No. 25-5029

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MELVIA HARRIS; ROBERTA KNIGHTEN,
Plaintiffs-Appellants,

v.

CITY OF LOS ANGELES,
Defendant-Appellee,

STRATEGIC ACTIONS FOR A JUST ECONOMY,
Intervenor-Defendant-Appellee

Appeal from the United States District Court
Case No. 5:24-cv-02679
Hon. Jesus G. Bernal

CITY OF LOS ANGELES'S ANSWERING BRIEF

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INTRODUCTION

Since 1979, Defendant and Appellee the City of Los Angeles's Rent Stabilization Ordinance (RSO) has addressed the City's housing shortage and homelessness crisis by regulating the landlord-tenant relationship. The RSO protects tenants from excessive rent increases and restricts the grounds for eviction, while also ensuring landlords a fair return on their properties. Property owners have sued over similar rent and eviction regulations for over a hundred years based on a litany of legal theories. See *Block v. Hirsch*, 256 U.S. 135, 157–58 (1921). In these cases, the United States Supreme Court has repeatedly affirmed the government's authority to regulate the landlord-tenant relationship for the public good.

This lawsuit is just the latest effort to try to unsettle that authority. Plaintiffs-Appellants Melvia Harris and Roberta Knighten challenge the constitutionality of the RSO, primarily asserting that several provisions effect physical and regulatory takings. The District Court properly dismissed the Complaint because the Supreme Court has long held that these types of landlord-tenant regulations are not

takings and do not require just compensation. The Court of Appeal should affirm the District Court's order for the following reasons.

First, *Yee v. City of Escondido*, 503 U.S. 519 (1992) precludes Appellants' physical takings claims. Where landlords enter a regulated market, voluntarily inviting tenants onto the property, the government may regulate their relationship with tenants without effecting a physical taking. *Id.* at 528–529. The Supreme Court most recently reiterated this reasoning in *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021) which distinguished regulations that force landowners to open private property to uninvited persons (a *per se* taking) from regulations that govern how landowners treat invited persons (not a taking).

Second, the District Court properly dismissed Appellants' regulatory takings claims under *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104 (1978) which requires a plaintiff to plead facts showing (1) the regulation's economic impact in the form of a diminution in property value, (2) interference with reasonable investment-backed expectations, and (3) the character of the action is akin to a physical invasion by the government. *Colony Cove Properties,*

LLC. v. City of Carson, 888 F.3d 445, 450–454 (9th Cir. 2018). Appellants' Complaint fails to allege such an economic impact. Although the District Court granted Appellants leave to amend to allege facts showing a diminution in property value, Appellants declined to do so. And, because they purchased property in a heavily-regulated market, they cannot allege interference with reasonable expectations based on amendments to the RSO. Lastly, regulating the landlord-tenant relationship is patently not akin to a physical invasion.

Third, the District Court correctly dismissed Appellants' remaining Equal Protection and First Amendment claims. Appellants have not stated a valid equal protection claim based on the RSO's regulation of pre-1979 buildings. The RSO's distinction between old and new buildings has at least two rational bases: newer buildings are already not subject to rent control under state law, and the RSO's exemption of newer buildings encourages new housing construction. As to Appellants' First Amendment claim, the RSO's requirement that landlords post a government-drafted notice in common areas does not interfere with Appellants' own speech. In the alternative, this requirement permissibly compels commercial speech under *Zauderer v.*

Off. of Disciplinary Couns. of Sup. Ct. of Ohio, 471 U.S. 626, as the notice summarizes purely factual and non-controversial information, and the requirement is reasonably related to the City's interest in informing tenants of the law.

The City respectfully requests that this Court affirm the dismissal of all claims.

STATEMENT OF AGREEMENT AS TO JURISDICTION

Appellants' Statement of Jurisdiction accurately describes the statutory basis of subject matter jurisdiction, the date of order appealed from, and the date of filing the notice of appeal, the statutory basis of jurisdiction of this Court, and the rule under which the appeal is timely.

STATEMENT OF THE CASE

A. The Rent Stabilization Ordinance (RSO) and its evolution from 1979

The City passed the RSO in 1979 to address its "shortage of decent, safe and sanitary housing in the City of Los Angeles resulting in a critically low vacancy factor." L.A. Mun. Code (L.A.M.C.) § 151.01. The City Council found that regulation was required "to safeguard tenants from excessive rent increases, while at the same time providing landlords with just and reasonable returns from their rental units."

L.A.M.C. § 151.01. The RSO generally applies only to dwellings built before October 1, 1978, to "encourage new construction and expansion of the City's housing stock." *City of Los Angeles v. Los Olivos Mobile Home Park*, 213 Cal App.3d 1427, 1432 (1989); L.A.M.C. § 151.02 (exceptions to definition of "rental unit" regulated by RSO).

For decades, the RSO has had three main features: (1) it regulates rent increases; (2) it regulates the grounds for eviction; and (3) if a landlord evicts a tenant for a "no-fault" reason, they must pay the tenant a relocation fee. L.A.M.C. §§ 151.04, 151.06, 151.09.A, 151.09(A)(8) & (G), 151.30(E). As to the first feature, the RSO regulates how much tenants' rents may increase each year, but does not set the rents landlords may charge a new tenant. L.A.M.C. § 151.06.C. That means landlords may generally charge whatever the market will bear when they get a new tenant. The RSO then allows landlords to raise rents annually by an amount tied to changes to the Consumer Price Index. *Id.* §§ 151.06.D, 151.07.A.6. Historically, RSO-permitted rent increases have ranged between three to eight percent each year. *Id.* § 151.07.A.6; (SER260; RJN Ex. N).

The RSO also protects landlords by providing them with an opportunity to obtain rent increases beyond the standard limit: landlords may apply for permission to increase rents if needed to obtain "a just and reasonable return" on their rental unit. L.A.M.C. § 151.07.B.1; *see also* § 151.07.A (allowing the City's Housing Department to approve rent increases for capital improvements or rehabilitation work). The process for determining a just and reasonable return is "designated to guarantee landlords at least the same rate of return, with adjustments for inflation, that they experienced prior to the enactment of rent control." Just & Reasonable Guidelines (SER73; RJN Ex. C), at § 241.09; *see also Palos Verdes Shores Mobile Estates v. City of L.A.*, 142 Cal.App.3d 362, 371 (1983) (explaining RSO's rent adjustment procedures). Thus, landlords are eligible for a rent increase when "necessary to enable the landlord to maintain the same net profit as obtained in the last year there was an unregulated housing market." *Id.* at 371.

As to the RSO's second main feature, it restricts the grounds upon which landlords can evict tenants. This includes "at-fault" reasons—like a tenant not paying rent or creating a nuisance—and "no-fault" reasons,

like a landlord's exit from the rental business. L.A.M.C. § 151.09. Eviction regulations work side-by-side with rent ceilings to prevent landlords from evicting tenants just to raise rents or "putting out tenants because of their unwillingness to pay illegal amounts of rent." *Birkenfeld v. City of Berkeley*, 17 Cal.3d 129, 148 (1976); see also *Block v. Hirsch*, 256 U.S. at 157–58 ("If the tenant remained subject to the landlord's power to evict, the attempt to limit the landlord's demands [for higher rent] would fail.").

Pursuant to the RSO's third feature, if a landlord wishes to evict a tenant for a "no-fault" reason such as an owner's decision to move a family member into the unit, the RSO requires the landlord to pay relocation fees ("Relocation Fee Requirement"). L.A.M.C. § 151.09.G. The purpose of relocation assistance is to assist tenants faced with displacement by defraying the costs of moving and securing new housing. Certain long-term low-income, elderly, or disabled tenants may be entitled to greater relocation fees. *Id.*; L.A.M.C. § 151.02 (definition of "qualified tenants" entitled to additional relocation fees). The relocation fee is based on a formula that has not changed since 2017. L.A.M.C. § 151.09.G. Additionally, pursuant to state law, landlords

seeking to evict a long-term elderly or disabled tenant to move into the rental unit must provide one year's notice of the eviction. L.A.M.C. §§ 151.30.D.1, 151.09.A.10, 151.23B (restating Ellis Act, Cal. Gov. Code §§ 7060-7060.7, requirements).

a. Amendments to the RSO during the Great Recession

The City amended the RSO over the decades to adjust for changing social and economic conditions. During the Great Recession, when thousands of renters faced eviction, the City revised its requirements for no-fault evictions. (SER101; Ord. 178,632 (2007), RJN Ex. E.) The City Council attempted to balance landlords' and tenants' interests by increasing relocation fees for no-fault evictions, while lowering those fees for "mom and pop" landlords who evict tenants to occupy a unit in their rental property (known as "owner-occupancy" evictions). L.A.M.C. § 151.30.E (reducing relocation fees for certain landlords); (SER114; L.A., Cal., Ord. 180,747 (2009), RJN Ex. H; SER100; RJN Ex. F). At the same time, consistent with its sister jurisdictions' practices, the City prohibited evictions of its most vulnerable residents—long-term disabled and elderly tenants, or terminally ill tenants—for owner-occupancy, unless the landlord

withdraws all of its units from the rental market. L.A.M.C. §§ 151.30.D.1, 151.09(A)(10).

