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19 **UNITED STATES DISTRICT COURT**
20 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
21 **EASTERN DIVISION**

22 MELVIA HARRIS; ROBERTA KNIGHTEN,) No. 5:24-cv-02679-JGB (SHKx)
23) *Honorable Jesus G. Bernal*
24)
25 *Plaintiffs,*) **PLAINTIFFS’ MEMORANDUM OF**
26) **POINTS AND AUTHORITIES IN**
27) **OPPOSITION TO DEFENDANT**
28) **CITY OF LOS ANGELES’S**
) **MOTION TO DISMISS UNDER**
) **FRCP 12(B)(1) AND 12(B)(6)**
)
) Hearing Date: Monday, May 19, 2025
) Time: 9:00 am
)
) *Defendant.*) Courtroom: 1

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1 **INTRODUCTION**

2 The City’s effort to dismiss this complaint and avoid serious inquiry into its
3 broken rent-control policies is deeply flawed. In reality, the City has violated three
4 constitutional rights, and Plaintiffs are entitled to proceed to vindicate their rights.

5 The Supreme Court made clear in *Cedar Point Nursery v. Hassid*, 594 U.S.
6 139 (2021), that a *per se* violation of the Takings Clause occurs when the government
7 prevents property owners from excluding third parties from their properties. The
8 City has committed such violations thrice over. The FMR Eviction Restriction pre-
9 vents Plaintiffs from excluding a non-paying tenant unless and until the tenant is
10 behind on rent to the tune of thousands of dollars. The 4% Rent-Increase Cap pre-
11 vents Plaintiffs from excluding tenants who pay artificially low rates and re-renting
12 to those willing and able to pay market rates. And the Relocation-Fee Requirement
13 prevents Plaintiffs from excluding tenants even when they wish to reclaim their own
14 property for their own use—unless they pay their tenants tens of thousands of dol-
15 lars. Those are quintessential *per se* takings under *Cedar Point* and its progeny. And
16 the City cannot evade that conclusion through the fiction that tenants allowed to
17 overstay by government fiat are invited guests or via rote citations to *Yee v. City of*
18 *Escondido*, 503 U.S. 519 (1992), which is distinguishable and pre-dated *Cedar Point*
19 in any event. Regardless, Plaintiffs have stated viable regulatory-takings claims un-
20 der *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978). None
21 of the City’s misguided procedural objections disturbs those conclusions.

22 The City also fails to demonstrate that it has complied with the Equal Protec-
23 tion Clause. To the contrary, the City concedes that it discriminates against rental

1 properties in existence as of October 1, 1978, by imposing the 4% Rent-Increase Cap
2 on those properties alone, and it does not even try to argue that this discrimination—
3 which implicates fundamental, constitutionally protected property rights—satisfies
4 heightened scrutiny. Instead, the City asserts that its discrimination is rational and
5 that Plaintiffs’ challenge is time-barred. But the City flunks even (inapplicable) ra-
6 tional-basis review, and it does not explain how a 2024 challenge to a policy en-
7 shrined in 2023 falls outside the two-year limitations period.

8 Nor does the City succeed in squaring its Renter Protections Notice Require-
9 ment with the First Amendment. That requirement compels Plaintiffs to alert their
10 tenants to the FMR Eviction Restriction, 4% Rent-Increase Cap, and Relocation-Fee
11 Requirement via notices posted in the common areas of their properties. Such com-
12 pelled speech triggers strict scrutiny, and the City does not and cannot contend that
13 it can satisfy that demanding test. Rather, the City posits that it has the same author-
14 ity over Plaintiffs’ premises as over a bulletin board at a commercial workplace.
15 That is wrong as a First-Amendment matter and adds one more physical taking to
16 the list. The Court should deny the City’s motion to dismiss.

17 **BACKGROUND**

18 **A. Legal Background**

19 1. Rent-control regimes are a relatively recent phenomenon, dating only
20 to the World War I era. *See* Compl.¶31. Los Angeles, for example, introduced its
21 first rent-control ordinance in 1921, only to see it promptly declared unconstitu-
22 tional. *See* Compl.¶33. Other jurisdictions achieved more success before the
23 courts—but only barely. While the Supreme Court in 1921 rejected Takings Clause

1 challenges to separate rent-control laws enacted by other jurisdictions, it did so on
2 the narrow ground that “rent control could be justified only as a temporary measure
3 passed in response to a war-generated crisis.” Louis M. Rea & Dipak K. Gupta, *The*
4 *Rent Control Controversy: A Consideration of the California Experience*, 4 Glen-
5 dale L. Rev. 105, 109 (1982) (discussing *Block v. Hirsh*, 256 U.S. 138 (1921), and
6 *Marcus Brown Holding Co. v. Feldman*, 256 U.S. 170 (1921)). That emergencies-
7 are-different approach to constitutional rights has not withstood the test of time. In
8 2020, the Supreme Court admonished that “the Constitution cannot be put away and
9 forgotten” “even in” emergencies like once-in-a-century pandemics. *Roman Cath.*
10 *Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (per curiam).

