy." *SFAA*, 20 Cal. App. 5th at 518.

Accordingly, the Court should reject Petitioner's argument that the City seeks "to unlawfully regulate the timing of unlawful detainer actions" because the law requires "property owners [to] delay in bringing such an action." Mot. at 14 (emphasis removed). Petitioner asserts that the ordinance "directly conflicts with the procedure established by Section 1161," which expressly allows a three-day notice to be served on a defaulting tenant "at any time within one year" after rent becomes due. *Id*. (emphasis removed). This reasoning—that eviction regulations are preempted when they have some effect on the *timing* of an unlawful detainer lawsuit—has been rejected in cases like *SFAA* and *Rental Housing. Birkenfeld* and *Fisher* specifically discussed substantive defenses to nonpayment-of-rent evictions that impact the timing of those evictions. If accepted, Petitioner's reasoning would undermine just-cause protections, unchallenged here, that equally impact the timing of evictions. For example, landlords are precluded from evicting tenants *before* paying relocation assistance (LAMC § 151.09.G), *when* the

landlord owns another available comparable unit (*id.* § 151.30.C), or *when* the tenant is terminally ill (*id.* § 151.30.D).

Tri County Apartment Association v. City of Mountain View, 196 Cal. App. 3d 1283 (1987), is not to the contrary. Mot. at 14. *Tri County* concluded that an ordinance requiring landlords to give 60 days' notice of rental increases for month-to-month tenancies was preempted by Civil Code section 827, which allows changes with 30 days' notice. 196 Cal. App. 3d. at 1289, 1296. The ordinance "adopts the same purpose as the statute, *i.e.*, appropriate notification, but then changes the statewide chronology to suit its own agenda." *Id.* at 1296. Although Ordinance No. 187763 may end up having an impact on the timing of evictions for nonpayment of rent, it does not adopt the same purpose as the state unlawful detainer statutes or other notice statutes like Civil Code section 827; it does not specify the *amount* of *notice* required. Once a tenant accrues more than one month of fair-market rent, and a landlord elects to evict, the landlord would serve the eviction notice as required by Section 1161 according to the timeline specified in it. As in *Rental Housing* and *SFAA*, the ordinance's impact on the *timing of evictions* does not render it preempted. *See Roble Vista Assocs. v. Bacon*, 97 Cal. App. 4th 335, 341 (2002) (law providing affirmative defense when landlords fail to offer one-year leases not preempted under *Tri County* or by unlawful detainer statute because it is a "substantive" regulation of evictions).

2. <u>The Costa-Hawkins Act does not preempt Ordinance No. 187764</u>

a. State law expressly allows cities to regulate and monitor evictions

The Costa-Hawkins Act allows landlords, "notwithstanding any other provision of law," to "establish the initial and all subsequent rental rates" of any dwelling that (1) "has a certificate of occupancy issued after February 1, 1995," (2) is "already exempt from the residential rent control ordinance of a public entity on or before February 1, 1995, pursuant to a local exemption for newly constructed units," or (3) is "alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision as specified [in state law]." Civ. Code § 1954.52(a). Separately, the Act provides that landlords may "establish the initial rental rate for a dwelling or unit" following a vacancy, with some exceptions, "what is known among landlord-tenant specialists as 'vacancy decontrol.'" *Id.* § 1954.53(a); *Mak v. Berkeley Rent Stabilization Bd.*, 240 Cal. App. 4th 60, 64 (2015); *Apt. Ass'n of L.A. Cty., Inc. v. City of L.A.*, 136 Cal. App. 4th 119, 122 (2006) ("*AAGLA*"). It expressly

preserves local government authority to "regulate or monitor the grounds for eviction." Civ. Code §§ 1954.52(c), 1954.53(e); *e.g.*, *Bullard v. S.F. Rent Stabilization Bd.*, 106 Cal. App. 4th 488, 489 (2003).

