**2d Civil No. B336071**

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**
**SECOND APPELLATE DISTRICT**
**DIVISION FOUR**

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APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC. dba APARTMENT ASSOCIATION OF GREATER LOS ANGELES,

Plaintiff and Appellant,

vs.

CITY OF LOS ANGELES; COUNCIL OF THE CITY OF LOS ANGELES,

Defendants and Appellees.

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# INTEVENORS' OPPOSITION TO APPELLANT'S OPENING BRIEF

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Appeal From the Superior Court of the State of California
for the County of Los Angeles
Honorable Mitchell L. Beckloff, Judge Presiding
Case No. 23STCP00720


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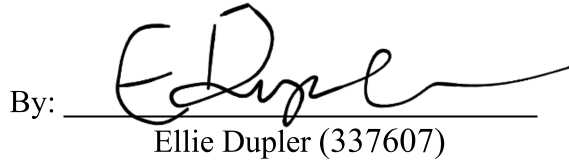
**CERTIFICATE OF INTERESTED PARTIES**
(Cal. Rule of Court, rule 8.208)

There are no interested entities or persons to list in this Certificate as defined in the California Rules of Court.

Dated: August 23, 2024

SUSMAN GODFREY L.L.P.

By: 
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Document received by the CA 2nd District Court of Appeal.

**TABLE OF CONTENTS**

I. INTRODUCTION ........ 8

II. STATEMENT OF FACTS ........ 9

III. PROCEDURAL HISTORY ........ 11

IV. LEGAL STANDARD ........ 12

V. ARGUMENT ........ 14

A. The Eviction Threshold Ordinance is not preempted by the unlawful detainer statute. ........ 14

1. The Eviction Threshold Ordinance is not expressly preempted because it places substantive, not procedural, limitations on eviction. ........ 15

2. The Eviction Threshold Ordinance is not impliedly preempted because the implied preemption doctrine is inapplicable here. ........ 21

3. The Eviction Threshold Ordinance falls squarely within the scope of the City's police power. ........ 23

B. The Relocation Assistance Ordinance is not preempted by the Costa-Hawkins Rental Housing Act. ........ 24

1. The Relocation Assistance Ordinance regulates evictions, not rental rates. ........ 24

2. Because the laws do not conflict, Appellant has not met its burden of showing express or implied preemption. ........ 27

3. Relocation assistance to prevent displacement has been consistently upheld in other contexts. ........ 29

4. The Relocation Assistance Ordinance does not impose a prohibitive price on landlords' Costa-Hawkins rights. ........ 31

VI. CONCLUSION ........ 32

CERTIFICATE OF COMPLIANCE ........ 33

PROOF OF SERVICE ........ 34



Document received by the CA 2nd District Court of Appeal.

## TABLE OF AUTHORITIES

**Page(s)**

**Cases**

*2710 Sutter Ventures, LLC v. Millis*
(2022) 82 Cal.App.5th 842 .................... 31

*Action Apartment Assn., Inc. v. City of Santa Monica*
(2007) 41 Cal.4th 1232 .................... 24, 32

*Apartment Assn. of L.A. County, Inc. v. City of L.A.*
(2006) 136 Cal.App.4th 119 .................... 11, 12, 28, 29

*Apartment Assn. of L.A. County., Inc. v. City of L.A.*
(2009) 173 Cal.App.4th 13 .................... 25

*Aweeka v. Bonds*
(1971) 20 Cal. App. 3d 278 .................... 26

*Big Creek Lumber Co. v. County of Santa Cruz*
(2006) 38 Cal.4th 1139 .................... 13, 14, 21

*Birkenfeld v. City of Berkeley*
(1976) 17 Cal.3d 129 .................... 16, 17, 18, 19

*Bullard v. S.F. Residential Rent Stabilization Board*
(2003) 106 Cal.App.4th 488 .................... 27, 28, 29

*Coyne v. City & County of S.F.*
(2017) 9 Cal.App.5th 1215 .................... 12, 13

*Fisher v. City of Berkeley*
(1984) 37 Cal.3d 644 .................... 18, 23

*Fisher v. City of Berkeley, Cal.*,
475 U.S. 260 .................... 23

*Freeman v. Vista de Santa Barbara Associates, LP*
(2012) 207 Cal.App.4th 791 .................... 25

*Ginsberg v. Gamson*
(2012) 205 Cal.App.4th 873 .................... 25

Document received by the CA 2nd District Court of Appeal.

*Jameson v. Desta*
(2018) 5 Cal.5th 594 .................................................................. 13

*Johnson v. City & County of S.F.*,
(2006) 137 Cal.App.4th 7 ............................................. 13, 21, 22, 30

*Kalaydjian v. City of L.A.*
(1983) 149 Cal.App.3d 690 ............................................................ 31

*National Meat Ass'n v. Harris*
(2012) 565 U.S. 452 ...................................................................... 9

*Nolan v. City of Anaheim*
(2004) 33 Cal.4th 335 .................................................................. 14

*Palmer/Sixth Street Properties, L.P.*,
(2009) 175 Cal.App.4th 1396. ............................................... 27, 28

*People v. H & H Properties*
(1984) 154 Cal.App.3d 894 ............................................................ 31

*Pieri v. City and County of S.F.*
(2006) 137 Cal.App.4th 886 ........................................................... 30

*Rental Housing Assn. of North Alameda County v. City of Oakland*
(2009) 171 Cal.App.4th 741 ......................................... 15, 18, 19, 20

*Roble Vista Associates v. Bacon*
(2002) 97 Cal.App.4th 335 ............................................................. 18

*S.F. Apartment Assn. v. City & County of S.F.*
(2018) 20 Cal.App.5th 510 ....................................................... *passim*

*Sherwin-Williams Co. v. City of L.A.*
(1993) 4 Cal.4th 893 ..................................................................... 13

*Tri County Apartment Assn. v. City of Mountain View*
(1987) 196 Cal.App.3d 1283 .................................................... 16, 17

**Statutes**

Cal. Civ. Code § 1947.12(a)(1) ........................................................... 26

Cal. Civ. Code § 1954.52 ....................................................... *passim*



Document received by the CA 2nd District Court of Appeal.