11 2. Los Angeles experimented with rent control periodically in the decades
12 after World War I, including during the World War II era. *See* Compl.¶¶34-40. But
13 the City’s modern rent-control story began in 1979, when the City enacted the Rent
14 Stabilization Ordinance (RSO), which it made permanent in 1982. *See* L.A. Mun.
15 Code §151.00, *et seq.*; Compl.¶¶41-42. The RSO applies only to rental properties
16 built on or before October 1, 1978—properties that today comprise approximately
17 76% of the City’s multi-family rental units (or 624,000 units in 118,000 properties).
18 Compl.¶¶42-43. Thus, except in narrow circumstances, *see, e.g.*, L.A. Mun. Code
19 §151.28, the RSO operates as a bizarre reverse-grandfather clause that leaves rental
20 properties built after October 1, 1978, unregulated.

21 From the outset, the RSO regulated all manner of details of the landlord-tenant
22 relationship wherever it applied, such as by enumerating an exclusive list of the
23 “only” permissible grounds for eviction. *See id.* §151.09(A) (1979); Compl.¶45.

1 And while the RSO had glaring constitutional defects on day one, the original ver-
2 sion at least allowed landlords to increase rents to some degree annually, to evict
3 tenants who refused to make timely rent payments, and to re-rent at market rates
4 those units vacated by evicted, non-paying tenants. *See* Compl.¶46.

5 3. In recent years, however, the City has taken an increasingly anti-land-
6 lord (and anti-property rights) stance. After the onset of COVID-19 pandemic, the
7 City flatly prohibited both rent increases and evictions between March 2020 and
8 January 2024—a four-year interval when inflation skyrocketed by 20% and reached
9 a 40-year high. *See* Compl.¶¶47-50. Unable to increase rents to keep pace with
10 rising costs, and unable to exclude non-paying tenants in favor of new tenants willing
11 to pay market rates, Los Angeles-area landlords “were ... forced to dip into savings
12 and let tenants fall tens of thousands of dollars behind in rent, even selling nest eggs
13 that were supposed to fund them through retirement.” Charlotte Kramon, *L.A. Ten-*
14 *ants Welcomed the Rent Freeze, But Landlords Are Tired of Restrictions*, L.A. Times
15 (Aug. 23, 2023), <https://rebrand.ly/hdlmatu>; Compl.¶¶50-53.

16 4. As the pandemic receded, the City could have taken the prudent and
17 constitutional course of making amends with landlords, recognizing their sacrifices,
18 and treating them all equally. It did no such thing. Instead, it amended the RSO in
19 certain relevant respects, doubling down on its anti-landlord position.¹ Compl.¶54.

¹ In 2019, the California state legislature enacted a statewide rent-control law—
AB 1482. Assem. Bill No. 1482, 2019-2020 Reg. Sess. (Cal. 2019). That law au-
thorizes local jurisdictions to preserve or to enact even more restrictive rent-control
policies if they so desire. *See* Cal. Civ. Code §§1946.2(i), 1947.12(d)(3). Los An-
geles’ RSO and the policies challenged here are indeed more restrictive than those

1 To begin, in 2023, the City enacted the FMR Eviction Restriction. Although
2 the RSO (from 1979 to 2020) had long allowed landlords to evict tenants for non-
3 payment of rent, the FMR Eviction Restriction permanently overturned that policy.
4 That restriction provides that landlords of RSO-regulated buildings may evict non-
5 paying tenants *only* “where the amount due exceeds one month of fair market rent
6 for the Los Angeles metro area set annually by the U.S. Department of Housing and
7 Urban Development [HUD] for an equivalent sized rental unit as that occupied by
8 the tenant.” L.A. Mun. Code §151.09(A)(1); L.A., Cal., Ordinance 187,763 (2023).

9 To be clear, that “fair market rent” threshold is not the same as the below-
10 market rent that Los Angeles allows property owners to charge, but instead is gener-
11 ally a higher amount due to the rate-suppressing effects of rent control. For the pe-
12 riod between October 2023 and September 2024, HUD’s “fair market rents” range
13 from \$1,777 for a studio to \$3,600 for a four-bedroom unit. *See* Compl.¶57. Be-
14 tween October 2024 and September 2025, the range is \$1,856 to \$3,698. *See*
15 Compl.¶57. The upshot of the FMR Eviction Restriction is that—unless one of the
16 limited number of reasons for eviction under the RSO applies (and a landlord’s mere
17 desire to rent to a different tenant is not a recognized reason, even if the fixed term
18 in the lease for the current tenant has expired), *see* L.A. Mun. Code §151.09—ten-
19 ants may serially underpay their rent, and landlords are powerless to exclude them
20 from their properties. *See* L.A. Mun. Code §151.06(C); Compl.¶¶58, 75-76.

21 After enacting the FMR Eviction Restriction, the City in 2024 enacted the 4%

in AB 1482, so the City’s stock of rental housing in existence on or before October 1, 1978 (and that stock alone) is subject to the RSO’s far more restrictive regulations.