To preserve this local authority, courts have upheld eviction regulations that deter rent increases that would otherwise "vitiate" local governments' ability to regulate evictions. *S.F. Apt. Ass'n v. City & Cty. of S.F.*, 74 Cal. App. 5th 288, 290, 292 (2022) ("*SFAA 2022*"). Thus, *SFAA 2022* upheld a San Francisco ordinance that makes it unlawful to evict a tenant residing in a non-rent-controlled unit "by means of a rent increase" "imposed in bad faith" or designed to "coerce the tenant into vacating the unit." *Id.* at 291. The landlord association argued the Costa-Hawkins Act preempted the ordinance because the ordinance "regulates the rent a landlord may charge on exempt property." *Id.* at 292. Although it conceded that the ordinance does not "directly limit the amount of rent a landlord may charge," the landlords' association argued that the city cannot "do indirectly what it is prohibited from doing directly." *Id.* The court disagreed; the ordinance "do[es] not prevent landlords from earning rent as determined by the free market, and it imposes no caps to ensure the availability of affordable rental housing." *Id.* Rather, the ordinance "prohibit[s] a landlord from designating as rent an artificial sky-high amount that the landlord does not intend to collect but intends to cause the tenant to vacate the unit voluntarily or by eviction for nonpayment of the unrealistic figure." *Id.* "Costa Hawkins does not protect a landlord's right to use a pretextual rent increase to avoid lawfully imposed local eviction regulations." *Id.* (citation omitted).

Mak similarly ruled that the Costa-Hawkins Act does not preempt a Berkeley regulation setting rents adopted to prevent evasion of eviction controls. 240 Cal. App. 4th at 68–69. The Act does not prohibit local governments from regulating the initial rent charged to new tenants when the prior tenancy was terminated under Code of Civil Procedure section 1946.1. *Id.* So the Berkeley regulation creates a rebuttable presumption that a prior tenancy terminated under Section 1946.1 when the tenant moved out within a year of an attempted eviction for the landlord's personal occupancy. *Id.* at 63. It provides that "'[t]he rental rate for the next tenancy established in the vacated unit shall be no more than the maximum allowed . . . for the tenant who vacated, plus any subsequent increases authorized by the Rent Board.'" *Id.* at 64. *Mak* rejected the argument that the rent restriction is preempted by the "vacancy decontrol" provisions of the Costa-Hawkins Act. *Id*. at 68–69. The regulation instead "creates

an administrative deterrent to discourage landlords from serving less than good faith owner move-in notices" and is a permissible regulation of "the grounds for eviction." *Id.* at 69.

b. Ordinance No. 187764 Does Not Regulate Rents; It Regulates Evictions

On its face, Ordinance No. 187764 does not restrict landlords' ability to "establish the initial and all subsequent rental rates" of properties that are not otherwise subject to some price control. A landlord covered by the Costa-Hawkins Act may increase rents to whatever the market will bear. The ordinance does not prevent a tenant from accepting that rent increase. It requires payment of relocation assistance only when the "tenant elects to relinquish their tenancy" following a large rent increase. And if the tenant leaves, the landlord still may charge the next tenant whatever the market will bear. The City's law could have no meaningful impact on the landlord's incentives to raise rents at all, which depends on at least the following: (1) the amount of the tenant's rent, (2) the percentage rent increase the landlord wishes to impose, (3) whether the tenant will accept the rent increase, (4) the fair market rent applicable in the year of the increase, (5) the type of property being rented, and (6) other relevant market conditions. Although the ordinance might result in a proposed rent increase becoming less profitable in some circumstances, that does not mean that it conflicts with the Costa-Hawkins Act, which provides only that a landlord may impose a rent increase, not that the increase will be fully profitable.

