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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

MELVIA HARRIS; ROBERTA KNIGHTEN, Plaintiffs, vs. CITY OF LOS ANGELES, Defendant.	) Case No. 5:24-cv-02679-JGB (SHKx)) *Honorable Jesus G. Bernal*)) **DEFENDANT CITY OF LOS**) **ANGELES'S NOTICE OF MOTION**) **AND MOTION TO DISMISS UNDER**) **FRCP 12(B)(1) AND 12(B)(6);**) **MEMORANDUM OF POINTS AND**) **AUTHORITIES**)) Hearing Date: Monday, May 19, 2025) Time: 9:00 am) Courtroom: 1

TO THE COURT, ALL PARTIES AND ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on Monday, May 19, 2025, at 9:00 am or as soon as thereafter the matter may be heard in the above-entitled Court located at the George E. Brown, Jr. United States Courthouse, 3470 Twelfth Street, Courtroom 1, Riverside, California, Defendant City of Los Angeles will and hereby does move this Court to dismiss the Complaint (ECF No. 1) pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) on the following grounds:

1. Plaintiffs have failed to state a violation of the Takings Clause of the U.S. Constitution (Counts I, II, and IV);
2. Plaintiffs' regulatory takings claim is unripe and therefore the Court lacks subject matter jurisdiction to hear that claim (Count II);
3. Plaintiffs' equal protection (Count III) and takings claims (Count IV) are untimely;
4. Plaintiffs have failed to state a violation of the Equal Protection Clause of the U.S. Constitution (Count III); and
5. Plaintiffs have failed to state a violation of the First Amendment of the U.S. Constitution (Count V).

Local Rule 7-3 Pre-Filing Conference: This Motion is made following a Local Rule 7-3 Pre-Filing Conference of Counsel that occurred on February 4, 2025. The parties were unable to reach a resolution that eliminates the necessity of a hearing on the City's Motion.

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the concurrently filed Request for Judicial Notice and exhibits, the pleadings and papers on file with the Court, and on any oral argument as may be presented.

Respectfully submitted,

Dated: February 12, 2025

OFFICE OF THE LOS ANGELES CITY ATTORNEY
MERETE RIETVELD, Deputy City Attorney
ELAINE ZHONG, Deputy City Attorney

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

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I. INTRODUCTION

It is no secret that the City of Los Angeles is grappling with a housing shortage and homelessness crisis. Over half of its residents are rent burdened, meaning that they pay most of their income to their landlords for rent. Solving these problems requires diverse policy tools. One of those has been the City's Rent Stabilization Ordinance, which has been in place for over 45 years.[1] It represents one of the City's most comprehensive attempts to balance the rights of tenants, by protecting them from excessive rent increases and displacement, and landlords, by ensuring them a fair return on their properties.

Since World War I, property owners have sued over rent and eviction regulations, like the Ordinance, based on a litany of legal theories. *E.g.*, *Block v. Hirsch*, 256 U.S. 135, 157–58 (1921). The decisions in those cases repeatedly affirm the government's authority to regulate the landlord-tenant relationship for the public good. Plaintiffs' lawsuit is just the latest effort to try to unsettle that authority.

It should be equally unsuccessful. A faithful application of binding precedent to their claims requires dismissal in full:

First, more than half of Plaintiffs' claims are either untimely or unripe. Plaintiffs' challenge to the Ordinance's rent ceilings is unripe because Plaintiffs have not requested administrative relief from those ceilings. Their challenge to the Ordinance's distinction between old and new properties is untimely because that distinction has been in place since 1979. And the Ordinance's requirement that landlords pay relocation assistance to evict faultless tenants has been in place for over a decade.

Second, Plaintiffs' physical takings claims fail because the overwhelming weight of authority holds that regulating the landlord-tenant relationship does not effect such a

[1] L.A., Cal., Mun. Code ("LAMC") §§ 151.00–151.35, https://codelibrary.amlegal.com/codes/los_angeles/latest/lamc/0-0-0-422835

taking. Plaintiffs' regulatory takings claims also fail, because Plaintiffs have not alleged facts showing the relevant *Penn Central* factors tip in their favor. Their takings claims fail as a matter of law.

Third, Plaintiffs' equal protection claim fails because the Ordinance's distinction between old and new properties has a rational basis: new properties are exempt from the Ordinance to encourage new housing construction.

Finally, Plaintiffs' First Amendment claim fails because the Ordinance's requirement that landlords notify tenants about the RSO compels only factual, noncontroversial, and non-burdensome commercial speech to advance the City's substantial interest in informing tenants of their rights under the law.

The City respectfully requests the Court grant this motion.

II. BACKGROUND

Rent control has a long history. For example, to combat housing shortages during World War II, Congress passed the Emergency Price Control Act of 1942 authorizing price controls on rents. 50a U.S.C. §§ 901, 902. In the 1970s, the City passed temporary rent and eviction controls when high inflation, "rapid and exorbitant rent increases," and rent strikes afflicted the City. L.A., Cal., Ord. 151,415 (1978) (preamble) (Request for Judicial Notice ("RJN"), Ex. A); L.A., Cal., Ord. 152,120 (1979) (RJN Ex. B); *see also City of Los Angeles v. Los Olivos Mobile Home Park*, 213 Cal. App. 3d 1427, 1432 (1989). After multiple hearings and studies, the City Council established that there was "a growing shortage of decent, safe and sanitary housing units resulting in a critically low vacancy rate and rising exorbitant rents exploiting this shortage[.]" L.A. Ord. 151,415 (preamble). Rising rents "endanger[ed] the health and welfare" of renters, including senior citizens and other persons on fixed-incomes and low-income households. *Id.*

Later, the City Council determined that its interim measures "successfully reduced the rate of rent increases in the City, along with the concomitant hardships and displacements." L.A. Ord. 152,120, RJN Ex. B at 20. The City's Rent Stabilization Ordinance ("RSO") was then enacted in 1979 and then made permanent.

A. The Rent Stabilization Ordinance and its evolution from 1979

The RSO's purpose then and now is to regulate rents "so as to safeguard tenants from excessive rent increases, while at the same time providing landlords with just and reasonable returns from their rental units." LAMC § 151.01. Since inception, the RSO has had two main features: (a) it regulates *rent increases* (*compare* L.A. Ord. 152,120, RJN Ex. B at 29–32, *with* LAMC §§ 151.04, 151.06); and (b) it requires evictions to be based on a "just cause" reason, which include "at-fault" reasons—like the tenant not paying rent or creating a nuisance—and "no-fault" reasons, like a landlord's exit from the rental business (*compare* L.A. Ord. 152,120, RJN Ex. B at 47–50, *with* LAMC § 151.09.A). 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*, 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.").

