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SUPERIOR COURT OF THE STATE OF CALIFORNIA

CENTRAL DISTRICT FOR THE COUNTY OF LOS ANGELES

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 Judge: Hon. Mitchell L. Beckloff Dept: 86 **PETITIONER'S REPLY TO CITY'S AND INTERVENORS' OPPOSITION BRIEFS** Date: November 8, 2023 Time: 9:30 a.m. Dept.: 86 Date Action Filed: March 3, 2023 Trial Date: November 8, 2023

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

FEDERAL CASES **Page(s)**

CALIFORNIA CASES

Page(s)

CALIFORNIA STATUTES

OTHER AUTHORITIES

I. INTRODUCTION

As explained in Petitioner's Opening Brief ("POB"), the issue at the heart of this case is whether the City of Los Angeles ("City") may override policy decisions made by the State of California by creatively framing ordinances that have the purpose and effect of undermining state law. While the City and Intervenors (collectively "Respondents") attempt to downplay the extent of the conflict between state law and the two ordinances at issue by suggesting it is merely "incidental," the reality is that each of the ordinances is a deliberate attempt to circumvent state laws the City does not like.[1]

Indeed, in arguing (incorrectly) that Ordinance No. 187764 is consistent with the purpose of state law restrictions on rent increases, the City admits that the ordinance is intended to deter landlords from raising rents in excess of the amount required to trigger relocation benefits: "state law wants to deter ***the 'very behavior' the City is seeking to deter here***." (City's Opposition/Response to Petitioner's Opening Brief ("COB"), p. 14, emph. added.) Thus, by the City's own admission, the ordinance is an attempt to regulate the rent of those dwelling units that municipalities are expressly preempted from regulating under the Costa–Hawkins Rental Housing Act ("Costa-Hawkins Act"). (*See* Civ. Code § 1954.52(a); *see also* AR 2219-2220 [City staff report asserting the ordinance is needed to "close a loophole" created by state law].)

The City's brief likewise confirms that Ordinance No. 187763 was intended to have a procedural effect, *i.e.*, to delay the timing of evictions: "tenants sometimes experience sudden losses in income and should not be displaced for owing a small amount of rent while seeking help: for example, '[i]f a renter loses their employment and applies for unemployment benefits, on average it takes six weeks to receive the assistance [when] the eviction process may [already be] underway." (COB, p. 3, alterations in original.) Moreover, the structure of the ordinance makes clear that the financial threshold is a proxy for an extension of the time provided by the unlawful detainer statute, *i.e.*, because the City cannot require a landlord delay one month before

[1] As Respondents note throughout their briefs, state law provides numerous protections to tenants, which have been substantially increased in recent years. (*See, e.g.*, Civil Code § 1946.2 [prohibiting evictions without a "just cause"]; Civil Code § 1947.12 [subjecting most types of rental units to rent control at the state level].) Respondents are nonetheless dissatisfied by the policy decisions made by the Legislature.

commencing an eviction based on nonpayment, it instead prohibited such an eviction until the amount due exceeds ***one month's*** fair-market rent. Thus, the ordinance is a procedural regulation that is preempted by the unlawful detainer statute. (*Birkenfeld v. City of Berkeley* ("*Birkenfeld*") (1976) 17 Cal.3d 129, 141.)

For the reasons set forth herein, and in Petitioner's Opening Brief, Petitioner respectfully requests that the Court grant its petition for writ of mandate.

II. ORDINANCE NO. 187764 IS PREEMPTED BY THE COSTA-HAWKINS ACT

A. Ordinance No. 187764 Regulates Rent, Not Evictions.

As explained in Petitioner's Opening Brief, a city may not "subvert the purpose of the Costa-Hawkins Act" by framing a rent restriction as an eviction regulation. (*Bullard v. S.F. Residential Ren Stabilization Bd*. ("*Bullard*") (2003) 106 Cal.App.4th 488, 491-492 [ordinance requiring a landlord who evicts a tenant in order to move into the tenant's unit to offer the tenant another available unit at comparable rent was preempted by Costa-Hawkins Act provision allowing property owners to establish initial rental rates]; *see* POB pp. 11-12.)