Cal. Code of Civ. P. § 1161 .................................................................. 10, 17

Gov. Code § 7060 ......................................................................................... 30

Gov. Code § 7060.1(c) .................................................................................. 25

L.A. Mun. Code § 151.00 .............................................................................. 10

L.A. Mun. Code § 165.00 .............................................................................. 10

Ordinance No. 187763 ........................................................................... *passim*

Ordinance No. 187764 ........................................................................... *passim*

Pen. Code § 396(f) ........................................................................................ 26

Document received by the CA 2nd District Court of Appeal.

# I. INTRODUCTION

Since their passage in February 2023, the Eviction Threshold Ordinance and Relocation Assistance Ordinance have kept thousands of Los Angeles tenants securely housed. Without the Eviction Threshold Ordinance, which sets a financial threshold for the amount of arrears over which a tenant can be evicted, tenants could be evicted for falling even a few dollars short on rent on a single occasion. And without the Relocation Assistance Ordinance, which provides financial assistance to tenants forced to relocate following rent increases over 10 percent, ousted tenants could end up homeless or in unstable housing because they are unable to cover costs associated with moving, such as security deposits and first and last month's rent. These ordinances play an essential role in preventing and addressing evictions and keeping Los Angeles residents housed.

Both Ordinances are the result of the City of Los Angeles (the "City") legislating to address its local housing and homelessness crisis pursuant to its inherent police powers. And both state statutes implicated in this case—Code of Civil Procedure section 1161 et seq. (hereinafter "unlawful detainer statute") and the Costa-Hawkins Rental Housing Act ("Costa-Hawkins")—explicitly reserve those police powers to local jurisdictions while granting other rights to landlords. As such, neither local ordinance runs afoul of preemption principles under California law. As the trial court concluded after careful consideration of the evidence and arguments before it, the Eviction Threshold Ordinance is not preempted because it is a substantive limitation on evictions that does not alter the unlawful detainer procedures laid out in state law, as permitted by established precedent; and the Relocation Assistance Ordinance is not preempted because it regulates the displacement effects of evictions, a power Costa-Hawkins explicitly reserves to cities.

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Appellant argues that the City has circumvented state law through "creatively framed local legislation." (Appellant's Opening Brief ("Opening Br.") at 10.) But the only "creative framing" in this case is Appellant's persistent attempts to bring into the preemption analysis factors that the Court is not required to consider. This case involves a straightforward inquiry into whether two local ordinances that are designed to address the substantive grounds for and effects of evictions conflict with state laws. Yet, from its opening reliance on dicta from an unrelated case[1] to its failure to engage in any implied preemption analysis, Appellant misconstrues the state of the law while bemoaning the alleged burdens that these sensible regulations place on landlords' activities. Intervenors—two community-based organizations representing thousands of Los Angeles tenants—respectfully request that this Court reject Appellant's arguments, affirm the trial court's finding that neither Ordinance is preempted by state law, and enter judgment in favor of the City.

## II. STATEMENT OF FACTS

Los Angeles is experiencing "a rental housing shortage and a humanitarian crisis of homelessness at unprecedented levels." (Appellant's Appendix ("AA") 65 (City's Legislative Findings for the Just Cause Ordinance).) For many Angelenos, evictions are the crossroads where this "rental housing shortage" and "humanitarian crisis of homelessness" meet. (See *id.*) "Displacement through arbitrary evictions affects the public

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[1] In *National Meat Ass'n v. Harris*, (2012) 565 U.S. 452, a state ban on certain meat sales expressly conflicted with a federal law that permitted such sales. That case is different from this one in nearly every way. It concerned federal preemption, while this case concerns state preemption; it concerned entirely unrelated subject matter; it concerned a law that *banned* certain actions, while the ordinances in this case do not ban any behavior; and it concerned express preemption. Appellant, no doubt recognizing these differences, does not try to argue otherwise.



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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." (AA 66.) "[A]rbitrary evictions are a key driver of homelessness" in Los Angeles. (*Id*.)

Against this backdrop, the City enacted Ordinance 187763 (the "Eviction Threshold Ordinance") on February 3, 2023, to "limit displacement and homelessness[] and restrict evictions for nonpayment of rent that is not material." (AA 57 (Text of Ordinance No. 187763).) The Eviction Threshold Ordinance amends the Rent Stabilization Ordinance (L.A. Mun. Code § 151.00 et seq., hereinafter "RSO") and the Just Cause Ordinance (L.A. Mun. Code § 165.00 et seq., hereinafter "JCO") such that a tenant cannot be evicted unless they owe more than "one month of fair market rent for the Los Angeles metro area . . . for an equivalent sized rental unit as that occupied by the tenant." (*Id*.) Importantly, the Eviction Threshold Ordinance does not modify the procedure that a landlord must follow to initiate an eviction once a tenant falls behind by one month's fair market rent. That procedure is set forth in the state's unlawful detainer statute.

On February 7, 2023, the City enacted Ordinance 187764 (the "Relocation Assistance Ordinance"), which amended the JCO to require landlords to pay reasonable relocation assistance to a tenant equal to "three times the fair market rent in the Los Angeles Metro area for a rental unit of a similar size . . . plus $1,411 in moving costs" 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." (AA 61 (Text of Ordinance No. 187764).) The Relocation Assistance Ordinance only applies to tenants who are not covered by the RSO. Notably, the amount of



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relocation assistance a landlord is required to pay is narrowly tailored to the intended purpose: it is explicitly set to cover no more than a tenant's reasonably anticipated moving costs, in order to avoid the eviction-to-homelessness pipeline. Again, the Relocation Assistance Ordinance does not limit or specify the amount that a landlord may charge for rent, either to a current tenant or to a subsequent tenant.