As its name indicates, the RSO focuses on *rent stabilization*. It does not set the rents landlords may charge; it controls how much incumbent tenants' rents may increase each year. LAMC § 151.06.C. That means landlords, absent some exception, may charge whatever the market will bear when they get a new tenant. Permitted rent increases are calculated based on changes to the Consumer Price Index (a common measure of inflation). *Id.* §§ 151.06.D, 151.07.A.6. Practically speaking, rent increases range between three to eight percent each year; landlords may add up to two percent more if they also pay the utilities. *Id.* § 151.07.A.6; RJN Ex. N. Landlords are free to raise rents so long they satisfy these limits. *Id.* § 151.06.C ("automatic" adjustments).

The RSO does not apply to dwellings built after October 1, 1978. *Compare* L.A. Ord. 152,120, RJN Ex. B at 26, *with* LAMC § 151.02 (definition of "rental unit"). The "obvious purpose" of this exemption is to "encourage new construction and expansion of the City's housing stock." *Los Olivos*, 213 Cal. App. 3d at 1432, 1438.

And since inception, the RSO has provided the landlords with an administrative mechanism to ensure that they receive "just and reasonable" returns from their rental units. *Compare* L.A. Ord. 152,120, RJN Ex. B at 33, 39, *with* LAMC § 151.07.B.1. Landlords may apply for rent increases, which are calculated based on an approach that maintains their properties' net profit from before the RSO and, among other criteria, considers whether operating expenses (such as insurance, taxes, or repairs) have outpaced the annual rent increases that the RSO already allows. Just & Reasonable Guidelines (RJN Ex. C), at § 241.09; *see also Palos Verdes Shores Mobile Estates v. City of L.A.*, 142 Cal. App. 3d 362, 366–67, 370–72 (1983) (explaining RSO's rent adjustment procedures).

Finally, if a landlord wishes to evict a tenant for a "no-fault" reason, the RSO requires the landlord to pay relocation assistance. *Compare* L.A., Cal., Ord. 164,679 (1989) (RJN Ex. D), *with* LAMC § 151.09.G. The relocation fee is based on a formula that has not changed since at least 2017. LAMC § 151.09.G.[2]

1. Amendments to the RSO during the Great Recession

The RSO has been amended repeatedly to adjust for changing social and economic conditions. For example, when thousands of renters were being evicted during the Great Recession, the City revised its requirements for no-fault evictions. *E.g.*, L.A., Cal., Ord. 178,632 (2007) (RJN Ex. E at 86). Displaced tenants faced an unforgiving rental market, in part because the foreclosure crisis increased demand while rentals were already in short supply. *See* RJN Ex. F at 93; Ex. J at 143. The City Council then made a policy choice that attempted to balance landlords' and tenants' interests: it increased the relocation amounts required for no-fault evictions, but reduced those fees for "mom and pop" landlords who evict tenants to occupy a unit in their rental property (known as "owner-occupancy" evictions). LAMC § 151.30.E (reducing relocation fees for certain landlords); L.A., Cal., Ord. 180,747 (2009) (RJN Ex. H); RJN Ex. F at 98. At the same

[2] The Complaint calls this RSO feature the "Relocation-Fee Requirement." Compl. ¶ 9. For ease of reference only, the City will also use this shorthand.

time, consistent with its sister jurisdictions' practices, the City decided to forbid evictions of its most vulnerable residents—disabled, elderly, and terminally ill tenants—for owner-occupancy. LAMC § 151.30.D.1; RJN Ex. F at 96.

In 2009, at the height of the foreclosure crisis, the City also passed Ordinance No. 180,769 (RJN Ex. I). It requires landlords to post a notice containing the City Housing Department's contact information and the RSO's requirements. LAMC § 151.05.I.[3] The notice requirement was adopted after the Department told the City Council that, despite the RSO's eviction protections, "some lenders and their agents have taken advantage of tenants' lack of awareness of their rights. They have forced tenants to vacate the property upon foreclosure in violation of the law." RJN Ex. J at 143. Thus, the City Council determined that it was important for tenants to know about their rights moving forward.

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

During the COVID-19 pandemic, when residents were ordered to shelter in place, the City adopted temporary renter protections. *Apt. Ass'n of L.A. Cnty., Inc. v. City of L.A.*, 10 F.4th 905, 909–10 (9th Cir. 2021) (summarizing protections). The pandemic underscored what was common knowledge: City renters faced significant housing instability and economic precarity. 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. RJN Ex. K at 178.

Before its pandemic-era protections expired, the City adopted new protections to prevent and mitigate the harms of evictions. The City Council found "arbitrary evictions affect[] the public health, safety and welfare of Los Angeles residents. Evictions destabilize communities by disrupting longstanding community networks, uprooting children from their schools, forcing low-income residents to pay unaffordable relocation

[3] The Complaint appears to challenge LAMC section 165.05, which the Complaint calls the "Renter Protections Notice Requirement" (Compl. ¶ 73), but that section does not apply to properties regulated by the RSO, LAMC § 165.02.A.

costs, and pushing City residents away from important public services. Additionally, arbitrary evictions are a key driver of homelessness." LAMC § 165.01.

One of the new protections requires a tenant to owe more than "one month of fair market rent for the Los Angeles metro area . . . for an equivalent sized rental unit" before a landlord could evict for nonpayment of rent. L.A., Cal., Ord. 187,763 (2023) (RJN Ex. L); LAMC § 151.09.A.1.[4] The protection operates as an affirmative defense. LAMC § 151.09.E. The City was not the first to establish this kind of unpaid-rent threshold. D.C. Law 24-115 (2022). According to the City's Housing Department, "[E]victions for non-payment of rent can take place for minor amounts of past due rent, even as little as one dollar." RJN Ex. O at 267. Because evictions are "painful and disruptive," they are "an extraordinary legal remedy that should not be used as a debt collection tool to recover relatively small sums." *Id.* The amendment does not prevent landlords from suing for small amounts of overdue rent in small claims court (for example).

Another protection temporarily limited rent increases to four percent, plus an additional two percent for utilities paid by the landlord, for the period between February 1, 2024 through June 30, 2024. LAMC § 151.34. Although the City departed from its usual method for calculating rent increases, the four percent figure was based "specifically on the Consumer Price Index from October 2022 through September 2023." RJN Ex. M.