The City and Intervenors both argue that the ordinance is a lawful "eviction regulation" that regulates "constructive evictions," rather than rent. (COB, pp. 11-12, Intervenors' Opposition to Opening Brief ("IOB"), pp. 8-9.) As Respondents' own authority demonstrates, however, the term "constructive eviction" ordinarily refers to ***wrongful*** behavior that forces a tenant to vacate a property. (*See, e.g.,* IOB, p. 8, citing *Ginsberg v. Gamson* (2012) 205 Cal.App.4th 873, 897 ["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."].) Thus, a constructive eviction occurs where a landlord fails to maintain the habitability of a property, causing the tenant to move. (*See, e.g., Johnson v. Snyder* (1950) 99 Cal.App.2d 86, 87–88.) Likewise, where a landlord imposes "artificially high rents in bad faith" in order "to force the tenant to vacate without having to comply with eviction regulations," that action can fairly be characterized as a constructive eviction. (*San Francisco Apartment Association v. City and County of San Francisco* (2022) ("*SFAA 2022*") 74 Cal.App.5th 288, 291-292.) Respondents have failed to point to any authority, however, that suggests a constructive eviction occurs when a tenant elects to relinquish their tenancy following a

lawful, good-faith increase in the rent. To the contrary, the authority cited by Respondents confirms that in distinguishing between eviction regulations and rent regulations, courts should look at the purpose and effect of a regulation, rather than myopically focusing on its mechanism.

For example, *Mak v. City of Berkeley Rent Stabilization Board* ("*Mak*") (2015) 240 Cal.App.4th 60 involved an ordinance that prohibited a landlord who regains possession of a rent-controlled unit by means of a false representation from charging the new tenant more rent than they could have charged the prior tenant. (*Id*. at 63.) The court explained that, under the circumstances, the ordinance was properly viewed as a regulation of evictions, rather than a restriction on setting initial rent, because it was intended to deter abuse of the eviction process and applied only where an owner had "terminated the prior tenancy based on a ***bad faith*** assertion":

> We agree with the trial court that Regulation 1016 "is a reasonable ***regulation of evictions***, as Berkeley can create an administrative deterrent ***to discourage landlords from serving less than good faith owner move-in notices***. As a means to deter owners from using a less than good faith owner move-in notice . . . Regulation 1016 is reasonably designed 'to regulate or monitor the grounds for eviction.' … ***Viewed as a sanction for the misuse of owner move-in notices***, Regulation 1016 does not regulate 'the initial rate for a dwelling unit' … and is a permissible regulation of 'the grounds for eviction.'

(*Id.* at 69, internal citations removed, emphasis added, *see also id*. at 71 ["Maintaining the rent level of the former tenant is a rational and proportional deterrent to the use of such an artifice..."].)

Similarly, while the ordinance at issue in *SFAA 2022* prohibited certain rent increases, *i.e*., those "imposed in bad faith with an intent to defraud, intimidate, or coerce the tenant into vacating the unit," the Court of Appeal explained it was not preempted by Costa-Hawkins, because it was narrowly tailored to "bad-faith," "pretextual" increases designed ***"to avoid eviction laws*** while forcing the tenant to vacate." (*Id*. at 291-294, emph. added [contrasting such increases with those imposed "for the purpose of collecting additional rent"].) The court thus distinguished the ordinance from that held to be preempted in *Bullard*, explaining:

> The [*Bullard*] court emphasized that the provision applied "to landlords acting in good faith as well as unscrupulous landlords" and was "contingent on the availability of another unit, ... provid[ing] only an occasional, weak deterrent." (Ibid.) The same is not true here. As discussed above, section 37.10(A)(i) ***applies only***

> ***to bad faith, pretextual rent increases*** designed to avoid local eviction regulations. ***It does not regulate permissible rent increases***.