There is nothing "unfortunate" about the City's adoption of these Ordinances. (See Opening Br. at 11.) The Ordinances were adopted after careful consideration to mitigate the homelessness impacts of large rent increases and evictions over *de minimis* rental debt. And the Ordinances have been successful: tenant declarations submitted to the trial court underscore the significant impact that these Ordinances have already had on the prevention of homelessness in low- and middle-income communities. (See, e.g., AA 860–78 (Declarations of Silvia Anguiano, Anabella Sam, and Heidi Gonzalez).).

## III. PROCEDURAL HISTORY

The Apartment Association of Greater Los Angeles ("AAGLA") filed this case in Los Angeles Superior Court on March 3, 2023. (AA 24–32.) On March 17, 2023, roughly six weeks after the Ordinances went into effect, AAGLA sought a preliminary injunction. (AA 34–53.) The trial court heard argument on AAGLA's motion for a preliminary injunction on May 17, 2023. (AA 664.)

At the May 17, 2023, hearing, the trial court also heard argument on and granted the motion to intervene filed by Community Power Collective ("CPC") and InnerCity Struggle ("ICS") (collectively, "Intervenors"). (AA 664–68.) CPC is a nonprofit organization of community members and organizers who advocate for the rights of tenants. (AA 666 (Order Granting Motion to Intervene).) ICS is a nonprofit organization that advocates for the

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right to live in safe, healthy, and thriving communities, with a specific focus on serving low-income people of color in East Los Angeles. (*Id*.)

On May 18, 2023, the trial court denied AAGLA's motion for a preliminary injunction, finding that AAGLA "ha[d] not demonstrated a strong probability of prevailing on the merits of its challenge to both ordinances" and that it had not shown a likelihood of irreparable harm. (AA 671–80.)

On November 8, 2023, at the hearing on the Petition for Writ of Mandate, the trial court heard lengthy oral argument regarding both Ordinances. (AA 896.) On January 17, 2024, Judge Mitchell Beckloff issued an order finding no preemption by state law as to either Ordinance. (AA 898–920.)

Following a thorough and well-reasoned analysis, the trial court held that the Relocation Assistance Ordinance "does not directly regulate the rental rates landlords may charge for any rental units," and that it "serves as effective regulation of eviction." (AA 904, 910.) With respect to the Eviction Threshold Ordinance, the trial court "disagree[d] with Petitioner's characterization of the ordinance" as a "financial threshold [that functions as] a proxy for an extension of the time provided by the unlawful detainer statute." (AA 913.) The trial court concluded that "the procedural impact is necessary to regulate the substantive grounds for eviction properly authorized through the ordinance under the City's police powers." (AA 918.) As such, the trial court held that neither Ordinance was preempted. (AA 911, 919.)

## IV. <u>LEGAL STANDARD</u>

Whether a local ordinance is preempted by state law "presents a question of law, subject to *de novo* review." (*Coyne v. City & County of S.F*. (2017) 9 Cal.App.5th 1215, 1224.) Nevertheless, "it is a fundamental



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principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate . . . that the trial court committed an error that justifies reversal of the judgment." (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608–09.)

"The party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption." (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149.) A local ordinance is preempted if it conflicts with state law. (*Sherwin-Williams Co. v. City of L.A.* (1993) 4 Cal.4th 893, 897.) 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.*) "Local legislation is 'duplicative' of general law when it is coextensive therewith and 'contradictory' to general law when it is inimical thereto. Local legislation enters an area 'fully occupied' by general law when the Legislature has expressly manifested its intent to fully occupy the area or when it has impliedly done so in light of recognized indicia of intent." (*Big Creek Lumber Co. v. County of Santa Cruz*, *supra*, at p. 1150 (internal citations omitted).)

"The first step in a preemption analysis is to determine whether the local regulation explicitly conflicts with any provision of state law." (*Johnson v. City* & *County of S.F.* (2006) 137 Cal.App.4th 7, 13 (cleaned up).) Absent an explicit conflict with state law, the local regulation's "validity must be evaluated under implied preemption principles." (*Id.*) Implied preemption is present if: "(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general



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law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality." (*Id*. at 13–14.)

"When the language of a statute is clear, we need go no further." (*Nolan v. City of Anaheim* (2004) 33 Cal.4th 335, 340.) Moreover:

> "When local government regulates in an area over which it traditionally has exercised control, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute. The presumption against preemption accords with [the] more general understanding that it is not to be presumed that the legislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by necessary implication."

(*S.F. Apartment Assn. v. City & County of S.F.* (2018) 20 Cal.App.5th 510, 515 (cleaned up).) California courts are "particularly reluctant to infer legislative intent to preempt a field covered by municipal regulation when there is a significant local interest to be served that may differ from one locality to another." (*Big Creek Lumber*, *supra*, 38 Cal.4th at p. 1149 (internal citations omitted).) Taken together, preemption case law provides that "if there is a significant local interest to be served which may differ from one locality to another then the presumption favors the validity of the local ordinance against an attack of state preemption." (*Id.)* "The party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption." (*Id*.)

## V. <u>ARGUMENT</u>

### A. <u>The Eviction Threshold Ordinance is not preempted by the unlawful detainer statute.</u>

The Eviction Threshold Ordinance is not preempted because it places a substantive, not procedural, limitation on the available grounds for eviction.

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Local jurisdictions can place *substantive* limitations on eviction, even if they result in an incidental delay before a landlord can initiate an unlawful detainer action; such local laws are not preempted by the unlawful detainer statute. (See, e.g., *Rental Housing Assn. of North Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741, 763; *S.F. Apartment Assn. v. City & County of S.F., supra*, 20 Cal.App.5th at pp. 510, 521.)

In its opening brief, Appellant places misguided emphasis on local ordinances that were struck down for materially changing the eviction *procedures* laid out in state law. Because Appellant has shown neither express nor implied preemption, and because the Eviction Threshold Ordinance falls squarely within the City's authority to limit the substantive grounds for eviction, this Court should affirm the trial court's ruling and uphold the Ordinance.