Throughout the pandemic and until today, the process to request relief from the RSO's rent increase ceilings has not changed. Landlords who are not making a "just and reasonable" return or who are operating at a loss after one year of ownership can apply for a permanent rent increase to improve their properties' profitability. LAMC § 151.07; RJN Ex. C. The City has also resumed using the formula in LAMC sections 151.06.D

[4] The Complaint refers to this as the "Fair Market Rent Eviction Restriction" or "FMR Eviction Restriction." Compl. ¶ 6; Count I. The City also uses that shorthand here for ease of reference.

and 151.07.A.6 to calculate annual rent increases. For the period between July 1, 2024, through June 30, 2025, the rent increase allowed is four percent. RJN Ex. N.[5]

B. State laws governing evictions and rent controls

The RSO and regulations like it coexist with, and are subordinate to, state law. *Birkenfeld*, 17 Cal. 3d at 140. Under California law, a "lease is both a contract and a conveyance[;] there are rights and obligations based upon the relationship of landlord and tenant as well as upon the contractual promises." *Spinks v. Equity Residential Briarwood Apts.*, 171 Cal. App. 4th 1004, 1031 (2009). Therefore, "landlord-tenant rights, obligations and remedies turn on both real property and contract law." *Id.* When tenants breach lease obligations, for example, landlords may pursue contractual remedies or attempt to recover possession through legal process (that is, evict). *Id.* at 1038 ("actual possession shall not be disturbed except by legal process" to maintain "orderly procedure and preservation of the peace").

California provides a summary eviction proceeding called unlawful detainer. Cal. Civ. Proc. Code § 1161. A landlord may pursue an unlawful detainer action after following the procedures in the state law. *Id.* Local governments may under their police power regulate what a landlord can evict a tenant for—for example, whether a tenant may be summarily evicted for "at-fault" or "no fault" reasons—but the eviction proceeding itself is the province of state law. *Birkenfeld*, 17 Cal. 3d at 149.

The State also constrains local regulations like the RSO through laws like the Costa-Hawkins Act, Cal. Civ. Code §§ 1954.50–1954.535. In general, the Act forbids price controls on (1) dwelling units constructed after February 1, 1995; (2) newly constructed units that are already exempt under a local rent control ordinance; and (3) single family homes. *Id.* § 1954.52(a). Both the California Legislature and voters have repeatedly declined to repeal the Act. Cal. Prop. 10 (2018); Prop. 21 (2020); Prop. 33

[5] The Complaint refers to this as the "4% Rent-Increase Cap." Compl. ¶ 7. Again, for ease of reference, the City adopts this shorthand.

(2024); Assemb. Bill 1506 (2017). Consequentially and in general, the RSO could not apply to new buildings even if local conditions may warrant changes to it.

C. The RSO and other laws have been repeatedly challenged—and upheld

For decades, the RSO and regulations like it have been the subject of litigation. For example, the RSO, including its "just and reasonable" rent adjustment mechanism, was upheld against preemption, due process, and equal protection challenges. *Palos Verdes Shores*, 142 Cal. App. 3d at 368–75. The RSO's restrictions on owner-occupancy evictions have been upheld against physical takings and due process claims. *Kagan v. City of L.A.*, No. CV-20-5515-DMG-ADSx, 2021 WL 958571, at *4 (C.D. Cal. Feb. 11, 2021), *aff'd*, No. 21-55233, 2022 WL 16849064 (9th Cir. Nov. 10, 2022), *cert. denied*, 144. S. Ct. 71 (2023). Recently, the City's pandemic-era protections were also upheld against physical and regulatory takings claims. *GHP Mgmt. Corp. v. City of L.A.,* CV-21-06311 DDP (JEMx), 2022 WL 17069822 (Nov. 17, 2022), *aff'd*, No. 23-55013, 2024 WL 2795190 (9th Cir. May 31, 2024), *cert. pet. filed*, No. 24-435 (Oct. 17, 2024). Another law requiring relocation fees for no-fault evictions did not work a physical taking. *Ballinger v. City of Oakland*, 24 F.4th 1287, 1294 (9th Cir. 2022), *cert. denied*, 142 S. Ct. 2777 (2022). And a landlord-tenant law's disclosure requirements survived a First Amendment challenge. *S.F. Apt. Ass'n v. City & Cnty. of S.F.*, 881 F.3d 1169, 1177–78 (9th Cir. 2018).

III. PLAINTIFFS' COMPLAINT

Plaintiffs each own a rental property subject to the RSO. Compl. ¶¶ 75, 76. Plaintiff Melvia Harris purchased her property in 1984. *Id.* ¶ 25. In 2009, Plaintiff Roberta Knighten inherited her property, which was first purchased by her grandfather in the 1930s. *Id.* ¶¶ 26, 76. While Plaintiffs assert that the rents they charge do not "keep pace with ballooning costs" (*e.g.*, *id.* ¶ 75), neither has sought any rent adjustment, *see id.* ¶ 113. Neither mentions any specific lost value in her property. Nor have Plaintiffs alleged that they applied for or received rent relief under government programs that distributed billions of dollars to landlords over the pandemic.

The Complaint alleges the following: (1) the FMR Eviction Restriction is an uncompensated taking in violation of the U.S. Constitution (Count I); (2) the 4% Rent-Increase Cap is an uncompensated taking and violates the Equal Protection Clause (Counts II and III); (3) the Relocation-Fee Requirement is also an uncompensated taking (Count IV); and (4) the Renter Protections Notice Requirement violates the First Amendment (Count V). All theories arise under 42 U.S.C. § 1983.[6]

IV. LEGAL STANDARD

A complaint may be dismissed based on lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). Plaintiffs, as the party seeking to invoke federal court jurisdiction, have the burden of establishing that jurisdiction exists. *Thompson v. McCombe*, 99 F.3d 352, 353 (9th Cir. 1996). When a defendant brings a facial attack on subject-matter jurisdiction under Rule 12(b)(1), the Court assumes the plaintiff's factual allegations in the complaint to be true. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1038 (9th Cir. 2004).