(*Id*. at 294-295, emph. added.)[2]

This case is essentially the inverse of *Mak* and *SFAA 2022.* Here, it is the City that is attempting to evade legal restrictions, by arguing the Costa-Hawkins Act applies only to a "direct" restriction on rent, regardless of the effect of an ordinance. (COB, pp. 10-11.) But just as the ordinances at issue in *SFAA 2022* and *Mak* were determined to be eviction regulations, because they were narrowly-tailored to deterring bad-faith actions designed to skirt eviction laws (and despite the fact that they accomplished that purpose via restrictions on rent), Ordinance No. 187764 must be viewed as a restriction on rent, because its clear purpose and effect is to deter increases in excess of the amount that triggers relocation benefits under the ordinance.

B. The City Admits the Ordinance Seeks to "Deter" Rent Increases the City Considers "Excessive."

Betraying its claim that Ordinance No. 187764 is not intended to regulate rent, the City insists that "the rent increases that may trigger relocation assistance in the Ordinance" are "materially different" than smaller increases, and thus, appropriate targets of regulation. (COB, p. 13.) The City references state law restrictions on rent increases, and asserts (incorrectly) that ***"state law wants to deter the 'very behavior' the City is seeking to deter here."*** (COB, p. 14, emph. added.) The City thus confirms the ordinance is intended to "deter" property owners from raising rents in excess of the amount required to trigger relocation benefits. (*See also* COB, p. 13 [insinuating that that relocation benefits are only triggered by "excessive" and "unjustified" increases that constitute "rent gouging"].) That admission alone is enough to make clear that the ordinance is not a lawful eviction regulation, but a deliberate attempt to interfere with landlords' right under the Costa-Hawkins Act to "establish . . . all subsequent rental rates" for certain types of housing units. (Civ. Code § 1954.52(a); *see Palmer/Sixth Street Properties, L.P. v. City of Los*

[2] In contrast, the ordinance at issue here applies to landlords acting in good faith and is not tailored to its asserted purpose of assisting tenants forced to move due to a proposed rent increase. (*See* POB, p. 15 [noting that if the ordinance is construed as an attempt to regulate "constructive evictions," it is both under- and over-inclusive].)

Angeles (*"Palmer"*) (2009) 175 Cal.App.4th 1396, 1411 [ordinance "hostile" to rights granted by Costa-Hawkins Act was preempted].)[3]

C. The Ordinance Is an Attempt to Override Policy Decisions Made by the State Legislature.

Moreover, the City's attempt to portray the ordinance as furthering the goals of state law is simply not supported by the legislative history. While state law restricts the amount by which rent can be raised for most housing units, as explained in Petitioner's Opening Brief, when the Legislature enacted statewide rent control it made a deliberate decision to exempt certain types of housing, including newer construction, from such restrictions. As made clear by the legislative history, the Legislature was concerned about unintended consequences that could exacerbate the housing crisis, and thus, intentionally sought ***"something of a middle ground."*** (Request for Judicial Notice ("RJN") submitted with POB, Exhibit D, p. 29, emph. added ["In response to the concern that the bill could otherwise discourage new housing development, the author has exempted new construction . . . from the bill."].) In other words, even while imposing rent control on most types of units, the Legislature determined that it was important that landlords of certain types of units remain free to set higher rents. Thus, while the City suggests that any rent increase that would trigger the ordinance is imposed in bad faith and even "rent gouging" (COB, p. 13), the Legislature clearly rejected that view as it attempted to strike a balance that would not make the housing crisis even worse.

Ordinance No. 187764 is precisely targeted at housing units the Legislature: (1) expressly prohibited cities from regulating in adopting the Costa-Hawkins Act (meaning such units must be exempt from the RSO); and (2) purposefully exempted from statewide rent control. (*See* AR 2219-2220.) It thus disregards the "middle ground" policy choice made by the Legislature and undermines state law by deterring behavior the Legislature determined should not be deterred.