**1. The Eviction Threshold Ordinance is not expressly preempted because it places substantive, not procedural, limitations on eviction.**

It is settled law that "a city, pursuant to its police power, may place substantive limitations on otherwise available grounds for eviction, but not procedural ones." (*Rental Housing Assn. of North Alameda County v. City of Oakland*, *supra*, 171 Cal.App.4th at p. 752 [citing *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 149].) The Eviction Threshold Ordinance regulates the substantive basis for eviction. It does not impose any additional procedural requirements on landlords who wish to initiate unlawful detainer actions, nor does it otherwise modify the procedures required by the unlawful detainer statute. Under the Eviction Threshold Ordinance, a landlord may initiate an unlawful detainer action as soon as the substantive condition of falling behind by one month's fair market rent

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is satisfied. At that point, a landlord may serve the three-day notice to pay rent or quit in accordance with the timeline and procedure provided by state law. And before that point, the tenant has a substantive defense to the eviction.

Appellant principally relies on *Birkenfeld* and *Tri County* to support their arguments. But unlike the Eviction Threshold Ordinance, the ordinances struck down in *Birkenfeld* and *Tri County* explicitly and directly modified the *procedures* for eviction set forth in the unlawful detainer statute. The issue in *Birkenfeld* was whether a local regulation that required a landlord to obtain a "certificate of eviction" from the City of Berkeley before seeking to recover possession of a rent-controlled unit conflicted with the state unlawful detainer laws. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 150–51.) The ordinance imposed complex and protracted procedural requirements for doing so. As the court in that case explained:

> The [Rent Control] Board must give notice of the application for the certificate to the tenant or tenants who then have five days in which to request a full hearing conducted under the rules governing hearings for adjustments in maximum rents. (§ 7, subds. (c), (e).) The hearing must be scheduled within seven days after it is requested (§ 7, subd. (d)) and the Board must grant or deny the certificate within five days after the hearing is held (§ 7, subd. (f)). However, no limit is stated for the time within which the Board must give the tenants notice of the application after it is filed or must act on the application if no hearing is requested following such notice. Moreover, there is an express provision that either party may seek judicial review of a decision of the Board to grant or deny a certificate. (§ 7, subd. (g); § 9.)

(*Id*. at 150.)

It takes no substantial analysis to see why the procedure set forth above directly conflicted with the straightforward three-day notice procedure set forth in the unlawful detainer statute and was therefore found to be preempted. But those complex procedural requirements bear no

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resemblance to the Eviction Threshold Ordinance. The Eviction Threshold Ordinance does not impose extensive hearing requirements or introduce the possibility of interim judicial review of a landlord's right to evict a tenant. It simply regulates a substantive ground upon which a tenant can be evicted using the standard unlawful detainer procedures described in statute.

*Tri County* is also inapposite, not only because it is not an unlawful detainer case, but also because it involved a local ordinance that conflicted with state law on its face. (*Tri County Apartment Assn. v. City of Mountain View* (1987) 196 Cal.App.3d 1283.) The *Tri County* court considered whether a local ordinance requiring landlords to give tenants 60 days' notice of a proposed rent increase conflicted with a state law permitting landlords to increase rent on 30 days' notice. (*Id*. at 1288–89.) *That* provision clearly conflicted with state law on its face and was therefore preempted. By contrast, there is no direct conflict between the three-day notice timeline laid out in Code of Civil Procedure section 1161 and the Eviction Threshold Ordinance's requirement that a tenant has not satisfied the substantive grounds for eviction until they are behind on one month's fair market rent. The latter is merely a *substantive* rule that must be satisfied before the cause of action for unlawful detainer arises, at which point the standard procedure, outlined in the unlawful detainer statute, controls.

For decades, courts have upheld municipal ordinances that regulate the substantive grounds for eviction, even when those ordinances incidentally affected the timing of otherwise lawful evictions. (See *Rental Housing Assn. of North Alameda County v. City of Oakland, supra*, 171 Cal.App.4th at p. 741; *S.F. Apartment Assn. v. City & County of S.F., supra*, 20 Cal.App.5th at p. 510; see also *Roble Vista Associates v. Bacon* (2002) 97 Cal.App.4th 335; *Fisher v. City of Berkeley* (1984) 37 Cal.3d

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644, 706.) This Court should follow this long line of precedents and do the same here.

In *Rental Housing*, the Court of Appeal considered a provision of the City of Oakland's Measure EE, which required landlords to provide tenants with a written notice to cease offending conduct before filing an unlawful detainer. (*Rental Housing, supra*, 171 Cal.App.4th at pp. 762–63.) Although this provision had the effect of delaying the date on which a landlord could evict a tenant who was in violation of their lease, the court nevertheless concluded that the warning notice requirement "***regulate[d] the substantive grounds for eviction, rather than the procedural remedy***" because "[i]f the tenant ceases the offending conduct once notified by the landlord, there is no good cause to evict." (*Id*. (emphasis added).) Unlike in *Birkenfeld*, "the warning notice requirements of Measure EE [did] not involve prefiling review by a local administrative agency or impose 'elaborate prerequisites' on the commencement of an unlawful detainer proceeding." (*Id*.) Because Measure EE regulated the substantive basis for eviction—whether a tenant continued their offending conduct—it complied with *Birkenfeld* and was not preempted by the unlawful detainer statute.