1 Rent-Increase Cap, which caps rents in RSO-regulated properties (*i.e.*, pre-October
2 1, 1978, properties only) at breathtakingly low levels by barring rent increases of
3 more than 4% between February 2024 and June 2025. *See* L.A. Mun. Code §151.34;
4 L.A., Cal., Ordinance 188,071 (2024); Compl.¶¶64. The City imposed this cap even
5 though it had prohibited *any* rent increases for the four prior years and even though
6 non-RSO-regulated properties governed by state law could increase rents between
7 8.8% and 10% from 2022 to 2025. *See* Compl.¶¶61-62. Although “rent adjustment”
8 is nominally available for landlords, it is no option for those seeking to charge market
9 rates: The City has stated that it will “not” make adjustments to enable landlords to
10 “bring the rents to market rate.” L.A. Hous. Dep’t, *Just & Reasonable Rent Adjust-*
11 *ment Program* (Apr. 2, 2024), <https://rebrand.ly/xdfilq8>; Compl.¶¶65-66.

12 The City has expressed its intent to vigorously enforce these provisions. Dur-
13 ing the COVID-19 pandemic, the City amended the RSO to state that “[a]ny person
14 violating any of the provisions, or failing to comply with any of the requirements, of
15 [the RSO] shall be guilty of a misdemeanor.” L.A. Mun. Code §151.10(B); *see* L.A.,
16 Cal., Ordinance 187,109 (2021). Each misdemeanor, the RSO continues, is punish-
17 able by a fine of up to \$1,000 or by a prison term of up six months—“or both.” L.A.
18 Mun. Code §151.10(B). The RSO states that “each day during which [a] violation
19 is committed, or continues, shall constitute a separate offense,” *id.*, and provides a
20 mechanism for a tenant to obtain treble damages from a landlord who violates the
21 4% Rent-Increase Cap. *See id.* §151.10(A).

22 Given these obstacles, many Los Angeles landlords are contemplating leaving
23 the rental business altogether. *See* Compl.¶¶69. But the City does not make exit easy.

1 For example, if landlords wish to regain the use of rental units for their own family’s
2 use, they must satisfy the Relocation-Fee Requirement, which requires them to pay
3 between \$9,900 and \$25,700 in “relocation assistance” to tenants. *See* L.A. Mun.
4 Code §§151.09(A)(8), (G), 151.30(E). Furthermore, if any tenants have “protected”
5 status (*i.e.*, they have lived in their units for at least 10 years and are either at least
6 62 or disabled), the landlord must remove all units from the rental market, pay all
7 tenants relocation fees, and then wait a year to reclaim the property. *See id.*
8 §151.09(A)(10), (G), 151.23(B), 151.30(D). Compl.¶¶70-71.

9 In short, once a tenant gets a foot in the door of an RSO-regulated rental unit,
10 it is exceedingly difficult for a landlord to get him out, even if the fixed term of the
11 lease has ended. So, unless owners sell their properties to third parties (who will
12 find themselves subject to the same restrictions, thus depressing the sales price), they
13 have no choice but to live with the consequences of the FMR Eviction Restriction,
14 4% Rent-Increase Cap, and Relocation-Fee Requirement. Those consequences in-
15 clude informing tenants of those three policies under the Renter Protections Notice
16 Requirement, which requires RSO-regulated landlords to “post[] ... in an accessible
17 common area of the property” a City-drafted notice highlighting those policies. L.A.
18 Hous. Dep’t, *Protections Notice*, <https://rebrand.ly/nfrnu6z> (last visited Mar. 13,
19 2025); L.A. Hous. Dep’t, *City of Los Angeles Renter Protections Notice* (rev. Oct. 1,
20 2024), <https://rebrand.ly/xkc988z>. Hence, the City is not content to erect a scheme
21 that erodes fundamental property rights; it conscripts landlords to act as accomplices
22 in the effort, converting their properties into workplace bulletin boards and forcing
23 them to convey controversial, property-rights-destroying messages to their tenants.

1 **B. Factual Background**

2 1. Plaintiffs are two women who have long served as landlords in the City.
3 Plaintiff Melvia Harris is a 63-year-old teacher who purchased two RSO-regulated
4 rental properties in the 1990s in the Jefferson Park and Mid-City neighborhoods near
5 where she grew up. *See* Compl.¶75. Plaintiff Roberta Knighten is the 68-year-old
6 trustee of a family trust who has overseen two RSO-regulated properties located near
7 Compton that her grandfather originally purchased in the 1930s. *See* Compl.¶76.