Respondents further argue that relocation assistance is a "standard feature" of eviction regulations and note courts have upheld certain ordinances requiring the payment of relocation

[3] The City's admission likewise refutes Respondents' assertion that the required payments are not intended to be a penalty. (*See* IOB, p. 12, COB, p. 14.)

benefits to tenants who are evicted for no-fault reasons, *e.g.*, when a landlord decides to get out of the rental business. (COB, p. 14 ["Relocation assistance is a cost of doing business…"]; IOP, pp. 10-11.) But the difference between the case at hand and those in which relocation benefits have been upheld is that here the required payments would deprive landlords of the benefit of their right to raise rent under the Costa-Hawkins Act. While paying similar relocation benefits might not be an undue burden on a landlord's right to go out of business or to convert apartments to condominiums, the right to raise rent above the threshold is valuable ***only*** to the extent it financially benefits landlords. (*C.f. Pieri v. City and County of San Francisco* (2006) 137 Cal.App.4th 886, 894 [ordinance that required relocation benefits where a landlord withdraws all the rental units in a building from the rental market did not, on its face, violate the Ellis Act, which expressly allows public entities to "mitigate any adverse impact on persons displaced by reason of [such a] withdrawal"]; *People v. H & H Properties* (1984) 154 Cal.App.3d 894, 902 [involving condominium conversion]; *compare Coyne v. City and County of San Francisco* (2017) 9 Cal.App.5th 1215, 1231 ["A local government's powers to mitigate are not without limits and cannot be enlarged in such a way to prevent a property owner from exercising her Ellis Act rights."].) If raising rent above the threshold instead costs landlords money—as it plainly will under the ordinance at issue here—then such right is illusory. Respondents fail to cite any authority upholding an ordinance that requires payment of relocation benefits where a tenant voluntarily vacates a unit following a lawful proposed rent increase.

D. The Ordinance Would Eliminate the Economic Benefit of Increasing Rent Above the Trigger Under Virtually All Realistic Scenarios.

Intervenors argue that Petitioner's explanation of how the ordinance will effectively deter property owners from raising rent above the trigger for relocation benefits has "multiple fatal flaws." (IOB, p. 12.) None of Intervenors' criticisms have any merit.

First, Intervenors confusingly suggest that landlords could propose "grossly unreasonable rent increases to current tenants as a pretext to constructively evict them" and then, after paying relocation benefits, "install[] a new tenant at a rental rate below the pretextual rental rate but still well above the rent of the displaced tenant." (IOB, p. 13:6-13.) But Intervenors do not explain

how a landlord would financially benefit from doing so.[4] If the ultimate increase in rent is not enough over the threshold to make-up for the relocation benefits, the landlord will lose money.

Next, Intervenors fault Petitioner's sample calculations as "unrealistic," because they assumed "only a one-year timeline and a base rent already near market." (IOB, p. 13.) But the reason for the one-year timeline is that the ordinance restricts how much rent can be raised on an annual basis. (AR 623.) A landlord who raises rent by 10 percent instead of 15 percent in order to avoid triggering relocation benefits does not necessarily lose the extra 5 percent in perpetuity, because they can raise rent again in a year (and the market is unlikely to support maximum raises every year). Thus, one year is a reasonable period to look at the effect of a rent increase.

Further, despite condemning Petitioner's sample calculations as "built on self-selected numbers and unreliable and unrealistic assumptions" (IOB, p. 13), the only real-world numbers provided by Intervenors result in an even more dramatic result. Intervenors present evidence of a landlord seeking to raise rent for a one-bedroom unit by 15%, from $940 to $1,081. (Decl. of Silvia Anguiano, ¶ 4.) The extra rent such landlord would receive by raising rent over the amount necessary to trigger relocation benefits is $47 per month (5% of $940), yet by triggering the ordinance they may be forced to pay $6,662 ($1,747 x 3 + $1,411) ***more than 11 times*** the amount of extra rent ($564) they might receive over a full year. No reasonable landlord would choose to raise rent by 15% rather than 10% under such circumstances.[5] Intervenors' own anecdote thus confirms the assumptions made in Petitioner's Opening Brief were extremely conservative.