More recently, in *San Francisco Apartment Association*, the Court of Appeal considered an ordinance that barred no-fault evictions of families with children and educators during the school year. (*S.F. Apartment Assn. v. City & County of S.F., supra*, 20 Cal.App.5th 510.) The City of San Francisco enacted Ordinance 55-16 to combat the harmful effects of "moving homes in the middle of a school year," including the "disrupt[ion of] relationships that are important to children, interfere[nce] with the learning process, and burden [on] schools." (*Id*. at 513.) Notably, San Francisco specifically sought to "regulat[e] the *timing* of certain no-fault evictions." (*Id*. (emphasis added).) In that case, like here, the property owners argued that "questions of timing . . . are purely procedural." (*Id*. at



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516.) Nevertheless, the court in *San Francisco Apartment Association* found that the ordinance was not preempted by the unlawful detainer statute despite effectively prohibiting an entire category of evictions for three-fourths of the year. Explaining its conclusion, the court reasoned:

> [T]he Ordinance does not impose any procedural requirements: it does not require landlords to provide written notice or to do any other affirmative act. Instead, it simply has a procedural *impact*, limiting the timing of certain evictions. Moreover, this procedural impact—like the procedural requirement in *Rental Housing*—is necessary to "regulate the substantive grounds" of the defense it creates. The purpose of the Ordinance 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. When tenants belong to this protected group (or have a custodial or familial relationship with a resident protected group member), they have a substantive defense to eviction; when they no longer belong to the group—because the regular school year has ended or will have ended by the effective date of the notice of termination—they no longer have a substantive defense. At this time, landlords may avail themselves of the unlawful detainer procedures, which are not altered by the Ordinance. Thus, 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. (*Birkenfeld*, *supra*, 17 Cal.3d at p. 149, 130 Cal.Rptr. 465, 550 P.2d 1001.)

(*Id*. at 518.) (emphasis added). Like the local ordinances at issue in *Rental Housing* and *San Francisco Housing Association*, the Eviction Threshold Ordinance does not impose any procedural requirements. While the Ordinance may in effect result in an incidental delay in the timing of an eviction, it remains a substantive limitation on eviction.

Moreover, the Eviction Threshold Ordinance would result in an incidental delay only where the tenant is unable to catch up on rental arrears, and there may be no delay at all for units at or above HUD's Fair Market Rent for which a tenant has fallen behind on just one month's actual



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rent. By contrast, the ordinance at issue in *Rental Housing* effectively forbade landlords from initiating the unlawful detainer procedure until the tenant engaged in offending conduct a second time, which could happen months after being served with a notice to cease such conduct. Going further, the ordinance at issue in *San Francisco Housing Association* forbade landlords from initiating the unlawful detainer procedure for up to nine months (or until the end of the school year), depending on the time of year.

While Appellant argues that "the timing of landlord-tenant transactions is a matter of statewide concern not amenable to local variations," the timing of those transactions is not the target of the Eviction Threshold Ordinance. (Opening Br. at 21; AA 918 (Order Denying Petition for Writ of Mandate) (concluding that "the ordinance creates a threshold amount that must be surpassed to act as a substantive trigger as grounds for eviction").) On its face, the Eviction Threshold Ordinance sets that threshold as an amount of money, not a length of time. Appellants misconstrue "one month of fair market rent" as being a length of time, when it is actually a calculation of debt. The Ordinance targets situations in which tenants are at risk of being evicted over potentially relatively small amounts of money. The City of Los Angeles, which has some of the highest rates of homelessness and the lowest rates of available affordable housing in the country, has a significant interest in ensuring that otherwise compliant and paying tenants are not evicted for being slightly short on rent. While other cities may prioritize this issue differently than the City of Los Angeles, "[t]he common thread of the [preemption] cases is that if there is a significant local interest to be served which may differ from one locality to another then the presumption favors the validity of the local ordinance against an attack of state preemption." (*Big Creek Lumber*,



Document received by the CA 2nd District Court of Appeal.

*supra*, 38 Cal.4th at 1149 (internal citations omitted).)[2] There is no express preemption here.

### 2. <u>The Eviction Threshold Ordinance is not impliedly preempted because the implied preemption doctrine is inapplicable here.</u>

Despite outlining the legal standard for implied preemption, Appellant's implied preemption analysis constitutes no more than vague hand-waving over legislative history. (Opening Br. at 18.) The facts of this case simply do not satisfy any of the "three tests" for implied preemption. (*Johnson v. City & County of S.F.*, *supra*, 137 Cal.App.4th at pp. 7, 13–14.) First, the financial threshold for eviction cannot be said to be "so fully and completely covered by general [state] law as to clearly indicate that it has become exclusively a matter of state concern." (*Id*. at 13.) Appellant has not cited any general state law to support this point. Further, given the wide variation in rental rates across California, the financial threshold for eviction is much more appropriately a matter of local concern. Second, the financial threshold for eviction has not "been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action." (*Id*. at 13–14.) The unlawful detainer statute merely governs the *procedural* aspects of eviction once a substantive basis for eviction is met. The unlawful detainer statute does not clearly indicate that further action will not be tolerated for

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[2] Appellant contends that "[i]f the City merely wanted to ensure any eviction based on non-payment involved a 'material' amount of money, rather than to delay the eviction process, it would have set the threshold at a lower amount not tied to a period of time." (Opening Br. at 23 n.4.) However, given the wide variability between fair market rent for, e.g., a studio apartment versus a four-bedroom home, such a monetary threshold would inherently be both under- and over-inclusive. The City's choice to tie the financial threshold for eviction to a period of time (one month's fair market rent) is a more practical and more tailored way of getting at the same objective.

Document received by the CA 2nd District Court of Appeal.

local action on financial thresholds for evictions. And third, the financial threshold for eviction is not "of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality." (*Id*. at 14.) This test is inapplicable because tenants are only subject to the financial threshold regulations, if any exist, of the locality in which they live.

Rather than apply these tests to the facts at hand, Appellant turns instead to legislative history, citing *Tri County* for the proposition that "the setting in which legislation was adopted well may be helpful in interpreting the language used in the enactment." (Opening Br. at 21.) But the language used in the Eviction Threshold Ordinance is clear on its face. Appellants have not identified a single word or phrase in the Eviction Threshold Ordinance ambiguous enough to require legislative history to explain. The Eviction Threshold Ordinance simply limits evictions based on nonpayment of rent to circumstances where the tenant owes more than "one month of fair market rent for the Los Angeles metro area . . . for an equivalent sized rental unit as that occupied by the tenant." (AA 503 (Text of Ordinance No. 187763).) Again, there is nothing ambiguous about this language that requires peering into the legislative history.