8 Plaintiffs have long sought to use these properties to benefit their families, but
9 those goals are now impeded by the City’s onerous restrictions. For example, both
10 Plaintiffs have tenants who refused to pay their full rent following the enactment of
11 the FMR Eviction Restriction. *See* Compl.¶¶75-76. But Plaintiffs could not evict
12 those tenants because they studiously kept their arrearages below the much higher
13 “fair market rent” threshold—presumably because the City required Plaintiffs to in-
14 form the tenants of the FMR Eviction Restriction via the Renter Protections Notice
15 Requirement. *See* Compl.¶¶75-76. L.A. Hous. Dep’t, *Protections Notice, supra*.
16 Plaintiffs would also like to increase rents to market rates to counteract ballooning
17 costs, but the 4% Rent-Increase Cap—which they would not have to abide by if only
18 they owned properties built after October 1, 1978—has prohibited them from doing
19 so. *See* Compl.¶¶75-76. Due to these restrictions, in 2024, Plaintiffs each sold one
20 of their properties. *See* Compl.¶¶75-76. And while Plaintiff Harris wants to reclaim
21 two units in her remaining property for family use, she cannot do so unless she pays
22 each of the “protected” tenants living in her units \$25,700 under the Relocation-Fee
23 Requirement (and waits a year to remove the property from the market). *See*

1 Compl.¶75. Plaintiff Harris cannot afford those payments, however, because she is
2 currently living paycheck-to-paycheck. *See* Compl.¶¶75, 135.

3 2. Plaintiffs sued to vindicate their constitutional rights on December 19,
4 2024. They allege that the FMR Eviction Restriction (Count I), Compl.¶¶77-103,
5 the 4% Rent-Increase Cap (Count II), Compl.¶¶104-18, and the Relocation-Fee Re-
6 quirement (Count IV), Compl.¶¶130-41, violate the Takings Clause. They allege
7 that the 4% Rent-Increase Cap’s discriminatory treatment of pre- and post-1978
8 rental properties violates the Equal Protection Clause (Count III). Compl.¶¶119-29.
9 And they allege that the Renter Protections Notice Requirement violates the First
10 Amendment by unlawfully compelling their speech (Count V). Compl.¶¶142-50.

11 ARGUMENT

12 To survive a motion to dismiss under Rule 12(b)(6), “the plaintiff’s complaint
13 must contain sufficient factual matter, accepted as true, to state a claim to relief that
14 is plausible on its face.” *Boquist v. Courtney*, 32 F.4th 764, 773 (9th Cir. 2022)
15 (quotation marks omitted). And to survive a motion to dismiss under Rule 12(b)(1),
16 the plaintiff need demonstrate only that the court “has jurisdiction to hear his claims.”
17 *Anderson v. United States*, 2022 WL 12427679, at *1 (C.D. Cal. Aug. 18, 2022).
18 Plaintiffs’ complaint here readily satisfies those standards.

19 I. The FMR Eviction Restriction Violates The Takings Clause.

20 The Takings Clause provides that “private property [shall not] be taken for
21 public use, without just compensation.” U.S. Const. amend. V. “By requiring the
22 government to pay for what it takes, the Takings Clause saves individual property
23 owners from bearing ‘public burdens which, in all fairness and justice, should be

1 borne by the public as a whole.” *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267, 273-
2 74 (2024). Government action that triggers the Takings Clause is divided into “*per*
3 *se* takings” and “regulatory takings.” *See Cedar Point*, 594 U.S. at 146-49. Try as
4 it might, the City cannot overcome Plaintiffs’ allegations demonstrating that the
5 FMR Eviction Restriction works a taking under both frameworks.

6 1. The Supreme Court has held that the government effects a *per se* taking
7 that automatically “trigger[s]” the “right to compensation” when it “appropriat[es]
8 property or otherwise interfere[s] with the owner’s right to exclude others from it.”
9 *Sheetz*, 601 U.S. at 274. As the Supreme Court explained in *Cedar Point*, a property
10 owner’s ability to decide whom she wants to grant access to and whom she wants to
11 exclude is “the ‘*sine qua non*’ of property.” 594 U.S. at 149-50; Compl.¶84. And as
12 the Supreme Court emphasized in *Alabama Association of Realtors v. HHS*, one way
13 in which the government “intrudes” on “the right to exclude” is by “preventing [land-
14 lords] from evicting tenants” who fail to pay rent. 594 U.S. 758, 765 (2021). Con-
15 sistent with those pronouncements, at least two courts of appeals have held that gov-
16 ernment regulations that “forc[e]” property owners “to house non-rent-paying ten-
17 ants” give rise to *per se* takings, as such regulations “remov[e] their ability to evict.”
18 *Darby Dev. Co. v. United States*, 112 F.4th 1017, 1035 (Fed. Cir. 2024); *see Heights*
19 *Apartments, LLC v. Walz*, 30 F.4th 720, 733 (8th Cir. 2022).