Indeed, even given full freedom to create a realistic hypothetical where a landlord required to pay the relocation benefits would nonetheless benefit from an increase over the trigger, Intervenors struggle to do so. As conceded by Intervenors, even assuming a dramatic—more than 50%—increase in rent from $1,500 to $2,300, a landlord would still not recoup their money within

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[4] There is no financial reason for a landlord to constructively evict a tenant from a dwelling that is not subject to rent control. To the contrary, landlords have an incentive to retain such tenants, since there are costs associated with unit turnover and finding a new tenant, and because the unit is likely to be vacant for some period of time after a tenant leaves, Nevertheless, as illustrated by *SFAA 2022*, any legitimate concern about bad-faith rent increases designed to force tenants to move can be easily addressed via an ordinance that addresses such behavior, without interfering with good-faith rent increases. (*See SFAA 2022*, 74 Cal.App.5th at 290-291.)

[5] Given the lack of detail in the declaration, it is not clear who the landlord is or whether they are aware of the ordinance.

the first year (even without accounting for the time value of money). (*See* IOB, p. 13.) Thus, while it may theoretically be possible for the owner of a unit that is far below market value to financially benefit by imposing, for example, a 50 or 60 percent increase to match the market, any such circumstances would be exceedingly rare. The obvious real impact of the ordinance will be to deter property owners from raising rent about the trigger amount. (*See, e.g.*, Decl. of Christina Amareld in Support of Plaintiff's Motion for Preliminary Injunction, ¶¶ 3-4 [property accounting supervisor explaining her company raised rents by only 10% instead of 12% (after 3 years of no raises), in order to avoid triggering relocation benefits].)

III. ORDINANCE NO. 187763 IS PREEMPTED BY THE UNLAWFUL DETAINER STATUTES

A. The Purpose and Effect of Ordinance No. 187763 is to Delay Evictions.

Respondents attempt to defend Ordinance No. 187763 by mischaracterizing Petitioner's position as arguing that "substantive eviction regulations are preempted when they have some effect on the timing of an unlawful detainer lawsuit." (COB, p. 9; IOB, p. 16 [arguing a substantive eviction is not preempted merely because it has an "incidental procedural impact"].) The reason Ordinance No. 187763 is preempted is that its procedural impact is ***not*** incidental. Rather, as set forth in Petitioner's Opening Brief, the record demonstrates that the very ***purpose*** of the ordinance was to delay the commencement of evictions based on nonpayment, in order to give tenants more time to avoid eviction. (*See* POB, pp. 8, 18-19.) The ordinance was enacted in response to requests that the City "allow[] tenants time to get back on their feet," and the City seemingly recognized that goal could be achieved via either a "financial and/or timeliness threshold," before settling on a financial threshold that is not coincidentally tied to a period of time (*i.e.*, one month's fair market rent). (*See* AR 65, 110; *see also Tri County Apartment Assn. v. City of Mountain View* (1987) 196 Cal.App.3d 1283 ["the setting in which legislation was adopted well may be helpful in interpreting the language used in the enactment"].)

Respondents entirely ignore this legislative history and insist the ordinance must be upheld merely because it is nominally structured as a "substantive" defense to eviction. (COB, pp. 8-10, IOB, pp. 15-16.) As this Court has recognized, however, "there is no bright line between

substantive and procedural rules." (Order Denying Motion for Preliminary Injunction, p. 9, fn.3.) How the ordinance is labelled and/or structured is thus less important than its purpose and effect.

As noted in Petitioner's Opening Brief, by prohibiting landlords from commencing an eviction based on nonpayment until the amount due exceeds one month's fair-market rent, the ordinance functions very much like a plainly procedural prohibition on commencing an eviction until rent is more than one month past due, and undeniably conflicts with the timeline set forth in the unlawful detainer law. (POB, pp. 18-19; Civ. Proc. Code § 1161(2) [3-day notice to pay rent or quit may be served "at any time within one year after the rent becomes due"].) And, as discussed above, the record indicates achieving such delay was the primary purpose of the ordinance. (AR 65, 110, 2221.) Accordingly, the Court should disregard the City's creative framing of the ordinance and treat it as the preempted procedural limitation it is.