Under Rule 12(b)(6), "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court "accept[s] all well-pleaded allegations of material fact as true and construe[s] them in the light most

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[6] It is unclear whether Plaintiffs challenge these protections facially or as-applied. Plaintiffs seek relief from enforcement of the RSO against them (*see* Prayer), and the Complaint contains eight paragraphs (out of 150) describing factual applications causing them harm. Compl. ¶¶ 52, 53, 75, 76, 100, 127, 135, 139. However, certain allegations are not specific to Plaintiffs and suggest that Plaintiffs challenge the RSO's requirements on their face. *E.g.*, Compl. ¶¶ 4 (referring to "landlords throughout the City"); 15–21, 55, 56, 63, 69–73 (referring generally to RSO's impact on landlords). In any event, the substantive legal tests used in the two challenges are "invariant." *Hoye v. City of Oakland*, 653 F.3d 835, 857 (9th Cir. 2011). So whether Plaintiffs are mounting a facial or as-applied challenge, the substantive legal analysis is similar. The only difference is that any facial challenge, which would invalidate an "entire legislative enactment or provision," "must fail where the statute has a plainly legitimate sweep." *Id*.

favorable to the nonmoving party." *Sateriale v. R.J. Reynolds Tobacco Co.*, 697 F.3d 777, 783 (9th Cir. 2012). However, the Court need not accept as true "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," *Iqbal*, 556 U.S. at 678, or any allegations that contradict matters subject to judicial notice or by exhibit, *see Mullis v. U.S. Bankr. Ct.*, 828 F.2d 1385, 1388 (9th Cir. 1987).

V. ARGUMENT

A. The Fair Market Rent Eviction Restriction (Count I)

As to the FMR Eviction Restriction or any other RSO restriction, *infra* Sections V.B.2 and V.C.2, Plaintiffs have alleged no taking.

The Federal Constitution's Takings Clause provides property owners "just compensation" when their property is taken "for public use." *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147 (2021). Courts have recognized two types of compensable takings: per se and regulatory takings. *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency ("TRPA")*, 535 U.S. 302, 321–23 (2002). A per se taking may occur when the government physically takes property, *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537, 538 (2005), such as by confiscating it, *Horne v. U.S. Dep't of Ag.*, 576 U.S. 350, 361 (2015), by occupying it, or by forcing the owner to submit to someone else's occupation, *Cedar Point*, 594 U.S. at 147–48. A per se taking may also occur if the government regulates property such that "no productive or economically beneficial use . . . is permitted." *TRPA*, 535 U.S. at 330–31. With anything less than a "total loss," a taking occurs if the government's regulation goes "too far" under the familiar factors set forth in *Penn Central Transportation Company v. City of New York*, 438 U.S. 104 (1978).

1. Eviction regulations that dictate when a landlord may evict tenants do not work physical takings

Plaintiffs' physical takings claim fails under existing precedent: Eviction regulations, which determine when and how a tenant may be evicted—like the FMR Eviction Restriction—do not effect physical takings. *Yee v. City of Escondido*, 503 U.S. 519, 531 (1992). "As the Supreme Court made pellucid in *Yee*, when a landowner

decides to rent his land to tenants," *74 Pinehurst LLC v. New York*, 59 F.4th 557, 563 (2d Cir. 2023), *cert. denied*, Nos. 22-1130, 22-1170, 2024 WL 674658 (Feb. 20, 2024), the State has "broad power" to regulate the landlord-tenant relationship "without paying compensation for all economic injuries that such regulation entails," *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 440 (1982); *accord FCC v. Fla. Power Corp.*, 480 U.S. 245, 252 (1987). When landlords "voluntarily open their property to occupation by others," *Yee*, 503 U.S. at 531, and "invite[] their tenants to lease their property," *Ballinger*, 24 F4th at 1293 n.3, landlords "cannot assert a *per se* right to compensation based on their inability to exclude particular individuals." *Yee*, 503 U.S. at 531. Therefore, "the government effects a physical taking only where it requires the landlord to submit to the physical occupation of his property." *Id.* at 527. That means a physical taking may occur when a regulation compels a property owner to be a landlord against their will or continues a tenancy in "perpetuity." *Id.* at 528. Eviction regulations that do neither are not per se takings, although they might well be regulatory takings under *Penn Central* if they go too far. *Id.* at 527, 529–31.

In a unanimous opinion, the Supreme Court in *Yee* rejected a physical takings claim against a municipality with a mobile home rent control ordinance that in combination with state law: (a) required park owners to have a "just cause" to terminate a mobile home owner's tenancy, (b) forbade park owners from evicting tenants to charge higher rent, (c) prohibited park owners from choosing the purchaser when a mobile home is sold, and (d) required a lengthy closure process to convert mobile home parks to another use. 503 U.S. at 524–26. The Court acknowledged that the "right to exclude" is an "essential stick[] in the bundle of rights" called property, but reasoned that "[w]hen a landlord decides to rent his land to tenants," the government may regulate the landlord-tenant relationship "without automatically having to pay compensation." *Id.* at 529. That includes when the government "require[s] the landlord to accept tenants he does not like" or "place[s] ceilings on the rents the landowner can charge." *Id.* (citing *Heart of Atlanta*

Motel, Inc. v. United States, 379 U.S. 241, 261 (1964); *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 82–84 (1980); *Pennell v. City of San Jose*, 485 U.S. 1 (1988)).

According to the Court, that result flowed logically from its earlier decision in *Florida Power*. *Yee*, 503 U.S. at 532. In *Florida Power*, a utility leased its poles to a cable television company to install television cables. 480 U.S. at 252. When the federal government reduced the pole rent from $7.15 to $1.79, the utility claimed that action was a per se taking. *Id.* The Court held otherwise. There was, according to the Court, 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 252–53. Because the utility invited the lessee, there was no physical taking, even though rent was reduced by 75 percent. *Id.* In *Yee*, according to the Court, that "distinction" between lessee and interloper was "equally unambiguous." 503 U.S. at 532.

Later, the Court repeated *Yee*'s reasoning in *Cedar Point*. The regulation there *was* a taking, because it required property owners to allow union organizers onto their farms. 594 U.S. at 149. The regulation appropriated and essentially gave the organizers an easement. *See id.* at 155. 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). *Id.* at 157 (citing again *Pruneyard* and *Heart of Atlanta Motel*). This theme runs throughout the Court's takings jurisprudence. *Id.* at 150–53 (discussing, *inter alia*, *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987) ("had California simply required . . . an easement" it would be a physical taking); *Kaiser Aetna v. United States*, 444 U.S. 164 (1979) (public navigational servitude would "result in an actual physical invasion of the privately owned marina" by the public); *United States v. Causby*, 328 U.S. 256 (1946) (low-flying military aircraft directly invaded "respondent's domain" and imposed a servitude)).