20 Those principles doom the FMR Eviction Restriction. After all, under that
21 restriction, the City prohibits a landlord from evicting a tenant who has refused to
22 pay rent unless the overdue amount measures in the thousands of dollars. *See* L.A.
23 Mun. Code §151.09(A)(1). The FMR Eviction Restriction thus is a government

1 mandate that landlords bear the physical presence of unwanted third parties—a clear
2 *per se* taking under *Cedar Point* and its progeny. In fact, the taking here is even
3 more obvious than in *Cedar Point*. There, the state authorized third parties (union
4 organizers) to enter agricultural property for only three hours a day for at most 120
5 days a year. *See Cedar Point*, 594 U.S. at 152. Here, the FMR Eviction Restriction
6 deprives a landlord of her right to exclude by enabling a defaulting tenant to maintain
7 a *permanent* presence in the unit for as long as the HUD-defined rent threshold is
8 not breached (*i.e.*, potentially *indefinitely*). There is simply no way to “reconcile
9 how forcing property owners to occasionally let union organizers on their property
10 infringes their right to exclude, while forcing them to house non-rent-paying tenants
11 (by removing their ability to evict) would not.” *Darby Dev.*, 112 F.4th at 1035.

12 The City insists that “[e]viction regulations that dictate when a landlord may
13 evict tenants do not work physical takings,” MTD.10, but it does not meaningfully
14 grapple with this precedent. In fact, the City does not even *mention* the Supreme
15 Court’s decision in *Alabama Association of Realtors*, and it relegates the Federal
16 Circuit’s decision in *Darby Development* and the Eighth Circuit’s decision in
17 *Heights Apartments* to an inaccurate footnote.² Instead, the City places almost all of
18 its chips on the Supreme Court’s decision in *Yee v. City of Escondido*. *See* MTD.12-
19 13. In *Yee*, the Court rejected a physical-takings argument “predicated on the un-
20 usual economic relationship between [mobile-home] park owners and mobile home

² The City describes the Federal and Eighth Circuits as “outliers.” MTD.13 n.7. But of the appellate courts that have issued precedential decisions applying *Cedar Point* and *Alabama Association of Realtors* in the landlord-tenant context, they comprise the *majority* (with only the Second Circuit in the minority).

1 owners,” while highlighting several features of the legal regime at issue without par-
2 allel here: (1) it did not prohibit evictions for “nonpayment of rent”; (2) it did not
3 “compel[]” the park owners, “once they have rented their property to tenants, to con-
4 tinue doing so”; and (3) on its face, it did not “compel a landowner over objection
5 to rent his property or to refrain in perpetuity from terminating a tenancy.” 503 U.S.
6 at 524, 527-28; *see Darby Dev.*, 112 F.4th at 1035-36; *Heights*, 30 F.4th at 733.
7 Those features allowed the Court to liken tenants to invited guests. In stark contrast,
8 the FMR Eviction Restriction *does* compel landlords over their objection to continue
9 to rent (potentially in perpetuity) to tenants in situations involving nonpayment of
10 rent. Compl.¶¶55-58, 75-76. In other words, this case involves precisely the forced
11 tenancy that is constitutionally suspect even under *Yee*.³

12 The City nonetheless asserts that, after *Yee*, landlords are categorically pre-
13 cluded from asserting takings claims because they “g[a]ve” away the right to exclude
14 once they “voluntarily leased their property.” MTD.13-14. Nonsense. “[J]ust be-
15 cause tenants (or other occupiers of property) were at one point ‘invited’ does not
16 mean that their continued, government-compelled occupation cannot ... be treated
17 as a physical taking.”⁴ *Darby Dev.*, 112 F.4th at 1036; *cf. Donahue Schriber Realty*

³ *FCC v. Florida Power Corp.*, 480 U.S. 245 (1987), is similarly inapposite. *Contra* MTD.12. There, the FCC set the rates that operators could charge for leased space on telephone poles, but it did not “require[] utilities, over objection, to ... refrain from terminating pole attachment agreements.” *Florida Power*, 480 U.S. at 251 n.6. The Court therefore did not address what would happen if the FCC barred the lessor from terminating the relationship due to a lessee’s non-payment.

⁴ The unpublished and nonprecedential Ninth Circuit decisions engaging in the same mistaken *Yee*-based analysis, *see* MTD.13, are no more persuasive. *See also*

1 *Grp. v. Nu Creation Outreach*, 181 Cal.Rptr.3d 577, 582 (Cal. Ct. App. 2014) (“[A]
2 trespass may occur if the party, entering pursuant to a limited consent, ... proceeds
3 to exceed those limits[.]”). If a homeowner invites neighbors to stay the night, rather
4 than drive home, she would obviously have a takings claim if the government en-
5 acted an ordinance entitling the neighbors to occupy the guest bedroom indefinitely.
6 Nor is it any answer to suggest that no taking can occur given that landlords can
7 simply stop renting altogether. *Contra* MTD.14. The Supreme Court has rejected
8 the proposition that property owners lose their constitutional rights by voluntarily
9 entering a regulated market (and the City imposes exit restrictions, *see* pp.22-23,
10 *infra*). *See, e.g., Horne v. Dep’t of Agric.*, 576 U.S. 350, 365 (2015); *Loretto v. Tel-*
11 *eprompter Manhattan CATV Corp.*, 458 U.S. 419, 439 n.17 (1982).