During the same period, the City began requiring landlords to post a one-page notice displaying the City Housing Department's contact information and several RSO requirements ("Notice Requirement"). L.A.M.C., § 151.05.I. Landlords must post this notice "in a conspicuous location in the lobby of the property, near a mailbox used by all residents on the property, and or near a public entrance to the property. *Id.* The City adopted this requirement in response to evidence that "some lenders and their agents have taken advantage of tenants' lack of awareness of their rights … [by] forc[ing] tenants to vacate the property upon foreclosure in violation of the law." (SER145; RJN Ex. J.)

b. Revisions to the RSO after the COVID-19 Pandemic

The COVID-19 pandemic exacerbated the significant housing instability and economic precarity City renters already faced. To keep renters housed and landlords afloat during a once-in-a-century public health crisis, the City, State, and federal government expended over $1.5 billion in rent relief in the City alone. (SER180; RJN Ex. K.) In response to the pandemic, the City declared a local emergency and

instituted a number of temporary renter protections. *Apt. Ass'n of L.A. Cnty., Inc. v. City of L.A.*, 10 F.4th 905, 909–910 (9th Cir. 2021) (summarizing protections). For one, the City barred any rent increase for RSO properties until one year following the termination of the emergency. L.A.M.C. § 151.32. The City ended the emergency on February 1, 2023. (ER51, ¶ 47.)

Before the pandemic-era protections expired, the City adopted two new rent control provisions to prevent and mitigate the harms of evictions. First, through two actions, the City capped rent increases at four percent ("Four Percent Cap"). From February 1, 2024 through June 30, 2024, the City set a special rent increase rate of four percent, raised by an additional two percent when landlords pay for utilities. L.A.M.C. § 151.34. The four percent figure was based on "specifically the Consumer Price Index from October 2022 through September 2023." (SER257; RJN Ex. M.) Then, after June 30, 2024, the City resumed using the regular RSO formula to calculate annual rent increases. L.A.M.C. §§ 151.34, 151.06D, 151.07A.6; (ER 59–60, ¶ 64). For the period between July 1, 2024 through June 30, 2025, the rent increase

allowed stayed at four percent. L.A.M.C. §§ 151.06.D, 151.07.A.6; (SER260; RJN Ex. N).

The Four Percent Cap did not alter the process by which landlords can apply for an exception from the RSO's rent increase ceiling. Landlords who do not make a "just and reasonable" return or who operate at a loss after one year of ownership may apply to the Housing Department for a permanent rent increase to improve their properties' profitability. L.A.M.C. § 151.07; RJN Ex. C. Where a landlord's current net operating income has decreased relative to before the property became rent-controlled, the landlord is eligible for a rent increase that returns the property to the same profitability. *Ibid.*

Second, the City enacted a restriction on evicting tenants who were less than one month behind on their rent ("FMR Eviction Threshold"). The FMR Eviction Threshold limited evictions for failure to pay rent to cases where the amount of rent owed is more than "one month of fair market rent." L.A.M.C. § 151.09.A.1. The ordinance tied the threshold amount to the fair market rent for the Los Angeles metro area set annually by the U.S. Department of Housing and Urban Development (HUD) for an equivalent-sized rental unit. *Id.* HUD

annually calculates the fair market rent for the L.A. area based on data from the Census Bureau adjusted using the local Consumer Price Index trends to reflect current market conditions.[1]

In adopting this ordinance, the City considered evidence that tenants who experience sudden losses in income are evicted while waiting for government assistance that would cure their rent default. (SER269; RJN Ex. O.) The City's Housing Department reasoned that, because evictions are "painful and disruptive," they should not be used for small amounts of overdue rent, but are "an extraordinary legal remedy that should not be used as a debt collection tool to recover relatively small sums." (SER269; RJN Ex. O.) Moreover, state law authorizes landlords to immediately pursue any amount of overdue rent in a "small claims" proceeding. Cal. Code Civ. Proc., §§ 116.10, et seq. The purpose of the small claims process is precisely "to provide a simple and expeditious means to settle disputes over small amounts…." *Siam v. Kizilbash*, 130 Cal.App.4th 1563, 1572 (2005).

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[1] U.S. Dept. of Housing and Urban Development https://www.huduser.gov/portal/datasets/fmr/fmr2026/FY26-Public-FMR-Methodology.pdf accessed on January 20, 2026.

B. State laws governing evictions and rent controls

The RSO and regulations like it are subordinate to state law. *Birkenfeld*, 17 Cal.3d at 140. Under California law, "landlord-tenant rights, obligations and remedies turn on both real property and contract law." *Spinks v. Equity Residential Briarwood Apts.*, 171 Cal.App.4th 1004, 1031 (2009). When tenants breach lease obligations, for example, landlords may pursue contractual remedies such as litigation *or* attempt to recover possession through an eviction. *Id.* at 1038.

California law provides for a summary eviction proceeding called an unlawful detainer. Cal. Civ. Code Proc. § 1161. State law sets forth the procedures by which a landlord may pursue an unlawful detainer action. *Id.* But local governments may regulate the reasons a landlord can evict a tenant for—for example, "at-fault" or "no fault" reasons. *Birkenfeld*, 17 Cal. 3d at 149.

The State also constrains local regulations like the RSO through laws like the Costa-Hawkins Rental Housing Act (Act). Cal. Civ. Code §§ 1954.50–1954.535. The Act precludes the City from extending rent control ordinances like the RSO to dwelling units constructed after

1995. *Id.* § 1954.52(a). In addition, the Act permits landlords to set the initial rent for new tenants without limit. *Id.* § 1954.53.

C. Appellants' Complaint

Plaintiffs each own rental property subject to the RSO. (ER65–66,¶¶ 75, 76.) Plaintiff Melvia Harris purchased her properties in 1984 and 1992. (ER42, ¶ 25.) Plaintiff Roberta Knighten inherited her property in 2009, which her grandfather purchased in the 1930s. (ER43, 67, ¶¶ 26, 76.) While Plaintiffs assert that the rents they charge do not "keep pace with ballooning costs," neither has applied for permission to increase the rent. (ER65, ¶ 75.) In addition, neither Plaintiff mentions any specific lost value in her property.[2] Nor have Plaintiffs alleged whether they received rent relief under government programs that distributed billions of dollars to landlords over the pandemic.

The Complaint challenge four aspects of the RSO, alleging (1) the FMR Eviction Restriction is an uncompensated taking in violation of

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[2] On the contrary, this Court may take judicial notice of public records showing that Harris purchased one of her properties (2810 Somerset Ave.) for $275,000 in 1992, and sold it in 2024 (less than two months before filing this action) for $1,175,000, for an approximate 325% increase in value. See https://portal.assessor.lacounty.gov/parceldetail/5050016005.

the U.S. Constitution (Count I); (2) the Four Percent Cap is an uncompensated taking and violates the Equal Protection Clause (Counts II and III); (3) the Relocation Fee Requirement is an uncompensated taking (Count IV); and (4) the Notice Requirement violates the First Amendment (Count V). All theories arise under 42 U.S.C. § 1983.

The City moved to dismiss the Complaint, as did intervenor Strategic Actions for a Just Economy, a tenant rights' organization. ER3.

D. The District Court granted the Motion to Dismiss with Leave to Amend.

The District Court granted the City's and Intervenor's motions with leave to amend. ER22. As to the FMR Eviction Threshold, the District Court fell "in line with the chorus of decisions upholding eviction restrictions" against takings claims. ER14. Citing to *Yee v. City of Escondido*, 503 U.S. 519 (1992) (*Yee*), the District Court found that,

> The FMR eviction restriction simply addresses the "terms of eviction" and is not a physical taking under Supreme Court precedent. [Citation.] Landlords, if they so choose, can leave the rental market. The FMR Eviction Restriction does not require landlords to 'rent property in perpetuity.' [Citation.] … Plaintiffs have decided to participate in a regulated market, and the FMR eviction restriction permissibly regulates their relationship with their tenants until they decide to leave that market.

ER 14. Plaintiff's physical takings challenge to the Four Percent Cap failed for the same reason: "once [landlords] rent their property, they are subject to regulation." ER18. Finally, under, Ninth Circuit precedent, the Relocation Fee Requirement is not a physical taking but merely a regulation of the landlord-tenant relationship. ER20.

As to the regulatory takings claims, the District Court found that a " 'mere loss in income' " was insufficient to allege a regulatory taking as to the FMR Eviction Threshold and Relocation Fee Requirement. ER 15 citing to *Colony Cove Properties, LLC. v. City of Carson*, 888 F.3d 445, 450–454 (9th Cir. 2018) (*Colony Cove*). ER20. Instead, "economic impact is determined by comparing the total value of the affected property before and after the government action,' " and Plaintiffs did not allege a diminution in property value. *Ibid.* As to the Four Percent Cap, the regulatory takings claim was not ripe, because Plaintiffs had not applied for a rent increase "beyond the ordinary RSO rent cap in order to receive a 'just and reasonable return.' " ER17.

As to Plaintiffs' equal protection challenge to the Four Percent Cap's regulation of property built before 1978, the District Court held the City has two rational bases for the ordinance's distinction between

pre- and post-1978 properties. ER18. First, because the state Costa-Hawkins Act prohibits rent control on units previously exempt under local rent control, the City cannot impose rent control on post-1978 properties. ER18 citing to Cal. Civ. Code, § 1954.52(a). Second, encouraging new housing construction justified exempting newer properties from rent control. ER18.

The District Court also found that Plaintiffs' equal protection and physical takings challenges to the Four Percent Cap, and takings challenge to the Relocation Fee Requirement are time-barred. ER 16–17, 19.

Finally, the District Court found that, under *Rumsfeld v. Foundation for Academic & Institutional Rights, Inc.*, 547 U.S. 47 (2006) (*FAIR*), the Notice Requirement did not infringe on Plaintiffs' First Amendment rights. ER21–22. The Court reasoned that the requirement "neither limits what [Plaintiffs] may say nor requires them to say anything," and concerned a Notice which "prominently expresses that it is authored by the City." ER22. Furthermore, Plaintiffs had not explained "how the common areas of their buildings are 'inherently expressive,' " and "there is no reason Plaintiffs cannot easily 'disclaim'

the message." ER22. Because the Court found that the Complaint did not allege that Notice Requirement affected their speech, the Court did not reach the argument that the Notice was permissible compelled commercial speech under *Zauderer v. Office of Disciplinary Counsel of Sup. Ct. of Ohio*, 471 U.S. 626 (1985) (*Zauderer*). ER21, fn. 9.