Moreover, Appellant's selective citation to a report issued by a group of tenant advocates from the Keep LA Housed (KLAH) coalition, rather than to the City's own purported reasons for enacting the Ordinance, misconstrues the record. (See Opening Br. at 22.) KLAH made numerous recommendations to the City, including that the City require landlords to file eviction notices with the City, that it raise the past due rent required for judicial intervention to $10,000, and that it enact permanent limits on evictions for failure to pay rent such that affected landlords would appeal to small claims court, not eviction court, to recoup past-due rent. (AA 604 (Memo from Keep LA Housed Coalition to LAHD).) The City declined to



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implement any of these suggestions in the final Ordinance. While the City may have *considered* a "financial and/or timeliness threshold" to address the issue of evictions over "as little as one dollar," it ultimately *enacted* a purely financial threshold—one month's fair market rent for an equivalent sized unit. (AA 915 (Order Denying Petition for Writ of Mandate).) The law at issue is the one the City actually adopted, not any hypothetical alternatives considered along the way. Further, Appellant fails to explain the relevance of this legislative history to any step in the express or implied preemption analysis. Accordingly, there is no express or implied preemption here.

### 3. The Eviction Threshold Ordinance falls squarely within the scope of the City's police power.

Appellant argues that the Eviction Threshold Ordinance exceeds the City's authority because "no authority suggests a city may go so far as to actually ***eliminate*** a default in the payment of rent as a basis for eviction." (Opening Br. at 24.) This question is not before the Court. (Cf. *Fisher v. City of Berkeley* (1986) 37 Cal. 3d 644, 691 n.52, affd *sub nom*. *Fisher v. City of Berkeley, Cal.*, 475 U.S. 260 (courts should avoid deciding issues not before them).) With respect to the Ordinance 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." (*S.F. Apartment Assn., supra*, 20 Cal.App.5th at p. 516.) The Eviction Threshold Ordinance, which amends the *substantive* bases for eviction in Los Angeles, is well within the City's established police power to regulate evictions and combat homelessness and is neither expressly nor impliedly preempted.



Document received by the CA 2nd District Court of Appeal.

**B. The Relocation Assistance Ordinance is not preempted by the Costa-Hawkins Rental Housing Act.**

The Relocation Assistance Ordinance is not preempted because it regulates evictions pursuant to the explicit reservation of local municipalities' power outlined in the Costa-Hawkins Rental Housing Act. It does not set rental rates or impact a landlord's power to do so, in contrast to Appellant's cited cases, which concern local ordinances that expressly regulate rental rates. Because Appellant has not met its burden of showing express or implied preemption, and because the Ordinance does not impose a prohibitive price on a landlord's ability to raise rents by over 10 percent, this Court should affirm the trial court's ruling and find that the Relocation Assistance Ordinance is not preempted.

**1. The Relocation Assistance Ordinance regulates evictions, not rental rates.**

Costa-Hawkins authorizes 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 Costa-Hawkins, 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, *supra* at p. 1237–38, [citing *Bullard v. S.F. Residential Rent Stabilization Board* (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 L.A. County., Inc. v. City of L.A.* (2009) 173 Cal.App.4th 13, 18 [citing Civ. Code, § 1954.52(c)] (emphasis added).)

In Costa-Hawkins, the state Legislature deliberately struck a balance whereby landlords can set rental rates, while local jurisdictions retain their

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otherwise existing authority, pursuant to their police powers, to regulate evictions. This authority is not strictly limited to unlawful detainer actions; cities have long enjoyed the right to reasonably regulate other forms of displacement as well, including constructive evictions. (See, e.g., Gov. Code, § 7060.1(c) [preserving local authority "to mitigate any adverse impact on persons displaced by reason of the withdrawal from rent or lease of any accommodations"]; *infra,* section V.b.iii [collecting cases upholding local police power to require relocation assistance to mitigate impacts of displacement].) An actual eviction takes place "[i]f the landlord ousts the tenant," while a constructive eviction takes place "[i]f the landlord's acts or omissions affect the tenant's use of the property and compel the tenant to vacate." (*Ginsberg v. Gamson* (2012) 205 Cal.App.4th 873, 897.) The Relocation Assistance Ordinance mitigates the impacts of large rent increases that result in constructive eviction.

Appellant's argument that a rent increase cannot cause a constructive eviction absent "wrongful" conduct by a landlord is without merit. (Opening Br. at 36.) "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; cf. *Aweeka v. Bonds* (1971) 20 Cal. App. 3d 278, 280 [holding that an excessive rent increase "constituted an actual eviction"].) And while Appellant argues that a tenant who *elects* to relinquish their tenancy following a rent increase is not being constructively evicted (Opening Br. at 35), this argument is at odds with the definition of a constructive eviction under *Ginsburg*. A tenant who can no longer afford to maintain a tenancy following an increase in rent is compelled to vacate; a tenant subject to a constructive eviction because their unit has become uninhabitable also ultimately "elects" to relinquish their tenancy under Appellant's logic. Moreover, Appellant's creative framing disregards the realities of living as



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a low- or middle-income tenant in one of the world's most expensive cities. The declarations in the record reflect the reality of what happens to many tenants whose rent is raised over 10 percent. For example, low-income tenant Silvia Anguiano, who relies on social security benefits and part-time work to make ends meet, stated that a 15 percent rent increase would force her and her son out of their home and community. (AA 862 (Declaration of Silvia Anguiano).) Ms. Anguiano is not alone. Annual rent increases over 10 percent are disfavored in state law[3] precisely because of the inherent likelihood that such increases will push people out of their homes. Notably, the trial court found that constructive evictions do not in all cases require illegal conduct on the part of a landlord. (AA 936 ("Petitioner fails to explain why a large rent increase even if imposed in good faith could not result in a constructive eviction.").)

Appellant attacks the trial court's legal interpretation of constructive evictions under the theory that the City's authority to enact the Relocation Assistance Ordinance stems solely from Costa-Hawkins' statement that local jurisdictions have the right to regulate the substantive bases of eviction. But Appellant misconstrues the source of such authority: the City's power to enact the Relocation Assistance Ordinance stems from its *otherwise existing* authority to "regulate or monitor the basis for eviction" as referenced in Costa-Hawkins. (See Civ. Code, § 1954.52(c).) Costa-Hawkins on its own terms did not create new authority for local jurisdictions to regulate evictions, but merely clarified that it did not alter their pre-existing authority.