12 Finally, the City dismisses any takings concerns because landlords have con-
13 tractual remedies and because tenants may eventually fall far enough behind on rent
14 to trigger the “fair market rent” threshold for eviction. *See* MTD.14. None of that
15 advances the ball. That a landlord can pursue contractual damages—“with no guar-
16 antee of eventual recovery,” *Ala. Ass’n of Realtors*, 594 U.S. at 765—does not ac-
17 complish the removal of the tenant from the property; he still enjoys government
18 approval to occupy it over the landlord’s objection, which is the basis for Plaintiffs’
19 takings claim. *See Loretto*, 458 U.S. at 440 n.19 (finding a taking even if the owner
20 could seek indemnity for any property damage caused by the cable box installation).

Compl.¶93; 9th Cir. R. 36-3 (“Unpublished dispositions and orders of this Court are not precedent, except when relevant under the doctrine of law of the case or rules of claim preclusion or issue preclusion.”).

1 And the possibility of eviction *after* a prolonged bout of non-payment does not ne-
2 gate that a taking has already occurred long before then: “The duration of an appro-
3 priation ... bears only on the amount of compensation” for the taking, not its exist-
4 ence. *Cedar Point*, 594 U.S. at 153 (citing *Loretto*, 458 U.S. at 433-37); Compl.¶96.
5 The City failed to address this well-established rule at its peril.⁵ In short, Plaintiffs
6 have stated a plausible *per se* takings claim vis-à-vis the FMR Eviction Restriction.

7 2. The FMR Eviction Restriction also constitutes a regulatory taking un-
8 der *Penn Central*. To raise a plausible regulatory taking, plaintiffs must allege that
9 (1) the regulation’s economic impact, (2) its interference with investment-backed
10 expectations, and (3) the character of the government action on balance show that it
11 is the “functional[] equivalent” of a *per se* taking. *Rancho de Calistoga v. City of*
12 *Calistoga*, 800 F.3d 1083, 1090 (9th Cir. 2015). Plaintiffs have done so here.

13 The economic burden of the FMR Eviction Restriction is palpable. It enables
14 tenants to serially underpay, which means that Plaintiffs are deprived of the (already
15 low) rental income needed to help cover even the basic costs required to operate the
16 properties. *See* Compl.¶¶75-76. Other courts have found that kind of impact suffi-
17 cient to satisfy the first *Penn Central* factor. *See Heights*, 30 F.4th at 734. If any-
18 thing, the economic burden here is more severe, as the FMR Eviction Restriction has
19 helped produce a dynamic where Plaintiffs cannot even justify renting some of their

⁵ The City instead makes the hyperbolic claim that applying *Cedar Point* accord-
ing to its terms will mean that “governments could not regulate evictions” anymore.
MTD.15. Not so. The government can still regulate numerous aspects of the evic-
tion process, like the statute of limitations or the applicable evidentiary rules. It just
cannot “regulate evictions” by forcing landlords to bear physical incursions by un-
wanted third parties. *See Ala. Ass’n of Realtors*, 594 U.S. at 765.

1 units anymore. See Compl.¶¶75-76. The City’s assertion that Plaintiffs have not
2 alleged a “significant” economic impact, MTD.15-16, thus blinks all reality.⁶

3 The FMR Eviction Restriction also interferes with “distinct investment-
4 backed expectations.” *Guggenheim v. City of Goleta*, 638 F.3d 1111, 1120 (9th Cir.
5 2010). The City does not deny that, before the FMR Eviction Restriction, it had
6 never taken the extreme step of denying landlords the right to evict non-paying ten-
7 ants (save for the temporary pandemic-era regulations). See Compl.¶100. And given
8 that landlords “traditional[ly]” have held a “right to evict” for non-payment of rent,
9 *Fresh Pond Shopping Ctr. v. Callahan*, 464 U.S. 875, 876 (1983) (Rehnquist, J.,
10 dissenting); *Del Toro v. Juncos Cent. Co.*, 276 F. 894, 895 (1st Cir. 1921)—even
11 under a good-cause eviction regime, see Kenneth Salzberg & Audrey A. Zibelman,
12 *Good Cause Eviction*, 21 Willamette L. Rev. 61, 62, 71 (1985)—Plaintiffs had no
13 reason to anticipate that the City would appropriate this right. See *Ruckelshaus v.*
14 *Monsanto Co.*, 467 U.S. 986, 1011-12 (1984); *Heights*, 30 F.4th at 734. The City’s
15 contrary view rests on a sweeping proposition: “When plaintiffs do business in a
16 highly regulated field,” they simply “cannot claim that regulatory changes then ‘up-
17 set’ those expectations.”⁷ MTD.17. The Supreme Court disagrees, as it has held that

⁶ The City suggests that Plaintiffs must plead a *specific* diminution in value to avoid dismissal. MTD.15-16. But *Penn Central* “identif[ies] several factors, not a set formula,” for courts to use. *Rancho*, 800 F.3d at 1090.