Plaintiffs declined to amend, and timely appealed. ER3.

SUMMARY OF THE ARGUMENT

The District Court properly dismissed this action.

First, Appellants' challenges to the Four Percent Cap and Relocation Fees are procedurally barred. Appellants' regulatory takings challenge to the Four Percent Cap is not ripe because they never applied for an individual rent adjustment that would allow them to raise their rent above the RSO's limits. Appellants' *per se* takings and equal protection claims against the Four Percent Cap are untimely Four Percent Cap did not substantively amend the RSO such that it re-started the statute of limitations. And, Appellants' takings challenge to the Relocation Fee Requirement is untimely because the City adopted this ordinance in 2017, more than two years before they filed their action in 2024.

Second, the FMR Eviction Threshold, the Four Percent Cap, and the Relocation Fee Requirement do not effect a physical takings. *Yee*, 503 U.S. at 539 precludes Appellants' physical takings claims because Appellants decided to participate in a regulated market, and these ordinances merely regulate their relationship with tenants.

Third, the District Court also correctly dismissed all of Appellants' regulatory takings claims because the Complaint fails to allege sufficient facts as to each of the *Penn Central* factors. As to the first factor, Appellants do not allege their property diminished in value. Under the second factor, Appellants cannot plead interference with objectively reasonable investment-back expectations because they purchased their properties with rent control already in place. Lastly, these regulations are not akin to a physical invasion by the government.

Fourth, Appellants have not stated a valid equal protection claim because the RSO's distinction between old and new buildings has at least two rational bases: state law already exempts newer buildings from rent control, and the RSO's exemption of newer buildings from this regulation encourages new housing construction.

Fifth, the Notice Requirement does not infringe on Appellants' First Amendment rights. Under *FAIR*, 547 US. 47, the requirement that landlords host the City's message by posting a notice does not require Appellants to speak: they need only display the Notice which does not interfere with their speech or other expressive activity. The Notice Requirement also permissibly regulates commercial speech under *Zauderer*, 471 U.S. 626.

ARGUMENT

I. Appellants' challenges to the Four Percent Cap and Relocation Fees are procedurally barred.

a. The regulatory takings challenge to the Four Percent Cap is not ripe.

The District Court properly held Appellants' "regulatory takings claim is not ripe" because Appellants failed to seek an exception from the rent cap. ER17. Without a determination of how much of a rent increase Appellants could obtain through an individual rent adjustment, the District Court could not determine the Four Percent Cap's impact on them. *Ibid.* Because a regulatory takings claim requires a finding of the regulation's "economic impact" on the plaintiff and neither Appellant applied for relief from the rent cap's impact on

their properties, their claim that the Four Percent Cap effected a regulatory taking is unripe.

A "plaintiff who asserts a regulatory taking must prove that the government 'regulation has gone "too far," ' " thus, "the court must first 'kno[w] how far the regulation goes.' [Citation.]" *Pakdel v. City & Cnty. of San Francisco, California*, 594 U.S. 474, 479 (2021) (*Pakdel*). "When a plaintiff alleges a regulatory taking …, a federal court should not consider the claim before the government has reached a 'final' decision." *Id.* at 475. A final decision ensures "that a plaintiff has actually 'been injured by the Government's action' and is not prematurely suing over a hypothetical harm." *Id.* at 479. Failure to exploit available procedures "may render a claim unripe *if* avenues still remain for the government to clarify or change its decision." *Id.* at 480 (emphasis original).

In the rent control context, no final decision exists until the landlord has availed herself of available procedures for obtaining an exemption from rent control limits. See *Amberhill Props. v. City of Berkeley*, 814 F.2d 1340, 1341 (9th Cir. 1987) ("until the [Rent Stabilization] Board has an opportunity to consider whether [plaintiff landlord] has been denied a fair return due to inflation and, if so, to use

its regulatory powers to make an appropriate adjustment, we cannot decide whether application of these regulations to [plaintiff landlord] would effect an unconstitutional 'taking.' "); *Little Woods Mobile Villa LLC v. City of Petaluma*, 736 F.Supp.3d 757, 767 (N.D. Cal. 2024) (dismissing regulatory takings claims because, *inter alia*, "the application of the City's Rent Control Law has not been conclusively determined: Plaintiffs have not sought an exception from the maximum rent increase through the process they allege is set out in the law.").

Here, as Appellants never applied for a rent adjustment for their properties, the City never made a final determination as to whether they were eligible for a rent increase beyond the Four Percent Cap. Appellants argue that the City did make a final decision that they "could not charge rates in 'the manner' that they would have 'proposed' in an administrative procedure," citing to *Williamson Cnty. Reg'l Plan. Comm 'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 193 (1985) (*Williamson*) overruled on other grounds in *Knick v. Township of Scott, Penn.*, 588 U.S. 180 (2019). OB 46. Specifically, because Appellants seek to charge "market rate[s]" for their rental units, they argue they were

not required to apply for a rent adjustment which only permits a "just and reasonable" return, not market rates. OB 46.

> As the District Court ruled, Appellants err in
>
> fram[ing] their injury as receiving anything less than market rate rent. That is not the law. Regulatory takings cases are of degrees, not absolutes. One cannot determine "the regulation's economic impact on the claimant" or "the extent to which the regulation interferes with distinct investment-backed expectations" without a determination of how the RSO applies to their property. *Colony Cove*, 888 F.3d at 450[.]

1-ER-17. Thus, although Appellants assert that any rent less than market rate constitutes a regulatory taking, in fact, a regulatory taking turns on the difference between "the value that has been taken from the property" and "the value that remains in the property." *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 497 (1987). Thus, the court must " 'kno[w] how far the regulation goes,' " not, as Appellants assert, simply whether it prevented them from recovering market-rate rents. *Pakdel*, 594 U.S. at 479.

Appellants' reliance on *Williamson* does not assist them. According to Appellants, *Williamson* holds that a final decision results when the City determines that "Plaintiffs could not charge rates in 'the manner' that they would have 'proposed' in an administrative

procedure." OB 46. In fact, *Williamson* explained that for an administrative action to be final such that it is "judicially reviewable," the decisionmaker must "arrive[] at a definitive position on the issue that inflicts an actual, concrete injury[.]" *Williamson*, 473 U.S. at 193. The *Williamson* plaintiff alleged the local government effected a taking when it rejected a proposed residential development. *Id.* at 182–183. The U.S. Supreme Court held the claim was unripe because the government's decision left "open the possibility" that the plaintiff could obtain a variance to proceed with the development. *Id.* at 192–193. As the government's "denial of approval does not conclusively determine whether [the landowner] will be denied all reasonable beneficial use of its property, [it] therefore is not a final reviewable decision." *Id.* at 194.

Appellants cherry-pick a phrase out of *Williamson*—that "resort to the procedure for obtaining variances would result in a conclusive determination by the Commission whether it would allow [the plaintiff] to develop the subdivision *in the manner [it] proposed*." OB 46 citing *Williamson*, 473 U.S. at 193 (emphasis added). But the Court made this statement in the context of *Williamson*'s holding that a final reviewable decision results when the decisionmaker arrives at a definitive position

on the issue that inflicts the actual, concrete injury. *Ibid.* In *Williamson*, no final decision existed until the plaintiffs applied for a variance to build their development. That does not mean that a regulatory taking would occur if the variance allowed the plaintiff to develop their property to a certain extent, but not exactly "in the manner proposed." Instead, the U.S. Supreme Court defined the injury in a regulatory takings claim as the denial of "approval for *all* uses that would enable the plaintiffs to derive economic benefit from the property." *Williamson*, 473 U.S. at 188 citing *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 136–137 (1978) (*Penn Central*) (emphasis added).

Likewise, here, the injury in Appellants' regulatory takings claim is not, as they suggest, that they cannot recoup market-rate rent—their "proposed" use of the property—but whether "the economic impact of the regulation, its interference with reasonable investment-backed expectations, and the character of the governmental action" resulted in a taking. *MacDonald, Sommer & Frates v. Yolo Cnty.*, 477 U.S. 340, 349 (1986). "[T]his is a question of degree," and there is "no 'set formula to determine where regulation ends and taking begins.' [Citation.]" *Id.* at

348. And, until a property owner has "obtained a final decision regarding the application of the … regulations to its property," "it is impossible to tell whether the land retain[s] any reasonable beneficial use or whether [the ladndowner's] expectation interests ha[ve] been destroyed." *Williamson*, 473 U.S. at 186, 189, fn. 11. As Plaintiffs have not obtained a determination as to whether they can increase the rents charged on their property, no final decision exists, and their regulatory takings claim is not ripe for review.

b. The physical takings and equal protection claims against the Four Percent Cap are untimely.

The District Court properly held that Appellants' *per se* takings and equal protection claims targeting the Four Percent Cap are time-barred. Appellants do not argue in their opening brief that the District Court erred in finding the equal protection claim untimely, therefore, they concede this point. *Destination Ventures, Ltd. v. F.C.C.*, 46 F.3d 54, 57 (9th Cir. 1995) (appellant "waived that claim on appeal by failing to address it in its brief"). As to the physical takings challenge, Appellants contend the District Court's "suggestion" that this claim was time-barred reflected a "basic misunderstanding" of the law. OB 46. Appellants have not shown error. The District Court correctly held that

the Four Percent Cap was not a substantive amendment to the RSO such that it re-started the statute of limitations.

"It is well-established that claims brought under § 1983 borrow the forum state's statute of limitations for personal injury claims, [citation], and in California, that limitations period is two years. [Citation.]' … In the context of a facial challenge under the Takings Clause, we have held that the cause of action accrues on the date that the challenged statute or ordinance went into effect. [Citation]. We also have held that the mere re-enactment of a statutory scheme does not restart the clock, [citation], and that substantive amendments to a takings statute will give rise to a new cause of action only if those amendments alter 'the effect of the ordinance upon the plaintiffs.' [Citation.]" *Action Apartment Ass'n, Inc. v. Santa Monica Rent Control Bd.*, 509 F.3d 1020, 1026–27 (9th Cir. 2007) (*Action Apt.*).