Again, the outcome of these cases is that eviction regulations that simply regulate landlord-tenant relationships are not physical takings. The myriad cases analyzing eviction regulations, essential to all rent control systems, have followed *Yee*'s logic. *E.g.*,

Ballinger, 24 F.4th at 1293; *Kagan*, 2022 WL 16849064, at *1; *74 Pinehurst*, 59 F.4th at 563–64 (New York rent stabilization ordinance not a physical taking); *Comm. Hous. Improv. Prog. v. City of New York ("CHIP")*, 59 F.4th 540 (2d Cir. 2023), *cert. denied*, 144 S. Ct. 264 (2023) (same); *G-Max Mgmt., Inc. v. New York*, No. 21-2526, 21-2448, 2024 WL 1061142 (2d Cir. Mar. 12, 2024), *cert. denied*, No. 23-1148, 2024 WL 4743157 (Nov. 12, 2024), No. 23-1220, 2024 WL 4743164 (Nov. 12, 2024) (same). Citing *Yee*, multiple cases in this Circuit upheld COVID-19 eviction moratoria prohibiting evictions for unpaid rent. *E.g.*, *Bols v. Newsom*, No. 22-56006, 2024 WL 208141 (9th Cir. Jan. 19, 2024); *GHP*, 2024 WL 2795190, at *1; *El Papel, LLC v. City of Seattle*, No. 22-35656, 2023 WL 7040314 (9th Cir. Oct. 26, 2023), *cert. denied*, 144 S. Ct. 827 (2024).

Yee's logic is sensible in the context of landlord-tenant relationships: after all, in leasing their property, landlords give one "essential" right in their bundle of rights—their right to exclude—*to their tenants*. *Spinks*, 171 Cal. App. 4th at 1040 (a lease gives the tenant the "right to exclusive possession as against the whole world, including the landowner"). So, while it may make sense to call the forcing of union organizers onto the private farm in *Cedar Point* a physical taking, the same cannot be said about landlord-tenant regulations. That is because the whole point of leasing rental property is to open up private property to others—that is, to invite tenants. *CHIP*, 59 F.4th at 551 ("the Landlords voluntarily invited third parties to use their properties, and as the Court explained in *Cedar Point*, regulations concerning such properties are 'readily distinguishable' from those compelling invasions of properties closed to the public.").[7]

[7] There are two outliers that distinguish *Yee* in ruling that a property owner plausibly alleged a per se taking to challenge COVID-19 eviction moratoria: *Heights Apartments, LLC v. Walz*, 30 F.4th 720 (8th Cir. 2022) and *Darby Development Co. v. United States*, 112 F.4th 1017 (Fed. Cir. 2024). The Ninth Circuit has not followed this approach. *E.g.*, *GHP*, 2024 WL 2795190, at *1, n.2.

2. The FMR Eviction Restriction does not cause a physical taking

Here, the FMR Eviction Restriction does not amount to a physical taking of property—as applied or facially. Both Plaintiffs, like all landlords in the City, voluntarily leased their property, so they cannot claim that the eviction restriction forces them to be landlords against their will. The restriction also does not compel Plaintiffs—or any landlord—to "refrain in perpetuity from terminating a tenancy," because the RSO contains several grounds for terminating a lease, even for tenants who fail to pay rent, such as removing the units from the rental market. LAMC § 151.09.A; *see Yee*, 503 U.S. at 524, 527–28 (prohibiting no-fault evictions does not work a per se taking because landlords may terminate tenancies by leaving the rental market).

That two tenants owe Plaintiffs rent does not change this analysis. Compl. ¶¶ 75, 76. An invited tenancy does not become a forced occupation just because Plaintiffs are collecting less rent each month. Otherwise, there would have been a physical taking in *Florida Power* when the government reduced the rent that could be collected, a key lease term, by 75 percent. That rent reduction did not convert the invited tenancy into a compelled occupancy because, again, it is the invitation—not the rent charged—that matters. 480 U.S. 252–53. And, finally, any facial challenge must fail: when a tenant's rent is more than one month of fair market rent, that tenant is immediately evictable.

If there are lingering concerns because Plaintiffs have gone for months without payment, recall that evictions are not the only remedy when tenants do not pay rent. When tenants breach lease obligations, landlords may immediately pursue contractual remedies, and in some instances, those may be their only recourse. *Spinks*, 171 Cal. App. 4th at 1031. Because of their summary nature, unlawful detainers decide only "the right to possession of the disputed premises, along with incidental damages[.]" *Martin-Bragg v. Moore*, 219 Cal. App. 4th 367, 385 (2013). The remedy may be forfeited if the landlord fails to adhere to strict statutory requirements. *WDT-Winchester v. Nilsson*, 27 Cal. App. 4th 516, 526 (1994).

Plaintiffs' theory—a government's regulation of the "right to exclude" nonpaying tenants causes a per se taking (Compl. ¶ 90)—taken to its logical conclusion would mean that governments could not regulate evictions because eviction controls *all* constrain the "right to exclude." That cannot be right. "The numerous cases that affirm the validity of rent control statutes" and landlord-tenant regulations in general "are the necessary result [of a long] line of consistent authority." *See 74 Pinehurst*, 59 F.4th at 563. The reasoning within that authority supports all manner of mundane landlord-tenant laws, whose lawfulness has gone unquestioned for decades—including fair housing laws that equally constrain landlords' ability to pick their tenants and exercise their right to exclude. *E.g.*, Cal. Gov't Code §§ 12955–56; *Rent Stabilization Ass'n of New York City, Inc. v. Higgins*, 83 N.Y.2d 156, 172 (1993) (that owner "must offer a renewal lease to a departed tenant's newly defined family member—potentially a stranger to the owner" not a physical occupation because "once a property owner decides to rent to tenants, the antidiscrimination laws eliminate an owner's unfettered discretion in rejecting tenants").