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[3] The California Tenant Protection Act, which "creates statewide protections against excessive rent increases," limits annual rent increases to the lesser of 5 percent plus the change in CPI, with a cap of 10 percent. (Civ. Code, § 1947.12(a)(1).) The Penal Code also prohibits rent increases greater than 10 percent following a state of emergency. (Pen. Code, § 396(f).)

Document received by the CA 2nd District Court of Appeal.

The Relocation Assistance Ordinance is intended to provide tenants with a narrowly tailored remedy to offset the costs associated with being forced to move following a significant rent increase: moving expenses, a security deposit, and first and last month's rent. Those costs will exist, and tenants will be pushed out, regardless of whether rent is increased in good or bad faith. According to the City, the policy was crafted and calculated to give tenants "the financial means to secure alternative housing," not to deter large rent increases. (AA 518 (Nov. 2022 LAHD Transmittal Regarding Tenant Protections).) The Relocation Assistance Ordinance is designed to address these constructive evictions, not to curb rental rates or punish landlords who choose to raise rents over a specified threshold.

**2. Because the laws do not conflict, Appellant has not met its burden of showing express or implied preemption.**

The Relocation Assistance Ordinance does not conflict with state law because it does not contradict, duplicate, or enter an area fully occupied by Costa-Hawkins. Appellant cites to *Bullard v. S.F. Residential Rent Stabilization Board, supra*, 106 Cal.App.4th 488, *Palmer/Sixth Street Properties, L.P. v. City of L.A.* (2009) 175 Cal.App.4th 1396, and *Apartment Assn. of L.A. County, Inc. v. City of L.A.* (2006) 136 Cal.App.4th 119 ("AAGLA") to support its cries of preemption, but all three cases entail circumstances in which a local ordinance expressly regulated rental rates, a right that Costa-Hawkins reserves to landlords. By contrast, the Relocation Assistance Ordinance does not regulate rental rates—a fact that Appellant conceded during oral argument before the trial court. (AA 931 (Order Denying Petition for Writ of Mandate) (calling this issue "undisputed").)

In *Bullard*, the court considered a San Francisco ordinance that expressly limited the amount of rent that a landlord could charge for a replacement unit following an owner move-in eviction. (*Bullard, supra*,

Document received by the CA 2nd District Court of Appeal.

106 Cal.App.4th at p. 489.) Specifically, the ordinance at issue required landlords to offer replacement units to tenants subject to owner move-in evictions "at a rent based on the rent that the tenant is paying, with upward or downward adjustments allowed based upon the condition, size, and other amenities of the replacement unit." (*Id*. at 490–91.) The ordinance further provided that "[d]isputes concerning the initial rent for the replacement unit shall be determined by the Rent Board." (*Id*. at 491). While the Board argued that the ordinance was an eviction regulation, there was little question that, even if designed to offset the effects of a no-fault, owner move-in eviction, the ordinance also on its face regulated rental rates. Because the ordinance directly conflicted with Costa-Hawkins, the court concluded that it was preempted.

Likewise in *Palmer*, the court considered a municipal ordinance that required developers to provide affordable housing units at regulated rates when developing new housing projects. (*Palmer/Sixth Street Properties, L.P. v. City of L.A.*, *supra*, 175 Cal.App.4th at pp. 1399–1400.) While the ordinance's affordable housing requirement aimed to "protect the Area's 'existing residential community from further displacement,'" like the ordinance at issue in *Bullard*, it expressly limited the monthly rent that could be charged for any required affordable housing unit built under the law. (*Id*. at 1400–01.) This was found to be "hostile or inimical to" Costa-Hawkins, and the ordinance was therefore preempted. (*Id.* at 1410.)

*AAGLA* is distinguishable on the same grounds. (*AAGLA, supra*, 136 Cal.App.4th at p. 122.) There, the City of Los Angeles adopted an ordinance prohibiting "a landlord, after termination or nonrenewal of a Section 8 housing contract with the City's Housing Authority, from charging the tenant more than the tenant's portion of the rent under the former contract, without any limitation as to time." (*Id*.) Looking to a provision of Costa-Hawkins that gives tenants 90 days following



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termination of their contract before that have to pay increased rent, the court concluded that "[s]tate law fully occupies the field of the length of time a tenant's rent payment is frozen following notice of termination or nonrenewal of a Section 8 agreement." (*Id*. at 582.) Here too, the ordinance was in direct conflict with Costa-Hawkins and was therefore preempted.

Unlike each of the cases to which Appellant cites, the Ordinance at issue here *does not regulate rent*. Under the Relocation Assistance Ordinance, landlords remain free to set initial and subsequent rental rates at whatever level they want, whenever they want. They can raise rents by 5 percent or 50 percent if they wish to do so; the Ordinance places no limitation on rent increases. Rather, *if* the annual increase is over 10 percent—and *if* the tenant elects to move rather than paying the higher rent—the landlord must pay a one-time sum of money that is narrowly tailored to cover costs such as moving expenses, a security deposit, and first and last month's rent on a new unit that are necessary to ensure the tenant can secure replacement housing. It is Appellant's burden to show preemption, yet Appellant has not pointed to a single case in which a court has found that an ordinance that did not directly regulate rental rates was preempted by Costa-Hawkins.

Further, it is clear that these facts do not satisfy any of the three tests for implied preemption under *Johnson*, nor does Appellant attempt to make this argument. (See *Johnson v. City* & *County of S.F., supra*, 137 Cal.App.4th at pp. 7, 13–14.) The Relocation Assistance Ordinance is neither expressly nor impliedly preempted by Costa-Hawkins.