Plaintiffs' physical takings and equal protection claims are subject to a two-year statute of limitations. As to the equal protection claim, even if this Court found no waiver, the two-year statute of limitations has elapsed. The Complaint alleges the Four Percent Cap violates equal protection by regulating buildings constructed before 1978, while

imposing no rent increase limitation on newer buildings, which are not subject to the RSO. (ER86, ¶ 122.) But the RSO, which has included a rent cap since its implementation (L.A.M.C. § 151.07(A)(6)), has distinguished between pre-1978 and post-1978 buildings for 45 years, and has applied to Plaintiff Harris since 1984 and Plaintiff Knighten since 2009. Thus, the two-year statute of limitations has run.

As to the Four Percent Cap, Appellants allege that this regulation effects a physical taking because the ordinance precludes them from "exclud[ing] tenants who do not pay market-based rates." (ER82–83, ¶¶ 111–112.) But Appellants do not dispute that the RSO has always capped rent increases, thereby preventing landlords from raising rents concomitant with what the market will bear. L.A.M.C. § 151.07(A)(6). As the City adopted the RSO in 1979, the two-year statute of limitations for a facial claim expired long ago. *Action Apt.*, 509 F.3d at 1027 (for a facial challenge under the Takings Clause, "the cause of action accrues on the date that the challenged statute or ordinance went into effect."). To the extent Appellants allege an as-applied claim, that, too, expired over a decade ago as they acquired their properties at the latest in 2009. *Scheer v. Kelly*, 817 F.3d 1183, 1188 (9th Cir. 2016)

(the statute of limitations for an as-applied claim is triggered when the plaintiff "knows or has reason to know of the actual injury.").

Yet Appellants argue their claim is not time-barred because the Four Percent Cap is "flatly inconsistent with standard operating procedure under the RSO, which otherwise would have allowed [Appellants] to increase rents at rates higher than 4%." OB 46. However, to demonstrate that their claim is timely, Appellants must show the Four Percent Cap worked a "substantive amendment" to the RSO, altering " 'the effect of the ordinance on [them].' [Citation.]" *Action Apt.*, 509 F.3d at p. 1027. That the Four Percent Cap is not identical to the prior cap, which was tied to the Consumer Price Index, is not the relevant inquiry. The critical question is whether Appellants' "asserted injury arises from the provisions that were enacted [originally] or from substantive amendments" that came later. *Ibid.*

Here, Appellants allege they were injured by the Four Percent Cap's precluding them from charging "market-based rates." (ER82–83; ¶¶ 111–12.) The Complaint further acknowledges that the "original version" of the RSO adopted in 1979 also contained a rent increase cap. (ER50–51, 46–47.) During the COVID-19 pandemic, the City froze all

rent increases. (ER52, ¶ 50.) Then, between February 1, 2024 and June 30, 2024, the City imposed the Four Percent Cap. (ER57, ¶ 60.) The City then resumed implementing the RSO's statutory rent increase mechanism which led to a four percent cap from July 1, 2024 to June 30, 2025. (ER58, ¶ 61.)

In other words, throughout the history of the RSO—from its inception when a rent cap was included in the original version, to the COVID-19 pandemic when no rent increases were allowed, to the subsequent Four Percent Cap—the RSO has capped the amount of rent increases Appellants may charge, preventing them from charging "market-based rates." Although Appellants now argue that the Four Percent Cap limited rent increases beyond the standard RSO rent increase mechanism, that is not the Complaint's alleged injury. The Complaint's takings challenge to the Four Percent Cap arises from Appellants' inability to charge "market-based rents," and the Four Percent Cap did not alter this such that a new limitations period began to run. See *De Anza Properties X, Ltd. v. County of Santa Cruz*, 936 F.2d 1085, 1086 (9th Cir. 1991) (where appellants experienced "substantially

the same injury" when an ordinance was amended, the limitations period did not re-start).

c. The takings challenge to the Relocation Fee Requirement is untimely.

The City adopted the current iteration of the Relocation Fee Requirement in 2017; thus, the two-year statute of limitations expired in 2019, years before Appellants filed this action in 2024. On this basis, the District Court correctly held that Appellants' takings challenge to this regulation is time-barred. Appellants now argue that the taking is a continuing violation, because the law caused Harris to abstain from reclaiming her property. OB 54. However, a takings claim accrues when the statute was enacted, thus, the continuing violation doctrine does not apply here.

"The applicable limitations period "begins to run when the claim accrues," which "occurs when the plaintiff has a complete and present cause of action,' [citation], that is, when the plaintiff 'knows or has reason to know of the actual injury.' [Citation]." *Flynt v. Shimazu*, 940 F.3d 457, 462 (9th Cir. 2019) (*Flynt*). The continuing violations doctrine functions as an exception to the discovery rule of accrual "allowing a plaintiff to seek relief for events outside of the limitations period." *Knox*

v. Davis, 260 F.3d 1009, 1013 (9th Cir. 2001). The essence of the rule is " 'when a defendant's conduct is part of a continuing practice, an action is timely so long as the last act evidencing the continuing practice falls within the limitations period.' [Citation.]" *Bird v. Dep't of Human Services*, 935 F.3d 738, 746 (9th Cir. 2019).

Appellants cite to *Flynt*, 940 F.3d 457, for the proposition that "when a law that 'operate[s] on an ongoing basis' causes a party to 'abstain from [conduct] for fear that the [City] will enforce' it, 'a new claim arises (and a new limitations period commences) with each new injury.' " OB 54 citing to *Flynt*, 940 F.3d at 462–63. However, *Flynt* does not address a takings claim; rather, its holding applied to a facial challenge under the dormant commerce clause. *Flynt*, 940 F.3d at 464 ("Assuming that the enforcement of [the challenged statutes] inflicts an injury, California's two-year statute of limitations does not bar facial challenges under the Dormant Commerce Clause.").

The Ninth Circuit in *Levald, Inc. v. City of Palm Desert*, 998 F.2d 680 (9th Cir. 1993) (*Levald*) addressed the difference between claims that may impose a continuing harm—which do "not occur until the statute is enforced" —compared with the "single harm" of a facial

takings claim—"measurable and compensable when the statute is passed." *Levald*, 998 F.2d at 688. *Levald* explained that the argument that a law that allegedly effects a taking operates on an ongoing basis "misapprehends the differences between a statute that effects a taking and a statute that inflicts some other kind of harm." *Ibid.* The "basis of a facial challenge is that the very enactment of the statute has reduced the value of the property or has effected a transfer of a property interest." *Ibid.* That "single harm" occurs "when the statute is passed." *Ibid.* Thus, "different rules adhere in the facial takings context and other contexts," and *Flynt*'s Dormant Commerce Clause holding does not apply here. *Ibid.*

Here, plaintiff Harris's asserted injury is the "inability to repossess her property." OB 55. As the District Court found, "under Plaintiff Harris's theory, she would have lost the ability to evict without paying a fee in 2017, not when she wanted to repossess." ER19. Thus, her claim accrued in 2017 when the challenged ordinance was enacted, and the statute of limitations has expired.

II. The FMR Eviction Threshold does not effect a taking.

a. The FMR Eviction Threshold did not effect a per se taking by setting a threshold of unpaid rent sufficient to trigger eviction proceedings.

The District Court properly held that the FMR Eviction Restriction does not effect a physical taking. The Supreme Court has consistently held that "statutes regulating the economic relations of landlords and tenants are not *per se* takings." *FCC v. Fla. Power Corp.*, 480 U.S. 245, 252 (1987)(*Florida Power*) citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 440 (1982). As this ordinance merely regulates landlord-tenant relations by limiting evictions to where a tenant owes at least one-month fair market rent, there is no physical invasion under the Takings Clause.

The Takings Clause of the Fifth Amendment provides that "private property [shall not] be taken for public use, without just compensation." U.S. Const. Amend. V. A physical taking occurs when the government physically takes property by occupying it, or by forcing the owner to submit to someone else's occupation. *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147–148 (2021) (*Cedar Point*). The dispositive question for a *per se* takings claim is "whether the government has

physically taken property for itself or someone else—by whatever means—or has instead restricted a property owner's ability to use his own property." *Id.* at 149 (citing *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 321–323 (2002)).

In *Yee v. City of Escondido*, 503 U.S. 519 (1992), the Supreme Court explained that when landlords "voluntarily open their property to occupation by others," landlords "cannot assert *a per se* right to compensation based on their inability to exclude particular individuals." *Id.* at 531. *Yee* considered a local rent control ordinance for mobile home parks that precluded landlords from evicting their present tenants for certain reasons. *Ibid.* The Court found no physical taking because tenants are not uninvited third parties as landlords "voluntarily rented their land." *Id.* at 527. Once a landlord enters the rental market, the ordinance "merely regulate[s] [the landlord's] *use* of their land by regulating the relationship between landlord and tenant." *Id.* at 528 (emphasis original). By contrast, "the government effects a physical taking only where it *requires* the landlord to submit to the physical occupation of his property." *Id.* at 527 (emphasis original). Such a physical taking may occur when a regulation compels a property owner

to be a landlord against their will or continue a tenancy in "perpetuity." *Id.* at 528.