***3. Plaintiffs' takings claim also fails under* Penn Central**

Absent any allegation that the FMR Eviction Restriction—or any other RSO feature—eliminates all value in their properties, Plaintiffs are left to attempt to plead a regulatory taking under *Penn Central*. That claim fails under all the relevant factors.

a. The Economic Impact of the City's Regulation

The first *Penn Central* factor considers "the challenged regulation's economic impact on the property owner." *Bridge Aina Le'a, LLC v. State Land Use Comm'n*, 950 F.3d 610, 630 (9th Cir. 2019). The impact is ascertained by comparing the value that the challenged regulation allegedly takes from the property with the value that remains. *Id.* at 630–31; *see also Murr v. Wisconsin*, 582 U.S. 383, 395 (2017) (same). "The mere loss of some income because of regulation does not itself establish a taking." *Colony Cove Props, LLC v. City of Carson*, 888 F.3d 445, 451 (9th Cir. 2018). To establish this factor, Plaintiffs must plead a significant diminution in value. *Id.* (describing cases rejecting takings claims involving 75% to 92.5% diminution in value and noting likely no case in

"which a court has found a taking where diminution in value was less than 50 percent"); *see also Rancho De Calistoga v. City of Calistoga*, 800 F.3d 1083, 1090 (9th Cir. 2015) (an alleged 28.53% diminution in market value may be "an inevitable consequence of the rent-control scheme but not an unconstitutional one").[8]

The Complaint does not allege facts for this analysis. *Evans Creek, LLC v. City of Reno*, No. 21-16620, 2022 WL 14955145, at *1 (9th Cir. Oct. 26, 2022), *cert. denied*, 142 S. Ct. 2561 (2023) ("complaint lacks any information" about the value of property before and after regulation). The Complaint's few, unspecific allegations relating to economic impact do not meet the high bar required to tilt this factor in Plaintiffs' favor. *E.g.*, Compl. ¶¶ 99 (general allegations about inability to receive rental income); 76, 111 (allegations about "below-market" rents). The Complaint asserts only that Plaintiffs Harris and Knighten lost around $17,000, and $6,000, respectively, in rent over four years during the pandemic, a time when governments distributed billions of dollars to landlords in their situation. *Id.* ¶¶ 52, 53. Finally, although Plaintiffs allege that they recently sold RSO properties with the restrictions in place (*id.* ¶¶ 75, 76), they allege no facts about whether the RSO caused a severe diminution in value even as to those sales.

b. Interference with Investment-Backed Expectations

The next *Penn Central* factor asks whether the challenged regulation interferes with a property owner's "distinct investment-backed expectations," *Bridge Aina Le'a*,

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[8] Because of the *ad hoc* analysis applicable to regulatory takings claims, facial challenges are rarely appropriate. Any plaintiff would have to "establish that no set of circumstances exists under which the [challenged] Act would be valid," *U.S. v. Salerno*, 481 U.S. 739, 745 (1987)—that is, show that each challenged provision "is unconstitutional in all of its applications." *Wash. State Grange v. Wash. State Rep. Party*, 552 U.S. 442, 449 (2008). This is a high bar. In particular, the economic impact of the RSO on various landlords "cannot be ascertained on a collective basis, as it necessarily varies among properties. Some landlords might have been harmed while others might not have been. It is not possible to generalize as to who was harmed, when, and to what extent. Furthermore, landlords who were not harmed would have no viable claims for relief." *74 Pinehurst*, 59 F.4th at 564–65.

950 F.3d at 633, which must be "objectively reasonable," *Colony Cove*, 888 F.3d at 452. When plaintiffs do business in a highly regulated field, they cannot claim that regulatory changes then "upset" those expectations. *Concrete Pipe & Prods. of Calif. v. Const. Labors Pens. Tr. for S. Calif.*, 508 U.S. 602, 645 (1993) ("[t]hose who do business in a regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve a legislative end"). Landlord-tenant relationships are heavily regulated, *e.g.*, *Ballinger v. City of Oakland*, 398 F. Supp. 3d 560, 577 (N.D. Cal. 2019), and those regulations change all the time, *see 74 Pinehurst*, 59 F.4th at 567 ("any investor could reasonably expect limits on the use of rental properties"). This factor may also weigh against property owners when they buy into the regulatory regime. *See Guggenheim v. City of Goleta*, 638 F.3d 1111, 1121–22 (9th Cir. 2010) ("Whatever unfairness to the mobile home park owner might have been imposed by rent control, it was imposed long ago, on someone earlier in the . . . chain of title.").

Plaintiffs have not demonstrated that the FMR Eviction Restriction, or any other RSO section they dislike, upset their "reasonable investment-backed expectations." Plaintiff Harris bought into rent control and has owned her property for over 40 years. Similarly, Plaintiff Knighten inherited property already subject to rent control and has owned her property for over 15 years. By the time each of them invested, the RSO would have been amended multiple times. During their ownership, too, the RSO has been repeatedly amended—including, during the Great Recession, when the City further narrowed the grounds for owner-occupancy evictions and increased relocation costs. *Supra* Section II.A.1. It is therefore "objectively reasonable" to expect the RSO to adjust based on changing conditions, especially after widely-shared traumas like the Great Recession and a worldwide pandemic.

c. Character of the Government Action

Finally, the third *Penn Central* factor considers the character of the government action taken. 438 U.S. at 124. This factor recognizes that governments routinely pass laws that adjust the rights of their citizens, and that those laws may burden some more

than others. *Id.* at 125. However, those facing increased burdens are not always entitled to compensation because the Takings Clause does not "compel the government to regulate by *purchase*." *Andrus v. Allard*, 444 U.S. 51, 65 (1979); *Connolly v. Pension Ben. Guar. Corp.*, 475 U.S. 211, 223 (1986) ("it cannot be said that the Taking Clause is violated whenever legislation requires one person to use his or her assets for the benefit of another"). For these reasons, courts routinely hold this factor favors the government when evaluating landlord-tenant regulations. *E.g.*, *74 Pinehurst*, 59 F.4th at 568 (affirming dismissal for failure to state a claim); *Colony Cove*, 888 F.3d at 454 (evaluating rent control ordinance shielding residents from "excessive rent increases" and allowing for "fair return" on investment).

This factor favors the City because every part of the RSO regulates the landlord-tenant relationship by "adjusting the benefits and burdens of economic life to promote the common good." *Penn Central*, 438 U.S. at 124. The RSO promotes the City's policy choices to protect renters from displacement, economic hardship, and high rent increases. *Supra* Section II. Although Plaintiffs assert the FMR Eviction Restriction causes a "physical invasion" (Compl. ¶ 101), there is no "invasion" because Plaintiffs' business is to rent private property out to tenants they select. *See TRPA*, 535 U.S. at 323 ("inappropriate to treat cases involving physical takings as controlling precedents for the evaluation of a claim that there has been a 'regulatory taking'").