B. <u>The City May Not Eliminate Nonpayment as a Basis for Eviction.</u>

For the reasons discussed above, the Court should determine Ordinance No. 187763 is preempted as a procedural regulation, and thus, need not reach the issue of whether the City could eliminate nonpayment of rent as a basis for eviction. The City's Opposition Brief, however, confirms that its view that the ordinance is permissible is based on the premise that it has the authority to entirely prohibit evictions for nonpayment. (COB, p. 9.)

The City's assertion that there is no basis for distinguishing between nonpayment of rent and other bases for eviction ignores the fact that the transaction at the heart of the landlord-tenant relationship is the payment of rent in exchange for the right to occupy a property. (*Action Apartment Ass'n v. Santa Monica Rent Control Bd.* (2001) 94 Cal.App.4th 587, 597–598 ["Rent is the consideration paid by the tenant to the landlord for the use, enjoyment and possession of the leased premises…. It is the means by which landlords make a profit on their property."], internal citations omitted; *Danger Panda, LLC v. Launiu* (2017) 10 Cal.App.5th 502, 513.)

The City claims it can prohibit evictions, because landlords have other remedies, such as "small claims court." (COB, p. 10.) But the unlawful detainer statutes exists precisely because the Legislature determined that ordinary contractual remedies are insufficient when a tenant continues to occupy a property after defaulting on rent. (*See Martin-Bragg v. Moore* (2013) 219

Cal.App.4th 367, 387–388, quoting *Lindsey v. Normet* (1972) 405 U.S. 56 at 72-73 ["unless a judicially supervised mechanism is provided for what would otherwise be swift repossession by the landlord himself, the tenant would be able to deny the landlord the rights of income incident to ownership by refusing to pay rent and by preventing sale or rental to someone else.... Speedy adjudication is desirable to prevent subjecting the landlord to undeserved economic loss…."]; *Nork v. Pacific Coast Medical Enterprises, Inc.* (1977) 73 Cal.App.3d 410, 413 ["the purpose of the unlawful detainer statutes . . . is to provide the landlord with a summary, expeditious way of getting back his property when a tenant fails to pay the rent…"].) Thus, the existence of other possible (inferior) remedies for nonpayment of rent does not suggest the City can entirely eliminate a remedy set forth in state law.

In short, the fact that cities may eliminate some grounds for eviction does not mean that they may eliminate all grounds for eviction, including nonpayment of rent. If a city could eliminate all substantive grounds for eviction, then the eviction procedure established by the Legislature—which all parties concede may not be altered—could simply be mooted out.

IV. CONCLUSION

Petitioner does not dispute that the City has authority to regulate certain aspects of the landlord-tenant relationship. That authority is nonetheless constrained by State law, including the Costa-Hawkins Act and the unlawful detainer statutes. Allowing the City to circumvent those statutes via creatively framed ordinances would "make a mockery" of such laws. (*National Meat Ass'n v. Harris* (2012) 565 U.S. 452, 464 [state could not avoid federal law preempting regulation of slaughterhouses by "framing it as a ban on the sale of meat produced" in a disapproved way].)

Petitioner respectfully requests that the Court issue a writ of mandate prohibiting the City from enforcing Ordinance No. 187763 and/or Ordinance No. 187764 and directing the City to rescind said ordinances.

Dated: October 24, 2023

RUTAN & TUCKER, LLP

By: _____

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PROOF OF SERVICE

Apartment Association of Los Angeles, Inc. v. City of Los Angeles, et al.

LASC – Case No. 23STCP00720

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On October 24, 2023, I served on the interested parties in said action the within:

PETITIONER'S REPLY TO CITY'S AND INTERVENORS' OPPOSITION BRIEFS

as stated below:

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Executed on October 24, 2023, at Irvine, California.

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

Pamela Carvalho	Pamela J. Carvalho
(Type or print name)	(Signature)

SERVICE LIST

Apartment Association of Los Angeles, Inc. v. City of Los Angeles, et al.
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