Yee analogized to *Florida Power*, 480 U.S. 245, where the Supreme Court rejected a physical takings claim directed at a landowner's voluntary leasing of space on its utility poles to a cable television company to install cables. *Yee*, 503 U.S. at 532. When the federal government reduced the pole rent from $7.15 to $1.79, the pole owners claimed that action was a per se taking. *Id.* The Court disagreed, finding an "unambiguous distinction" between a lessee and "an interloper with a government license": "it is the invitation, not the rent, that makes the difference." *Id.* at 252–253. Because the utility invited the lessee, there was no physical taking, even though rent was reduced by 75 percent. *Id.* *Yee* reasoned that the "distinction" between lessee and interloper was "equally unambiguous here." *Yee*, 503 U.S. at 532.

Later, the Court repeated *Yee's* reasoning in *Cedar Point* when it held that a law requiring landowners to allow union organizers onto their property was a physical taking. 594 U.S. at 149. The Supreme Court reasoned that the law was a "government-authorized invasion[]" because it required property owners to grant access to individuals who

were not invited. *Id.* at 152. In so reasoning, the Court again distinguished regulations that force landowners to open private property to uninvited persons (a per se taking) from regulations that govern how invited persons are treated (not a taking), citing to *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1982) (*Pruneyard*). *Ibid.*

Pruneyard found no physical taking where the California Constitution permitted members of the public to exercise free speech rights on the property of a privately owned shopping center. *Pruneyard*, 447 U.S. at 85. *Cedar Point* emphasized that,

> Limitations on how a business generally open to the public may treat individuals on the premises are readily distinguishable from regulations granting a right to invade property closed to the public.

Cedar Point, 594 U.S. at 157. *Yee*, in turn, applied *PruneYard* to the rental housing market, citing the case for the principle that landlords who "voluntarily open their property to occupation by others [] cannot assert a *per se* right to compensation based on their inability to exclude particular individuals." *Yee*, 503 U.S. at 531. Thus, *Yee, Florida Power*, and *Cedar Point* are consistent in drawing a distinction between laws that regulate how landlords treat invited persons such as tenants, and

laws that compel a landowner to admit an uninvited third party onto their land.

Under the reasoning of these cases, the FMR Eviction Restriction does not effect a physical taking because Appellants voluntarily invited tenants to lease their units. The ordinance did not compel landlords to rent their property, and an invited tenancy does not become a forced occupation just because the landowners collect less rent each month. Otherwise, the Court would have found a physical taking in *Florida Power* when the government reduced the rent that could be collected by 75 percent. In addition, the restriction does not compel landlords to "refrain in perpetuity from terminating a tenancy," because the RSO contains several grounds for terminating a lease, including permitting landlords to leave the rental market. L.A.M.C. § 151.09.A; see *Yee*, 503 U.S. at 524, 527–528 (prohibiting no-fault evictions does not work a *per se* taking because landlords may terminate tenancies by leaving the rental market).

Appellants dispute that *Yee* is dispositive, and argue that, unlike the present case, the *Yee* regulation did not "compel a landowner over objection to rent his property or to refrain in perpetuity from

terminating a tenancy." *Yee*, 503 U.S. at 526. The Ninth Circuit's dismissal of this argument in *GHP Mgmt. Corp. v. City of L.A.* is persuasive. *GHP Mgmt. Corp. v. City of Los Angeles*, No. 23-55013, 2024 WL 2795190, at *1 (9th Cir. May 31, 2024) (*GHP*). In upholding the City's eviction moratorium against a physical takings claim, *GHP* explained that an eviction regulation does not compel landowners to rent their property over their objection "because the Landlords voluntarily opened their property to occupation by tenants." *Ibid*. For the same reason, *GHP* reasoned that *Horne v. Department of Agriculture*, 576 U.S. 350, 365 (2015), also cited by Appellants here, is not on point, "because it involved a third party (the government) taking property, rather than an adjustment of voluntary relations between a landlord and a tenant." *GHP*, 2024 WL 2795190, fn. 1.

Nor does the FMR Eviction Threshold require a landowner to refrain in perpetuity from terminating a tenancy, but "rather allow[s] landlords to evict their previously invited tenants for reasons not otherwise prohibited." *GHP*, 2024 WL 2795190. *GHP*'s reasoning remains true as to the FMR Eviction Threshold which only delays landlords' ability to initiate an eviction until the tenant owes at least

one-month of fair market rent for an equivalent-sized unit. Landlords may still evict the tenant once that threshold is reached, or for other reasons not prohibited. The *Yee* ordinance, by comparison, "preclude[d] landlords from evicting their present tenants, as well as their tenants' successors in interest, for most reasons, and yet [still] 'did not effect a *per se* taking.' [Citation.]" *Id.*, fn. 2.

Criticizing the Ninth Circuit's reasoning in *GHP*, Appellants rely instead on the Federal Circuit's *Darby Development Co., Inc. v. U.S.*, 112 F.4th 1017 (Fed. Cir. 2024) (*Darby Development*). *Darby Development* considered the Center for Disease Control and Prevention's (CDC) eviction moratorium, concluding it effected a physical taking. *Id.* at 1020. The Federal Circuit acknowledged that because the "tenants had been voluntarily 'invited' onto" their property, *Cedar Point* was distinguishable. *Id.* at 1036. However, *Darby Development* held this was not determinative, because forcing property owners "to house non-rent-paying tenants (by removing their ability to evict)" infringes on their right to exclude, just as "forcing property owners to occasionally let union organizers on their property" did in *Cedar Point*. *Id.* at 1035. The Federal Circuit distinguished *Yee*, which

it deemed to be "fundamentally a rent-control case," from the "outright prohibition on evictions for nonpayment of rent" at issue in *Darby Development*. *Id.* at 1035.

The Federal Circuit explained,

> what we have here is hardly a run-of-the-mill law implicating the landlord-tenant relationship. Instead, it is a highly unusual—and, so far as the parties have shown, unprecedented—Order that outright prevented evictions for nonpayment of rent. *Cf. Cmty. Hous. Improvement Program v. City of New York*, 59 F.4th 540, 552 (2d Cir. 2023) ("It is well settled that limitations on the termination of a tenancy do not effect a [physical] taking *so long as there is a possible route to an eviction*." [Citation.]

Id. at 1037. In other words, *Darby Development* expressly distinguished an eviction moratorium from rent control measures, and limited its holding to "highly unusual" cases where eviction is "outright" prohibited for nonpayment of rent. Here, by contrast, the FMR Eviction Threshold adjusts the "terms of eviction," which the Courts have long held rent control ordinances can do. *GHP*, 2024 WL 2795190 at* 1 (rent control ordinances can permissibly adjust the landlord-tenant relationship, including the "rental amount, terms of eviction, and even the identity of the tenant"). Thus, *Darby Development* is distinguishable, and does not stand for the position that a rent control ordinance that changes the

terms of eviction impermissibly "invades" on the landlord's right to exclude such that it constitutes a taking.

Finally, Appellants err in suggesting that *Cedar Point* and *Alabama Association of Realtors v. Department of Health and Human Services*, 594 U.S. 758 (2021) (*Alabama Realtors*) announced a new *per se* rule that a takings occurs whenever the government interferes with a landowner's right to exclude. Neither case supports such a sweeping claim. *Alabama Realtors* does not even address a takings claim, but simply holds that an eviction moratorium "intrudes" on landlords' right to exclude. *Alabama Realtors*, 594 U.S. at 765. And *Cedar Point*, while holding that mandating access to an uninvited union organizer is a *per se* taking, reaffirmed *PruneYard*'s holding that "[r]estrictions on how a business generally open to the public … may treat individuals on the premises are readily distinguishable from regulations granting a right to invade property closed to the public." *Cedar Point*, 594 U.S. at 141. *Yee*, in turn, extended this principle to landlord-tenant relations. *Yee*, 503 U.S. at 531. Far from overruling either *Yee* and *Pruneyard* on these points, *Cedar Point* took pains to "distinguish" them, expressly limiting

its holding to "a right to invade property closed to the public." *Cedar Point*, 594 U.S. at 141.

Cedar Point also acknowledged that "many government-authorized physical invasions will not amount to takings because they are consistent with longstanding background restrictions on property rights." 594 U.S. at 160. For over a century, the Supreme Court has recognized the government's right pursuant to the police power to adopt rent control and eviction regulations. In *Block v. Hirsch*, 256 U.S. 135 (1921), the Supreme Court addressed a statute limiting residential rents and precluding the eviction of existing tenants due solely to a lease's expiration. *Id.* at 153–54. The Court held no regulatory taking occurred because the statute was a valid exercise of the police power. *Ibid.* *Yee, Florida Power*, and the FMR Eviction Threshold are all consistent with this longstanding background restriction on property rights, and for this reason as well, no physical takings occurred here.

b. The FMR Eviction Threshold does not effect a regulatory taking.

The Supreme Court "has consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all

economic injuries that such regulation entails." *Yee,* 503 U.S. at 528–29. "However, under *Penn Central* ... a regulatory taking may occur—and just compensation is required—when 'regulatory actions [occur] that are functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner' with the inquiry 'focus[ing] directly upon the severity of the burden that government imposes upon private property rights.' " *MHC Financing Ltd. v. City of San Rafael,* 714 F.3d 1118, 1127 (9th Cir. 2013) (*MHC Fin.*).

Courts evaluate a regulatory taking via three *Penn Central* factors: "(1) 'the economic impact of the regulation on the claimant,' (2) 'the extent to which the regulation interfered with distinct investment-backed expectations,' and (3) the character of the governmental action.' [Citation.]" *Bridge Aina Le'a,LLC v. Land Use Comm'n*, 950 F.3d 610, 625 (9th Cir. 2020). Here, the district court correctly concluded that Appellants failed to allege facts necessary to state a claim for a regulatory taking. Each *Penn Central* factor weighs against Appellants: the Complaint did not allege facts showing (1) the requisite significant diminution in property value, (2) interference with an objectively

reasonable investment-backed expectation in the highly regulated rental-housing market, or (3) that setting a threshold for eviction proceedings can be characterized as a physical invasion by government.

i. Appellants failed to allege the requisite economic impact to show a regulatory taking.