Finally, as discussed, *supra* Section II.A.2, the RSO's eviction regulations leave undisturbed the contractual remedies available to landlords to collect any rent that is owed, such as the ability to sue in small claims. The law also does not affect Plaintiffs' other bundle of rights, including the right to devise property or to engage in other lawful uses. *E.g.*, *Andrus*, 444 U.S. at 65–66 (property owners "possess[] a full 'bundle' of property rights[;] the destruction of one 'strand' of the bundle is not a taking").

B. The Four Percent Rent-Increase Cap (Counts II and III)

1. Plaintiffs' regulatory taking claim is unripe (Count II)

As a threshold matter, any as-applied regulatory takings claim by Plaintiffs is unripe because neither has applied for any "just and reasonable" rent adjustment. Under the RSO, a hearing officer "shall have authority" to grant increases after notice and hearing when "the rent otherwise permitted" does not generate a just and reasonable return. LAMC § 151.07.B.1. Under the City's approach, the hearing officer may consider a number of factors, including increased operating expenses or property taxes. *Id.* That hearing officer's decision can then be appealed to the City's Rent Adjustment Commission, a seven-member body composed of individuals who are not tenants or landlords and who are appointed according to the City's Charter, LAMC § 151.03.

"When a plaintiff alleges a regulatory taking, a federal court should not consider the claim before the government has reached a 'final' decision." *Pakdel v. City & Cnty. of S.F.*, 594 U.S. 474, 475 (2021). Though a property owner "has a claim for a violation of the Takings Clause as soon as a government takes his property for public use without paying for it," *Knick v. Township of Scott*, 588 U.S. 180, 189 (2019), a claim that a regulation effects an as-applied taking cannot be adjudicated until there is "no question . . . about how the regulations at issue apply to the particular [property] in question," *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725, 739 (1997). "After all, until the government makes up its mind, a court will be hard pressed to determine whether the plaintiff has suffered a constitutional violation." *Pakdel*, 594 U.S. at 475. Thus, a "plaintiff's failure to properly pursue administrative procedures may render a claim unripe if avenues still remain for the government to clarify or change its decision," including when the plaintiff has "an opportunity to seek a variance." *Id.* at 480.

Again, Plaintiffs have not applied for any rent adjustment. Perhaps Plaintiffs' rents—which *they* initially set—do not earn a "just and reasonable return." We do not know. Plaintiffs attempt to sidestep this problem by arguing that the RSO is not "intended" to bring the rents to "market," but they do not address their ability to earn a

fair return. Compl. ¶ 113. Plaintiffs just speculate that the process will not bring them the kind of rents they want. That is not the standard. *See 74 Pinehurst*, 59 F.4th at 565. To show the RSO has gone "too far," we must first "kno[w] how far the regulation goes." *Pakdel*, 594 U.S. at 479; *see also Yee*, 503 U.S. at 528 (no "as-applied" takings case where owner did not run "gauntlet" of applying for change of land use).

2. The RSO's rent ceilings do not work a taking (Count II)

Even if the Court addressed Plaintiffs' Takings claim on its merits, the claim would fail for the same reasons discussed above (Section V.A). To recap: rent controls, like the Four Percent Rent-Increase Cap, are not physical (or per se) takings because they just regulate the landlord-tenant relationship. *Yee*, 503 U.S. at 529. There is no reason to revisit the constitutionality of rent ceilings. *Pennell*, 485 U.S. at 12 n.6 ("Despite *amici*'s urgings, we see no need to reconsider the constitutionality of rent control *per se*."). Additionally, Plaintiffs do not allege any facts showing that the RSO, let alone the Four Percent Rent-Increase Cap by itself, causes a severe diminution in the value of their properties. Plaintiffs also bought into rent control; when Plaintiff Harris purchased one of her properties in 1992 and when Plaintiff Knighten inherited her property, rent ceilings had been at four percent (sometimes less than that) for multiple years. RJN Ex. N. These two considerations are fatal to their regulatory takings claim. *E.g.*, *Lingle*, 544 U.S. at 538 ("primary" among the *Penn Central* factors are economic impact of the regulation and the regulation's interference with investment-backed expectations).

3. Plaintiffs' equal protection claim is untimely (Count III)

Plaintiffs' equal protection claim is based on the RSO's distinction between buildings constructed before 1978 and newer buildings, which are not subject to the RSO. Compl. ¶ 122. That distinction has been in place for over 45 years and has been applied to Plaintiff Harris since 1984 (40 years) and Plaintiff Knighten since 2009 (15 years). Their equal protection claim is time-barred, whether their time to challenge the RSO's distinctions started on the date of enactment (a facial challenge) or when the RSO applied to Plaintiffs (an as-applied challenge). "Claims brought under § 1983 borrow the forum

state's statute of limitations for personal injury claims" and, in California, the limitations period is two years. *Action Apt. Ass'n, Inc. v. Santa Monica Rent Control Bd.*, 509 F.3d 1020, 1026–27 (9th Cir. 2007) (citing Cal. Civ. Proc. Code § 335.1).

Nor can either Plaintiff claim that any changed circumstance or continuing violation applies. No changes have occurred to the RSO that have "alter[ed] the effect of the ordinance" on Plaintiffs and the equal protection violation alleged is a single harm that occurred as soon as the allegedly unlawful distinction was made. *See id.* ("substantive amendments" may give rise to a new cause of action); *Bird v. State of Hawaii*, 935 F.3d 738, 748 (9th Cir. 2019). Additionally, since 1985, except for the pandemic-era pauses, rent increases have never exceeded five percent. RJN Ex. N.

4. Plaintiffs fail to allege an equal protection violation (Count III)

Plaintiffs do not allege they are a part of a protected class, and landlords are not a protected class. *See, e.g.*, *Hotop v. City of San Jose*, 982 F.3d 710, 718 (9th Cir. 2020); *Sylvia Landfield Trust v. City of L.A.*, 729 F.3d 1189, 1192 (9th Cir. 2013) (analyzing substantive due process claim). Therefore, the Court need only apply rational basis review to Plaintiffs' equal protection claim. *E.g.*, *Pennell*, 485 U.S. at 14–15.

The City "need not control all rents or none" to satisfy the Equal Protection Clause. *Hotop*, 982 F.3d at 717 (citation omitted) (San Jose rent control ordinance's "various distinctions," including among unit types, "appear easily to survive rational basis review"); *see also Equity Lifestyle Props., Inc. v. Cty. of San Luis Obispo*, 548 F.3d 1184, 1195 (9th Cir. 2008) (rational to apply rent control to mobile homes only). The distinction the RSO draws between old and new buildings has a rational basis: new buildings are exempt to encourage new housing construction. *Los Olivos*, 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). Also, because of the Costa-Hawkins Act, *supra* Section II.B, the City cannot expand the RSO's protections to newer buildings to avoid Plaintiffs' equal protection arguments.