⁷ This assertion is particularly dubious since the most recent restrictions are so severe that they are different in kind from any prior restrictions. Indeed, Plaintiffs or their families rented their properties for decades, but only the most recent policies prompted them (and others) to sell. Compl.¶¶75-76, 99; see Gail Feuerstein, *Letters to the Editor: I Was a Small Landlord Who Gave Up on L.A. Because of Draconian Rent Rules*, L.A. Times (Dec. 11, 2024), <https://tinyurl.com/muvbtm7u>.

1 the government does not enjoy “unfettered authority to ‘shape and define property
2 rights and reasonable investment-backed expectations,’ leaving landowners without
3 recourse.” *Murr v. Wisconsin*, 582 U.S. 383, 396 (2017).

4 That leaves the character-of-government action prong, which weighs in favor
5 of a taking “when the interference with property can be characterized as a physical
6 invasion by government.” *Penn Cent.*, 438 U.S. at 124. As noted above, *see pp.10-*
7 *14, supra*, that characterization is apt here, and the City’s resistance to that proposi-
8 tion is no more successful the second time around. When someone sits in your prop-
9 erty despite not paying rent because the government grants him a right to do so, it is
10 hard not to conceive of the dynamic as “a physical invasion by the government.”⁸

11 **II. The 4% Rent-Increase Cap Is Doubly Unconstitutional.**

12 The 4% Rent-Increase Cap not only effects both a *per se* and regulatory tak-
13 ing, but also violates the Equal Protection Clause. The City’s contrary arguments
14 are wrong across the board.

15 **A. The 4% Rent-Increase Cap Violates the Takings Clause.**

16 The *per se* taking effected by the 4% Rent-Increase Cap is self-evident. As
17 explained, after *Cedar Point*, “the right to compensation is triggered if [govern-
18 ments] ‘physically appropriat[e]’ property or otherwise interfere with the owner’s
19 right to exclude others from it.” *Sheetz*, 601 U.S. at 274 (quoting *Cedar Point*, 594
20 U.S. at 149-152). And one of the “the most obvious applications ... of *Cedar Point*
21 would be to ... rent control ordinances.” Aziz Z. Huq, *Property Against Legality*:

⁸ If the FMR Eviction Restriction somehow survives under *Penn Central*, that would be one more reason for the Supreme Court to revisit the test. *See Compl.* ¶102.

1 *Takings After Cedar Point*, 109 Va. L. Rev. 233, 261-62 (2023). “[L]aws that limit
2 landlords’ ability to control whom they rent their property to [and] how much they
3 rent their property for ... appropriates from the landlords their right to exclude for
4 the enjoyment of the occupying tenants, who may remain in situ despite the land-
5 lord’s desire to rent ... at market rate.” Abigail K. Flanigan, Note, *Rent Regulations*
6 *After Cedar Point*, 123 Colum. L. Rev. 475, 498 (2023). That perfectly describes the
7 scenario that Plaintiffs face here. They wish to exclude their current tenants and rent
8 their properties at market rates. But because of the 4% Rent-Increase Cap, Plaintiffs
9 are compelled to continue renting to current tenants at rates that do not even remotely
10 approach market rates. See Compl.¶¶75-76, 111. In fact, the rates that the City
11 allows them to charge are \$1,000 (or far more) *below* what HUD has deemed a “fair
12 market rent” for comparable units. See Compl.¶¶57, 75-76. “That sort of intrusion
13 on property rights is a *per se* taking.” *Sheetz*, 601 U.S. at 274.

14 The City’s cursory response does not move the needle. Again invoking *Yee*,
15 it insists that “rent controls, like the Four Percent Rent-Increase Cap, are not physical
16 (or *per se*) takings because they just regulate the landlord-tenant relationship.”
17 MTD.20. But *Yee* did “not” address “ordinary rent control statutes,” 503 U.S. at 526,
18 and “after *Cedar Point*,” “[i]t is pure sophistry to claim that the state does not engage
19 in a taking when it authorizes a tenant to stay continuously in possession of the leased
20 premises after the expiration of the lease at a rent that is consciously set below mar-
21 ket value,” Richard Epstein, *A Bombshell Decision on Property Takings*, Hoover
22 Inst. (June 28, 2021), <https://rebrand.ly/jnjgrh>. The City’s only response is to cite a
23 footnote in *Pennell v. City of San Jose*, 485 U.S. 1 (1988). See MTD.20. But that

1 footnote just observed that the plaintiffs there “d[id] not claim ... that rent control is
2 *per se* a taking.” *Pennell*, 485 U.S. at 12 n.6. Plaintiffs have indisputably done so
3 here, and the 4% Rent-Increase Cap is indisputably a *per se* taking.

4 2. The City’s half-paragraph effort to deny the existence of the regulatory
5 taking caused by the 4% Rent-Increase Cap is also unavailing. Its 4% cap on rent
6 increases for 17 months after four years of prohibiting *any* increases plainly imposes
7 severe economic burdens on Plaintiffs, who must now use their own savings to cover
8 skyrocketing costs. *See* Compl. ¶¶75-76, 114. The City downplays these allegations
9 by again suggesting that Plaintiffs must allege a specific diminution in value to move
10 past the pleading stage. *See* MTD.20. But that is not the law. *See* p.15 n.6, *supra*.