The first *Penn Central* factor—the "challenged regulation's economic impact on the property owner"—is determined by "compar[ing] the value that has been taken from the property with the value that remains in the property." *Bridge Aina Le'a, LLC v. Land Use Comm'n*, 950 F.3d at 630. Thus, "the mere loss of some income because of regulation does not itself establish a taking." *Colony Cove*, 888 F.3d at 451. To establish this factor, plaintiffs must plead a significant diminution in value which courts have recognized when in excess of 50%. *Ibid.* ("observ[ing] that diminution in property value because of governmental regulation ranging from 75% to 92.5% does not constitute a taking").

The FMR Eviction Threshold prevents a landlord from starting eviction proceedings until a tenant's unpaid rent reaches the threshold of at least one-month's fair market rent for an equivalent-sized unit. L.A.M.C. § 151.09A.1. Appellants first assert that allegations they could

not profitably operate the property due to this regulation established the requisite economic impact, as nothing requires them to "plead a diminution of property value with particularly." OB at 36. However, Appellants have not pled *any* diminution in property value, but instead object to the FMR Eviction Threshold's authorization to tenants to "serially underpay on rent." OB 36 citing to ER-65–68, ¶¶ 75, 76. Appellants erroneously claim that "direct loss of rental income" is what demonstrates the requisite economic impact. OB 36.

The Ninth Circuit has affirmed the dismissal of takings claims for failure to adequately plead the first *Penn Central* factor where the complaint lacks facts making it possible to determine what the economic impact to the property is. *Evans Creek, LLC v. City of Reno*, 2022 WL 14955145 at *1 (9th Cir. Oct. 26, 2022) (mem. disp.). Absent allegations about a change in value, it is "not possible for this Court to determine what the economic impact to the property is, even taking the allegations in the complaint as true." *Id*. Here, Appellants' allegation of a "loss of rental income" does not satisfy this prong. OB 36.

The Ninth Circuit affirmed the dismissal of a complaint where more was alleged. In *Rancho de Calistoga v. City of Calistoga*, 800 F.3d

1083, 1090 (9th Cir. 2015), the Court found the plaintiffs failed to state a regulatory takings claim where the complaint alleged both a 28.53% diminution in market value *and* lost income. *Id.* The Court reasoned that, "[t]his economic impact is an inevitable consequence of the rent-control scheme but not an unconstitutional one." *Id.* In 2018, in *Colony Cove*, this Court affirmed that "the mere loss of some income because of the regulation does not itself establish a taking." *Colony Cove*, 888 F.3d at 451. And, most recently in *GHP*, the Ninth Circuit found that the plaintiff-landlords "failed to allege the diminution in property values they suffered as a result of the eviction moratorium, and alleged only the amount of rent lost." 2024 WL 2795190 at *2. "But the mere loss of some income because of the regulation" does not establish a regulatory taking because " 'economic impact is determined by comparing the total value of the affected property before and after the government action.' [Citation.]" *Id.*

Appellants ignore this Ninth Circuit authority, and rely instead on an Eighth Circuit opinion, *Heights Apartments, LLC v. Walz*, 30 F.4th 720 (8th Cir. 2022) (*Heights*). In *Heights*, the plaintiff-landlord challenged a state eviction moratorium during the COVID-19 pandemic

as both "depriv[ing] it of receiving rental income" *and* preventing the plaintiff from "managing its property." *Id.* at 734. The Eighth Circuit held these allegations sufficiently pled the first *Penn Central* factor. *Id.* *Heights* is plainly distinguishable as it involved both an indefinite moratorium on evicting a tenant for unlimited nonpayment of rent, in addition to other factors. In addition, the Ninth Circuit declined to follow *Heights* on other points, and should not stray from its regulatory takings precedent to do so here. See *GHP*, 2024 WL 2795190at *1, fn.2; *Iten v. Cnty. of Los Angeles*, 2025 WL 733236, at *1, fn. 3 (9th Cir. Mar. 7, 2025).

To the extent Appellants argue the Complaint alleges "the losses proved severe enough to cause them to "cease renting financially nonviable units" (OB 36), in fact, the Complaint alleges the FMR Eviction Restriction's impact was as follows: the regulation (1) prevented Harris from evicting a one-bedroom tenant who "refused to pay his full rent on time" but who "never crossed th[e] line" of failing to pay one-month's fair-market rent for his unit, and (2) prevented Knighten from evicting a studio unit-tenant who "consistently refused to pay his full (and substantially below-market) rent of $520/month" but

that his unpaid rent remained less than the fair-market monthly value for a studio. 1-ER-65–68, ¶¶ 75–76. These alleged facts do not show that Appellants' units were "financially nonviable," rather, they show each Appellant had one tenant who was behind in rent in an amount less than the fair market value of monthly rent for their respective units.

In essence, Appellants argue that this loss of rent is the "functional equivalent" of a government appropriation of property. However, the FMR Eviction Threshold's impact on Appellants amounts to a tenant's failure to pay a few thousand dollars. As the District Court correctly observed, "while Plaintiffs allege they have suffered a discrete loss—up to one month's worth of Fair Market Rent—their cash flow otherwise remains the same." ER15. In addition, a landlord can immediately seek to recoup any amount of overdue rent by filing a small claims action against the tenant. Cal. Code Civ. Proc., §§ 116.10, et seq. Such a limited amount of economic harm does not constitute the severe diminution in property value sufficient to establish a regulatory taking.

ii. Appellants failed to allege the FMR Eviction Threshold interfered with objectively reasonable investment-backed expectations

The second *Penn Central* factor asks whether the challenged regulation interferes with a property owner's objectively reasonable "investment-backed expectations." *Penn Central*, 438 U.S. at 124. Appellants claim that they reasonably expected the law would remain the same concerning landlords' ability to immediately evict for nonpayment of any amount of rent. But, when plaintiffs do business in a highly regulated field, it is reasonable to expect adjustments to the existing regulatory scheme.

" '[T]hose who do business in a regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the legislative end.' [Citation.] " *Concrete Pipe and Products of California, Inc. v. Const. Laborers Pension Trust for So. Cal.,* 508 U.S. 602, 645 (1993) (*Concrete Pipe*). The " 'primary factor,' 'the extent to which the regulation has interfered with distinct investment-backed expectations' " is "fatal" to a takings claim where the plaintiff purchased the property with a rent control ordinance already in place.

Guggenheim v. City of Goleta, 638 F.3d 1111, 1120 (9th Cir.2010) (en banc).

Here, the City and state have long regulated when and for what reasons a landlord may evict a tenant, and limited the timing of evictions. For example, the RSO, since its inception, has regulated the basis for evictions, generally requiring "just cause" and permitting "at-fault" evictions in limited circumstances, and state unlawful detainer procedure imposes strict requirements on landlords seeking to evict. See L.A.M.C. § 151.09 (requiring an eviction to be based on an enumerated "just cause" for rent-controlled apartments); Code of Civ. Proc., § 1161 [unlawful detainer procedure].

Appellants argue that the FMR Eviction Threshold upended their investment-backed expectations because "the City had never before taken the extreme step of denying landlords the right to evict non-paying tenants (save for the temporary pandemic-era regulations)." OB 36. This is wrong for two reasons. First, Appellants misstate the ordinance's impact: it does not eliminate a landlord's ability to evict non-paying tenants who owe more than a de minimus amount but rather delays the initiation of some unlawful detainer actions.

Landlords remain free to evict tenants whose unpaid rent reaches the threshold of one-month fair market value for an equivalent-sized unit. Second, the FMR Eviction Threshold adjusts the existing regulatory framework by placing yet another substantive limit on otherwise available grounds for eviction.

Appellants bought into rent control, enacted in 1979 and have each owned their properties for more than twenty-five years. By the time they invested, the City had amended the RSO multiple times. Moreover, during their ownership, the City repeatedly amended the RSO, including, during the Great Recession, when the City further narrowed the grounds for owner-occupancy evictions. The FMR Eviction Restriction is yet another amendment to this existing regulatory scheme, and it was not objectively reasonable to expect that rent control would remain unchanged. See *MHC Fin.*, 714 F.3d at 1128 (no disruption of investment-backed expectations due to amendment to existing rent control).

iii. Appellants failed to allege the FMR Eviction Threshold is akin to a physical invasion by the government.

The third *Penn Central* factor considers whether the targeted regulation can be characterized as a physical invasion by government. Appellants argue the FMR Eviction Threshold is such a physical invasion because it allows a tenant to remain "despite not paying rent." OB 37. In fact, the ordinance's adjustment of what triggers an eviction is simply a limit to existing eviction regulations, rather than a physical invasion of property.

"A 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *Penn Central*, 438 U.S. at 124. "[A] slight modification to an already-existing rent control ordinance" is not a physical invasion of property. *MHC Fin.,* 714 F.3d at 1128.

The FMR Eviction Threshold is precisely the kind of program that "adjust[s] the benefits and burdens of economic life to promote the common good." *Penn Central*, 438 U.S. at 124. It shifts the economic

burden of up to a one-month's rent to the landlord—although the landlord retains the option of immediately suing in small claims court—while giving tenants who experience a temporary loss of income or unexpected expense more time to cure a minor rent default before losing their home. This regulation of Appellants' business renting private property to tenants is not a physical invasion of property or government appropriation.

For these reasons, all three *Penn Central* factors—the economic impact, investment-backed expectations, and the ordinance's character—show that the FMR Eviction Threshold does not constitute a regulatory taking.

III. The RSO's rent ceilings do not effect a taking.

Even if Appellants' *per se* takings challenge to the Four Percent Cap were not time-barred, and the regulatory takings claim were ripe, the Complaint still fails to allege facts to state a taking for the same reasons discussed above. To recap: rent controls, like the Four Percent Cap, are not physical takings because they simply regulate the landlord-tenant relationship. *Yee*, 503 U.S. at 529. Appellants also do not allege the rent ceilings significantly reduced the value of their

properties, or interfered with objectively reasonable investment-backed expectations given Appellants bought into rent control. For these reasons, the Complaint fails to allege the rent ceilings effected a physical or regulatory taking.