Contrary to Petitioner's argument, this relocation assistance is intended to help tenants move, not to penalize landlords who seek to increase rents pursuant to the Costa-Hawkins Act. Mot. at 11, 13; *see* LAMC §§ 165.01 (evictions "forc[e] low-income residents to pay unaffordable relocation costs"), 165.09 (enumerating relocation assistance, including moving costs, payable to tenants). As under the RSO and Just Cause Ordinance, relocation assistance is required when tenants are evicted for a no-fault reason, such as when the landlord leaves the rental business or a government order requires a unit to be vacated. LAMC § 151.09.G. In many instances, under state law, rent increases above 10 percent are considered "excessive" and "unjustified" price gouging. *E.g.*, Civ. Code § 1947.12 (a), (m) (prohibiting rent increases over 10 percent to "address rent gouging"); Pen. Code § 396(e) (prohibiting rent increases over 10 percent to "protect citizens" from price increases during a declared emergency). Large rent increases could displace tenants involuntarily in the same way that other no-fault evictions do. So the City's ordinance helps tenants pay for relocation costs that they would otherwise not have to incur

without the eviction. As in *SFAA 2022*, the law does not prevent landlords from earning "rent as determined by the free market;" it is at most *Mak*'s "administrative deterrent" of constructive evictions. Without the City's law, landlords can eviscerate the City's Just Cause Ordinance by forcing tenants out with large rent increases.

Petitioner offers two inapposite cases, *Bullard* and *AAGLA*. Mot. at 12. Each involved local ordinances that directly conflicted with specific rent decontrol provisions in the Costa-Hawkins Act. Both are distinguishable because Ordinance No. 187764 does not regulate the rent that landlords may charge, either at the outset of a tenancy or later. *Bullard* invalidated a local ordinance requiring landlords to offer replacement units at regulated rates when they evict tenants for personal occupancy. 106 Cal. App. 4th at 491–93. The ordinance directly conflicted with the Costa-Hawkins Act because it prevented the landlord from establishing the initial rental rate for the replacement unit. *Id.* In *AAGLA*, the Act preempted a city ordinance prohibiting landlords, after terminating a Section 8 contract with the local housing authority, from charging tenants more than their portion of the rent under the former contract, "without any limitation as to time." 136 Cal. App. 4th at 122. The ordinance directly conflicted with Section 1954.535, which specifies that for *90 days* after receiving notice of the contract termination, the tenant "shall not be obligated to pay more than the tenant's portion of the rent" under the former contract. *Id.* Section 1954.535 thus "specifie[s] the period of time a tenant's rent payment is frozen following termination or nonrenewal of a Section 8 agreement—90 days following receipt of notice of termination or nonrenewal." *Id.* at 132. The city's law directly contradicted that timing. *Id.*

V. CONCLUSION

For the foregoing reasons, the City respectfully asks the Court to deny Petitioner's motion.

Respectfully submitted,

Dated: May 4, 2023

HYDEE FELDSTEIN SOTO, City Attorney
ELAINE ZHONG, Deputy City Attorney

By: */s/ Elaine Zhong*
ELAINE ZHONG, Deputy City Attorney

Attorneys for Respondent CITY OF LOS ANGELES

PROOF OF SERVICE

I, Elaine Zhong, declare as follows: At the time of service I was over 18 years of age and not a party to this action. My business address is City Hall, 200 North Spring Street, 21st Floor, Los Angeles, CA 90012, which is in the County, City and State where this mailing occurred.

On May 4, 2023, I served the document(s) described as **RESPONDENT CITY OF LOS ANGELES'S OPPOSITION TO PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES** on all interested parties in this action as follows:

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[STATE]

I enclosed true copies of the documents(s) in a sealed envelope or package addressed to the person(s) address(es) as above and:

[] **BY MAIL** - I deposited such envelope in the mail at Los Angeles, California, with first class postage thereon fully prepaid. I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, 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 postage cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing in affidavit; and/or,

[**X**] **BY ELECTRONIC SERVICE**. Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 4, 2023, at Los Angeles, California.

/s/ Elaine Zhong
Elaine Zhong