C. The Relocation-Fee Requirement (Count IV)

1. Plaintiffs' takings claim is untimely

Plaintiffs' claim that the Relocation-Fee Requirement works a taking of property is also time-barred. As with Plaintiffs' equal protection claim, a two-year limitations period applies. *E.g.*, *Colony Cove*, 640 F.3d at 956. The last time the City amended the Relocation-Fee Requirement was in 2017; the obligation as it stands today (which the Complaint appears to recognize (¶ 139)) has been in place since at least 2009. *Supra* Section II.A.1. Plaintiffs' claim is at least four years too late.

The limitations period started upon the law's passage, when there was no question about how the law applied to Plaintiffs' property and how their property was "taken." *Suitum*, 520 U.S. at 739; *see also Pakdel*, 594 U.S. at 475; *Nat'l Advert. Co. v. City of Raleigh*, 947 F.2d 1158, 1162–66 (4th Cir. 1991); *accord Palazzolo v. Rhode Island*, 533 U.S. 606, 620 (2001) ("once . . . the permissible uses of the property are known to a reasonable degree of certainty, a takings claim is likely to have ripened"). Plaintiffs' takings claim is time-barred whether analyzed as a facial or as-applied challenge. Plaintiffs allege that the Relocation-Fee Requirement (Section 151.09.G), not any recent specific factual application of that provision, took their property. Compl. ¶ 135; *see Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 688–89 (9th Cir. 1993) ("facial challenge involves a claim that the mere enactment constitutes as a taking, while an as-applied challenge involves a claim that the particular impact of a government action on a specific piece of property requires the payment of just compensation."). Plaintiffs know, and have known since at least 2017, that they must pay relocation assistance to their tenants to evict for a no-fault reason in an amount based on a fixed formula. LAMC § 151.09.G. The RSO may also authorize *reduced* payments. *Id.* 151.30.E. Plaintiff Harris, who is the only plaintiff alleging that she wishes to evict to "reclaim" her property (Compl. ¶ 75), has always been subject to the relocation fee.

2. The Relocation Fee Requirement does not take property

Plaintiffs' takings claim also fails on its merits for the same reasons already discussed. Additionally, Plaintiffs' physical taking theory is foreclosed by *Ballinger*. There, an Oakland ordinance required the Ballingers to pay a relocation assistance payment to their tenant before they could move back into their home. 24 F.4th at 1291. Like Plaintiffs here (Compl. ¶ 136), the Ballingers claimed the required fee was a "ransom" of their home and, thus, a physical taking. 24 F.4th at 1291. Relying on *Yee* and *Florida Power*, the Court ruled that the relocation fee was not a per se taking because "the Ballingers voluntarily chose to lease their property and to 'evict' under the Ordinance—conduct that required them to pay the relocation, which they would not be compelled to pay if they continued to rent their property. . . ." *Id.* at 1293. The relocation fee requirement is just a regulation of "the relationship between landlord and tenant." *Id.* at 1294.

D. <u>The Renter Protections Notice Requirement (Count V)</u>

1. The Notice Requirement does not violate the First Amendment

Plaintiffs allege that the Renter Protections Notice Requirement violates the First Amendment because it compels landlords to inform tenants of eviction protections, rent increase limits, and relocation assistance requirements. *E.g.*, Compl. ¶ 73. The applicable RSO provision, section 151.05.I, *supra* n.3, requires the posting of "information about the RSO" in a common area.

Section 151.05.I does not unconstitutionally compel speech because the requirement to post information about the RSO directly advances the City's substantial interest in informing tenants of their rights under the law, and merely requires landlords to post an informational notice provided by the City's Housing Department. *See S.F. Apt. Ass'n*, 881 F.3d at 1178 (requiring notice about tenants' rights served purpose of increasing fairness in negotiations between landlord-tenant). Under *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio,* 471 U.S. 626, 651 (1985), 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 City requires landlords to provide tenants with a form containing information about the RSO. As Plaintiffs allege, the Department's current notice "explains that: (1) RSO-regulated 'landlords may not evict a tenant who falls behind on rent unless the tenant owes an amount higher than the Fair Market Rent (FMR),' . . . (2) RSO-regulated landlords may not increase rents annually by more than 4% . . . and (3) RSO-regulated landlords must pay 'Relocation Assistance' . . . in all circumstances involving 'no-fault evictions for all residential units' . . . ." Compl. ¶ 147. This 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). Plaintiffs do not allege otherwise. Nor do Plaintiffs claim that posting a notice in a common area is overly burdensome.

Instead, Plaintiffs allege that the notice is controversial because it "describe[es] how tenants may neuter [landlords'] own property rights – specifically, the right to exclude." Compl. ¶ 21. In evaluating whether the compelled speech is "noncontroversial" under *Zauderer*, courts have looked at "the effect on the speaker" as well as "an objective evaluation of 'controversy.'" *Wheat Growers*, 85 F.4th at 1277. Here, an accurate summary of the law is not the type of one-sided statement courts have found controversial. *See CTIA - The Wireless Ass'n v. City of Berkeley*, 928 F.3d 832, 848 (9th Cir. 2019) (a description of a safety warning required by the FCC not controversial); *Compasscare v. Hochul*, 125 F.4th 49, 65 (2d Cir. 2025) ("Of course, the policy judgment that motivated the Act may be 'controversial' . . . But the existence and contents of the Act . . . is not itself controversial."); *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 is eviction and rent control the type of heated political controversy that courts have

considered controversial. *Cf. Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755 (2018) (compelling an abortion provider to take sides in a heated political controversy and convey a message fundamentally at odds with its mission deemed controversial). Put bluntly, a document summarizing the law, informing tenants of their rights, should not be controversial. The notice satisfies *Zauderer*.

VI. CONCLUSION

For the foregoing reasons, the City requests the Court grant its motion to dismiss.

Respectfully submitted,

Dated: February 12, 2025

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L.R. 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendant City of Los Angeles, certifies that this brief is 25 pages, which:

__ complies with the word limit of L.R. 11-6.1.

X complies with the page limits (25 pages) set by the Court's Standing Order dated January 7, 2025 (ECF No. 17).

Respectfully submitted,

Dated: February 12, 2025

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