Appellants argue this Court should read *Cedar Point* to hold that "limiting how much landlords can rent their property for appropriates their right to exclude." OB 42. But, as stated above, *Cedar Point* affirmed the Supreme Court's long-standing distinction between granting access to uninvited individuals versus regulating individuals that landowners invited onto their property. *Cedar Point* explained that its holding—finding a taking where the targeted law granted access to uninvited organizers—was consistent with *Pruneyard*'s holding that regulating members of the public at a shopping center was not. *Cedar Point*, 594 U.S. at 156. Regulating how a business "may treat individuals" invited on the premises is "readily distinguishable" from "*granting* a right to invade property closed to the public." 594 U.S. at 157 (emphasis added). Under this reasoning, regulating how much landlords can raise the rent of a tenant invited onto the property is not

a physical taking, but simply a limit on how Appellants "may treat individuals" invited onto their property. *Id.*

Appellants next argue that *Florida Power* is irrelevant because, in that case, the government did not "require[] utilities, over objection, to … refrain from terminating" their contract with the company that used their property. *Florida Power*, 480 U.S. at 251, n. 6. Appellants contend that the Four Percent Cap, by contrast, "*did* force Plaintiffs to continue renting to incumbent tenants over their objection…." OB 42 (emphasis added). But a cap on rent increases does not require a landlord to refrain from terminating a lease. Instead, the Four Percent Cap simply limits how much landlords may raise the rent. Should Appellants wish to evict their tenants to charge a higher rent to a new tenant—under the vacancy decontrol provision of the Costa Hawkins Act, which allows landlords to set the initial rent of a newly rented unit—*other* City and state laws limit landlords from terminating a lease for this reason. L.A.M.C. §§ 151.04; Cal. Civ. Code, § 1946.2.

Nor do the RSO rent ceilings effect a regulatory taking. Appellants first argue that the Four Percent Cap effected a significant economic impact under the first *Penn Central* factor because the

ordinance "limit[s] allowable increases in rent to amounts 50% or more below what HUD has identified as the 'fair market rate' for comparable units in Los Angeles." OB 43 citing ¶ 115 at ER-83–84. But that argument mischaracterizes the ordinance. As the District Court noted, "[u]nder the RSO, landlords can apply to raise rent beyond the ordinary RSO rent cap in order to receive a 'just and reasonable return.'" ER17 citing L.A.M.C. § 151.07(B). Although Appellants claim that rent ceilings caused them to charge less than half of the fair market rent, Appellants never applied to the City to raise rent beyond the rent cap as the RSO permits. Appellants' failure to do so not only renders the claim unripe as it is impossible to determine "the regulation's economic impact on the claimant," but also belies their argument that the annual rent cap caused them to charge rent far below the fair market value.

Appellants further argue that the Four Percent Cap "interfered with investment-backed expectations because it deviated from the prior rent-cap formula." OB 43. But Appellants bought into a decades-old rent control scheme; when Harris purchased one of her properties in 1992 and when Knighten inherited her property, rent ceilings had been at four percent (sometimes less than that) for multiple years. (SER 260;

RJN Ex. N.) These two considerations are fatal to their regulatory takings claim. See *Lingle v. Chevron U.S.C., Inc.*, 544 U.S. 528, 538 (2005) ("primary" among the Penn Central factors are economic impact of the regulation and the regulation's interference with investment-backed expectations).

For these reasons, the Complaint does not allege facts showing the Four Percent Cap effects a taking.

IV. Appellants have not stated a valid equal protection claim.

In addition to being time-barred, Appellants' equal protection violation fails because the RSO's rent ceilings are rational. The Complaint alleges that the Four Percent Cap violates the Equal Protection Clause because it applies only to rental units built prior to the RSO's adoption. (ER86, ¶ 122.) The District Court properly held that this ordinance is subject to rational basis review, and the RSO's distinction has such a rational basis.

"[E]qual protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *Mass. Bd. of Ret. v. Murgia*, 427 U.S.

307, 312 (1976). Here, Appellants contend that strict scrutiny applies because the Four Percent Cap "impinges on property owners' right to exclude—a 'fundamental element of the property right ….' " OB 47 citing to *Cedar Point*, 594 U.S. at 150. But stating that the right to exclude is "a fundamental element" of property rights is not the same as holding that the right to use property as one wishes is a fundamental right. This Circuit held it is not. *Slidewaters LLC v. Wash. State Dept. of Lab. & Indus.*, 4 F.4th 747, 758 (9th Cir. 2021) ("the right to use property as one wishes is [] not a fundamental right"); *Yim v. City of Seattle*, 63 F.4th 783, 798 (9th Cir. 2023).

As only non-fundamental property rights are at issue, rational basis review applies. *Yim v. City of Seattle,* 63 F.4th at 798. The distinction the RSO draws between old and new buildings has at least two rational bases. First, new buildings are exempt to encourage housing construction. *City of Los Angeles v. Los Olivos Mobile Home Park*, 213 Cal.App.3d at 1438. This is a common feature in California rent control regulations. See, e.g., Cal. Civ. Code § 1946.2(e)(7); S.F., Cal., Admin. Code § 37.3(g)(1) (exempting residential dwelling units constructed after June 13, 1979 from rent limitations). Second, because

the Costa-Hawkins Act prohibits price controls on units previously exempt under local rent control, the City cannot expand the RSO's protections to newer buildings. Cal. Civ. Code, § 1954.52(a). The Supreme Court has recognized that rent control "represents a rational attempt to accommodate the conflicting interests of protecting tenants from burdensome rent increases while at the same time ensuring that landlords are guaranteed a fair return on their investment." *Pennell v. City of San Jose*, 485 U.S. 1, 14 (1988). Here, the Four Percent Cap reflects such a rational attempt, therefore, Appellants have not stated an equal protection violation.

V. The Relocation Fee Requirement does not effect a taking.

Ninth Circuit precedent holds that a relocation fee requirement does not constitute a physical taking. The District Court properly relied on this precedent in holding that the Complaint does not state a physical taking as to this ordinance. ER14. Appellants' assertion that the Relocation-Fee Requirement works a regulatory taking also fails as the Complaint does not allege their property experienced a diminution in value, or explain how this regulation of evictions interfered with expectations in the heavily-regulated rent control market.

In *Ballinger v. City of Oakland*, an Oakland ordinance required the plaintiff to pay a relocation assistance payment to their tenant before they could move back into their home. 24 F.4th 1287, 1291 (9th Cir. 2022). Like Appellants here, the *Ballinger* plaintiffs claimed the required fee was a "ransom" of their home and, thus, a physical taking. *Id*. Relying on *Yee* and *Florida Power*, the Court ruled that the relocation fee was not a *per se* taking because the plaintiffs "voluntarily chose to lease their property and to 'evict' under the Ordinance—conduct that required them to pay the relocation fee, which they would not be compelled to pay if they continued to rent their property. . . ." *Id.* at 1293.

Appellants contend *Ballinger* is distinguishable "[b]ecause the *Ballinger* plaintiffs framed the taking as an unconstitutional seizure of money," not an infringement of a property right such as in *Cedar Point*. OB 52. That the *Ballinger* plaintiffs did not word their physical takings challenge in an identical manner does not vitiate the Court's holding that a relocation fee requirement does not effect a taking. *Ballinger* dismissed the argument that a relocation fee was " 'functionally equivalent' " to "a taking of an interest in the real property itself."

Ballinger, 24 F.4th at 1297 (quoting *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 612–613 (2013)). "Instead, the relocation fee required by the Ordinance is a monetary obligation triggered by a property owner's actions with respect to the use of their property, not a burden on the property owner's interest in the property." *Ibid*. This reasoning establishes that relocation fees do not work a physical taking, but simply regulate "the relationship between landlord and tenant." *Id.* at 1294.

As for Appellants' regulatory takings claim, it fails for the same reasons. Appellants claim a "mere loss of some income," and fail to explain how the relocation fee requirement diminishes their property value. *Colony Cove*, 888 F.3d at 450. As for investment-backed expectations, Appellants only generally argue that "no property owner reasonably expects" to pay a fee "to exercise fundamental property rights." OB 53. But state and local laws have for a long time regulated a landlord's ability to evict a tenant, thus, an amendment adding a conditional relocation fee is no more than an adjustment to this existing regulatory framework. *Concrete Pipe*, 508 U.S. at 645.

VI. The Notice Requirement does not violate the First Amendment

The District Court properly found Appellants did not allege a First Amendment violation arising from the City's requirement that RSO-regulated landlords post a Renter Protections Notice. L.A.M.C. § 151.05(I). Appellants contend that requiring them to post a notice about tenants' rights under the RSO impermissibly compels speech in violation of the First Amendment. Whether this Court concludes that this law does not regulate speech by requiring landlords to post a government-drafted notice, or permissibly compels consumer-protecting information that is purely factual and uncontroversial, no First Amendment violation occurred.

a. Under FAIR, the Notice Requirement does not regulate Appellants' speech.

The First Amendment limits the government's power to compel individuals to accommodate another's message that would interfere with the speaker's ability to express its own ideas pursuant to its First Amendment rights. *FAIR,* 547 U.S. at 63. But "compelled statements of fact" do not violate the First Amendment where the compelled speech is "not inherently expressive." *Id.* at 64. Here, the Notice Requirement did not affect Appellants' speech rights, because it did not restrict their

ability to convey their own message, and the posting of a notice in a common area is not expressive activity.