**3. <u>Relocation assistance to prevent displacement has been consistently upheld in other contexts.</u>**

Courts have consistently upheld reasonable, tailored relocation assistance requirements in other contexts. For example, in *Pieri v. City and County of S.F.* (2006) 137 Cal.App.4th 886, the court considered a facial

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challenge to a San Francisco ordinance that required landlords to pay relocation assistance up to a maximum payment of $13,500 per rental unit to tenants being evicted under the Ellis Act.[4] The landlords 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*, *supra*, 137 Cal.App.4th at p. 888.) 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 possibility of a $13,500 relocation payment was not "necessarily beyond that contemplated by the Legislature in enacting and amending" the Ellis Act. (*Id*. at 893–94.) Notably, the amount of relocation assistance that the court approved in *Pieri* almost 20 years ago is far greater than the average amount of relocation assistance at issue in this case, even before accounting for inflation.[5]

Relocation assistance ordinances have also been upheld in a variety of other circumstances. For example, in *Kalaydjian v. City of L.A.* (1983) 149 Cal.App.3d 690, this Court found that a Los Angeles ordinance that required landlords to pay relocation assistance to tenants who are displaced when apartments are converted into condominiums was a valid exercise of the City's police power. (*Kalaydjian*, 149 Cal.App.3d at 692). The court in *People v. H & H Properties* (1984) 154 Cal.App.3d 894 reached the same conclusion in a case regarding the conversion of housing to condominiums. (*H & H Properties*, 154 Cal.App.3d 894, 897–98 & fn. 1, 901). (See also, e.g., *2710 Sutter Ventures, LLC v. Millis* (2022) 82 Cal.App.5th 842, 855

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[4] The Ellis Act is a state law that gives landlords the right to evict tenants to remove their property from the rental market. (See Gov. Code, § 7060 et seq.)

[5] As Appellant notes, relocation assistance for a two-bedroom unit would be $8,077. (Opening Br. at 30.)



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("[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).) These cases clearly show that passing an ordinance requiring landlords to pay reasonable compensatory relocation assistance to mitigate the adverse effects of housing displacement is well within a city's police power.

#### 4. **The Relocation Assistance Ordinance does not impose a prohibitive price on landlords' Costa-Hawkins rights.**

Appellant erroneously argues that the Relocation Assistance Ordinance, if implemented, "will effectively deter property owners from raising rents above the trigger for [relocation] benefits," thereby effectively capping "rent increases on the very properties that the State Legislature has purposefully exempted from both local and state rent control measures." (Opening Br. at 31.)

In support of this claim, the Appellant deploys arbitrary, self-serving arithmetic and faulty business analysis to conclude that the unavoidable impact of the Relocation Assistance Ordinance is tantamount to rent control. (Opening Br. at 31.) Appellant offers the example of a property owner considering two options to increase rent on a two-bedroom unit renting in 2023 for $2,000: a 10 percent increase resulting in a rent of $2,200 that would *not* trigger the Relocation Assistance Ordinance; or alternatively, a 15 percent increase which would result in a new rent of $2,300 and *would* trigger the Relocation Assistance Ordinance. Appellant argues that no landlord would increase the rent above $2,200 because doing so would result in the landlord "losing money" if the tenant elected to vacate and receive relocation assistance—in this example, in the amount of $8,077. (*Id.*)

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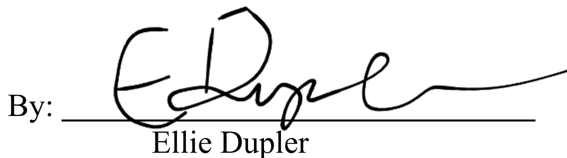
This example asks the Court to ignore the fact that a landlord who increases the rent to $2,300 will make an additional $3,600 per year on that unit for an indefinite period of time. For example, after three years, the landlord will have collected an additional $10,800 on the unit, thereby surpassing the amount paid out in relocation assistance.

Appellant's argument that the Relocation Assistance Ordinance is "directed at behavior the City does not have a legitimate interest in regulating" misses the mark. (Opening Br. at 37; cf. *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].) No one can dispute that the City has an enormous stake in ameliorating homelessness and housing insecurity crisis in Los Angeles. And no one can dispute that significant rent increases frequently force tenants to relocate—often into homelessness or less secure housing. (See AA 860–78 (Declarations of Silvia Anguiano, Anabella Sam, and Heidi Gonzalez).) In a city where low- and middle-income tenants struggle to find safe and affordable places to live, the City of Los Angeles has a significant interest in offsetting the financial impacts of rent hikes and keeping people housed. The Relocation Assistance Ordinance is therefore clearly well within the City's police powers, targets an issue the City has legitimate interest in regulating, and is not preempted by state law.

## VI. CONCLUSION

For the foregoing reasons, Intervenors respectfully request the Court uphold the trial court's ruling and find that neither Ordinance is preempted.

Dated: August 23, 2024 SUSMAN GODFREY L.L.P.



By: ______________________________
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## CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) or 8.360(b)(1) of the California Rules of Court, the enclosed brief of COMMUNITY POWER COLLECTIVE and INNER CITY STRUGGLE is produced using 13-point Roman type including footnotes and contains approximately 7,732 words, not including table of contents and authorities, the caption page, the signature blocks, or this certification page. Counsel relies on the word count of the computer program used to prepare this brief.

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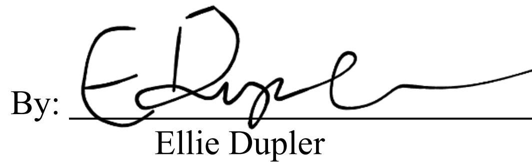
By: 
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**PROOF OF SERVICE**

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 August 23, 2024, I caused to be served the foregoing document 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 VIA TRUEFILING for e-service to the email address(es) set forth on the attached service list.

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Hon. Michell L. Beckloff
Los Angeles Superior Court
Stanley Mosk Courthouse, Dept. 86
111 North Hill Street
Los Angeles, CA 90012

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

Executed on August 23, 2024, Los Angeles, California.

| Ellie Dupler | /s/ *Ellie Dupler* |
|---|---|
| Typed Name | Signature |

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