Rumsfield v. Foundation for Academic & Institutional Rights, Inc., 547 US. 47, 63 (2006) (*FAIR*) outlined the rules applicable to hosted speech. *FAIR* involved a challenge to the Solomon Amendment which withholds federal funds from schools of higher education that deny equal access to military and nonmilitary recruiters. 547 U.S. at 51–52. The law compelled these schools to state facts such as, "The U.S. Army recruiter will meet interested students in Room 123 at 11 a.m." via posting on a bulletin board or sending scheduling emails, for example. *Id.* at 61. An association of law schools argued the Solomon Amendment violated the schools' right to express disagreement with military policies under the First Amendment. *Id.* at 52.

The Supreme Court found the Solomon Amendment "regulates conduct, not speech" because it "affects what law schools must *do*—afford equal access to military recruiters—not what they may or may not *say*." *FAIR*, 547 U.S. at 60 (emphasis original). To the extent that schools "may send e-mails or post notices on bulletin boards on an employer's behalf," such "compelled speech … is plainly incidental to

the Solomon Amendment's regulation of conduct ...." *Id.* at 62. Furthermore, the schools "are not speaking when they host interviews and recruiting receptions." *Id.*, at 64. Because "law school's recruiting services lack the expressive quality of a parade, a newsletter, or the editorial page of a newspaper," the required "accommodation of a military recruiter[ ]" did not "interfere with any message of the school." *Ibid.*

Appellants argue *FAIR* is distinguishable because, here, L.A.M.C. section 151.05 "requires" them "to *speak* a government-scripted message...." OB 58 (emphasis original). But, just as in *FAIR*, here, the regulation simply requires Appellants to post a notice. Where *FAIR* required schools to speak in ways "incidental to the Solomon Amendment's regulation of conduct," by directing students to military recruiting events, here, section 151.05 does not even require incidental speech, just the display of a notice in a conspicuous location. Although Appellants analogize the Notice requirement to the state's forcing a Jehovah's Witness to display the motto "Live Free or Die" on a license plate in *Wooley v. Maynard*, 430 U.S. 705 (1977), *FAIR* dismissed this analogy, reasoning that "send[ing] scheduling e-mails ... is simply not

the same" as endorsing a government-mandated motto, and "it trivializes the freedom protected in … *Wooley* to suggest that it is." OB 58; *FAIR*, 547 U.S. at 63. Likewise, requiring a landlord to post a print-out summarizing local housing laws "is a far cry from the compelled speech in … *Wooley*." *Id.* at 62.

FAIR further reasoned the Solomon Amendment did not violate the First Amendment by forcing a speaker to host the government's message. *FAIR*, 547 U.S. at 63. Because the law did not affect "the complaining speaker's own message," no First Amendment violation resulted. *Ibid.* The Court noted two factors central to this analysis: the "expressive nature" of the complaining speaker's conduct, and whether the compelled hosting of the government message "interfere[d] with a speaker's desired message." *Id.* at 64.

Appellants argue that the Notice Requirement ticked both boxes: "a property owner's decision about how to adorn common areas is plainly expressive," and "[t]he mere fact that [a landlord] is free to dissociate himself from the views expressed on his property cannot restore his 'right to refrain from speaking at all.' " OB 59. In support, Appellants cite to footnote 10 of *Green v. Miss U.S.A, LLC*, and a

fragment from the dissent, arguing that the Supreme Court there held that "a property owner's decision about how to adorn common areas is plainly expressive." OB 59 citing *Green v. Miss U.S.A, LLC*, 52 F.4th 773, 783, n. 10 & 820 (9th Cir. 2022). The cited content shows that the dissent in *Green v. Miss U.S.A.* argued that the state "could not compel" "a militant feminist owner of a hotel chain" "to decorate her lobbies with banners proclaiming that 'June is National Men's Health Month!' " *Id.* at 820. And, the majority held that a beauty pageant is expressive activity. *Id.* at 783, fn. 10.

Neither cited excerpt helps Appellants. The City does not require landlords to "adorn" their lobby with a government-mandated motto or pledge, but to post a notice accurately summarizing several provisions of the RSO. This posting patently "lack[s] the expressive quality of a parade" or a pageant. *Id.* at 64. Moreover, Appellants acknowledge the Notice Requirement does not restrict what landlords may say about the RSO, nor do they dispute that the Notice is conspicuously attributed to the Department of Housing. For these reasons, Appellants are not "compelled to affirm [a] belief in any governmentally prescribed position or view" such that the hosting of this message compels speech. *Ibid.*

b. *The Notice Requirement permissibly regulates commercial speech.*

This Court "may affirm a district court's judgment on any ground supported by the record, whether or not the decision of the district court relied on the same grounds or reasoning…." *Atel Fin. Corp. v. Quaker Coal Co.*, 321 F.3d 924, 926 (9th Cir. 2003). Here, the City argued below that the Notice Requirement qualified as constitutional commercial speech under *Zauderer*. The District Court expressly did not reach this argument, instead holding the law was constitutional under *FAIR*.[3] (ER21; fn. 9.)

The Notice Requirement permissibly regulates commercial speech under the First Amendment. See *S.F. Apartment Ass'n v. City & County of San Francisco*, 881 F.3d 1169, 1175, 1177–78 (9th Cir. 2018) (*SFAA*) (analyzing requirement that landlords provide city-drafted form to tenants as regulation of commercial speech); *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York,* 447 U.S. 557, 561

[3] Appellants do not address this alternative ground for dismissal and therefore waived any such argument. See *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (arguments raised for the first time in a reply brief are deemed waived).

(1980) ("commercial speech" is "expression related solely to the economic interests of the speaker and its audience.").

" '[T]he First Amendment does not prevent restrictions directed at commerce or conduct from imposing incidental burdens on speech[.]' [Citation.]" *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 768 (2018) (*NIFLA*). Courts apply "a lower level of scrutiny to laws that compel disclosures" in commercial contexts where the law "require[s] the disclosure of 'purely factual and uncontroversial information about the terms under which … services will be available….'" *Id.* at 768. Under *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio,* 471 U.S. 626 (1985) (*Zauderer*), the City may compel commercial speech so long as it is reasonably related to a substantial governmental interest, and the compelled speech is (1) purely factual, (2) noncontroversial, and (3) not unjustified or unduly burdensome. *Am. Beverage Ass'n v. City & Cnty. of S.F.*, 916 F.3d 749, 755–56 (9th Cir. 2019) (en banc).

Here, the *Zauderer* standard applies because the Notice is "limited to 'purely factual and uncontroversial information about the terms under which ... services will be available.' [Citation.]" *NIFLA*, 585 U.S.

at 768 (*Zauderer* standard did not apply where the subject notice "in no way relates to the services" provided). First, the Notice is purely factual as it only requires the "the disclosure of accurate, factual information." *Nat'l Ass'n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1276 (9th Cir. 2023) (*Wheat Growers*). Appellants do not dispute the truthfulness of the Notice, but object instead to the summarized law itself. ER41 (alleging the notice is controversial because it "describe[s] how tenants may neuter [landlords'] own property rights – specifically, the right to exclude.")

Second, the Notice is not controversial. In evaluating whether a factual statement is "controversial" under *Zauderer*, courts look to "the effect on the speaker" as well as "an objective evaluation of 'controversy.' " *Wheat Growers*, 85 F.4th at 1277. In *NIFLA*, the Court found controversial a requirement that "crisis pregnancy centers" post a notice about state-sponsored family planning services because the regulation took "sides in a heated political controversy"—abortion—by "forc[ing] the clinic to convey a message fundamentally at odds with its mission." *CTIA - The Wireless Ass'n v. City of Berkeley*, 928 F.3d 832, 848 (9th Cir. 2019) (*CTIA*) citing *NIFLA*, 585 U.S. 755.

Here, by contrast, L.A.M.C. section 151.05 merely requires landlords to inform tenants of their rights under the RSO, not to convey a message at odds with the landlords' mission of providing housing. While Appellants allege that the policy judgment behind the RSO is controversial, the mere "existence and contents of" the law is "not itself controversial." *Compasscare v. Hochul*, 125 F.4th 49, 65 (2d Cir. 2025). Moreover, an accurate summary of the law is not the type of one-sided statement courts found controversial. *See CTIA*, 928 F.3d at 848 (a purely factual statement does not become controversial simply because it "can be tied in some way to a controversial issue"); *cf. Am. Beverage*, 916 F.3d at 761 (concur.) (a warning that "requires the advertisers to convey [city's] one-sided policy views about sugar-sweetened beverages" involved "a controversial topic"). Nor are eviction and rent control the type of heated political controversy that courts consider controversial. *Cf. NIFLA*, 585 U.S. 755 (compelling an abortion provider to take sides in a heated political controversy deemed controversial).

Third, the "Renter Protection Notice Requirement" is neither unjustified nor unduly burdensome. The requirement is "reasonably related "to the City's interest in informing tenants of their legal rights,

and the prescribed method of notification is not "unjustified or unduly burdensome." *Zauderer*, 471 U.S. at 651; see *CompassCare v. Hochul*, 125 F.4th at 67 (law requiring employers to include in an employee handbook "notice of employee rights and remedies" " 'reasonably related to the State's interest in preventing deception of' employees as to their statutory rights, and … not 'unjustified or unduly burdensome.'"); *SFAA*, 881 F.3d at 1178 (required disclosure advanced the city' s substantial interest in "informing tenants of their rights").

For these reasons, the Notice Requirement does not violate the First Amendment.

CONCLUSION

For the foregoing reasons, this Court should affirm the District Court's dismissal of Appellants' complaint.

Dated: January 20, 2026

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Certificate of Compliance

Counsel of Record hereby certifies that the enclosed APPELLEE'S ANSWERING BRIEF produced using 14-point Roman type, including footnotes; that contains 13,965 words; and that its form and length complies with all aspects of FRAP 32 (a)(5) and (a)(7). Counsel relies on the word count of the computer program used to prepare the brief.

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