11 The City’s arguments on the two other *Penn Central* factors go nowhere ei-
12 ther. The City asserts that the 4% Rent-Increase Cap did not interfere with reasona-
13 ble investment-backed expectations because Plaintiffs “bought into rent control,”
14 and “when Plaintiff Harris purchased one of her properties in 1992 and when Plain-
15 tiff Knighten inherited her property, rent ceilings had been at four percent (some-
16 times less than that) for multiple years.” MTD.20. But the City does not and cannot
17 dispute that it *deviated* from the rent-cap formula that it has used for decades when
18 adopting the currently applicable, but artificially low 4% cap or that adhering to that
19 longstanding formula would have nearly doubled the permissible annual increase.
20 *See* Compl. ¶¶61, 115-16. Plaintiffs had no reason to expect *that* kind of “confisca-
21 tory” rate after one of the worst stretches of inflation in the last half-century. *Florida*
22 *Power*, 480 U.S. at 253; *see* p.15 n.7, *supra*. Furthermore, because “the interference
23 with property” here “can be characterized as a physical invasion by government” for

1 all the reasons provided above, *Penn Cent.*, 438 U.S. at 124, the regulatory taking
2 here is just as obvious as it is with the FMR Eviction Restriction.

3 3. With little to offer on the merits, the City spends most of its time argu-
4 ing that Plaintiffs’ “regulatory taking” challenge to the 4% Rent-Increase Cap (but
5 not its *per-se* takings challenge) is “unripe.” MTD.19. Wrong again. Ripeness en-
6 sures that courts do not “entangl[e] themselves in abstract disagreements.” *Clark v.*
7 *City of Seattle*, 899 F.3d 802, 808-09 (9th Cir. 2018). A regulatory-takings claim
8 thus is ripe once “the government is committed to a position,” as “potential ambigu-
9 ities” about the impact of its decision on property rights “evaporate” at that point.
10 *Pakdel v. City & Cnty. of S.F.*, 594 U.S. 474, 479 (2021). Under those principles,
11 the regulatory takings claim here is unquestionably ripe: Plaintiffs wish to rent their
12 units at market rates free from “government restriction,” but are barred from doing
13 so by the 4% Rent-Increase Cap. Compl.¶¶75-76. Although the City allows relief
14 from that cap in some instances, it has made crystal clear that it will “*not*” permit
15 rent adjustments just “to bring the rents to market rate.” Compl.¶113 (emphasis
16 added). In short, “there is no question about the city’s position” here: Market rates
17 are verboten. *Pakdel*, 594 U.S. at 478. The regulatory-takings claim thus is ripe.

18 The City protests that “Plaintiffs have not applied for any rent adjustment”
19 and assert that “Plaintiffs just speculate that the process will not bring them the kind
20 of rents they want.” MTD.19-20. But the City forgets that it must “accept as true
21 all well-pleaded factual allegations” at this stage. *Parents for Priv. v. Barr*, 949 F.3d
22 1210, 1221 (9th Cir. 2020). And in all events, there is nothing speculative about the
23 City’s self-professed “final position,” *Pakdel*, 594 U.S. at 480, that its rent-

1 adjustment program will *never* allow landlords to obtain market rates. *Cf. 74 Pine-*
2 *hurst LLC v. New York*, 59 F.4th 557, 565 (2d Cir. 2023).

3 **B. The 4% Rent-Increase Cap Violates the Equal Protection Clause.**

4 1. Plaintiffs have also plausibly alleged that the 4% Rent-Increase Cap vi-
5 olates their equal-protection rights. The City admits (as it must) that it discriminates
6 between properties built before and after October 1, 1978. *See* MTD.20-21. And
7 while the City argues that rational-basis review applies, it does so only by ignoring
8 the Supreme Court precedent (cited in the complaint, *see* Compl. ¶¶ 19, 121-22) that
9 applies heightened scrutiny to discrimination based on fundamental, constitutionally
10 protected rights. *See Plyler v. Doe*, 457 U.S. 202, 216-17 & n.15 (1982). The right
11 to exclude is one such right, as *Cedar Point* confirms. *See* 594 U.S. at 149-50. The
12 City thus must justify the 4% Rent-Increase Cap under heightened scrutiny. But it
13 does not try to do so, apparently conceding the issue.

14 In all events, the 4% Rent-Increase Cap flunks even rational-basis review. The
15 City tellingly offers no precedent holding that this kind of reverse-grandfather clause
16 is rational—because it is not. Jurisdictions often grandfather existing property own-
17 ers to rationally respect reliance interests. Doing the opposite—imposing burden-
18 some restrictions only on those with valid reliance interests—is irrational and down-
19 right pernicious. Older properties are the ones most likely to require expensive re-
20 pairs and upkeep, yet owners of such properties are the ones denied the ability to
21 raise rents to accomplish those objectives. *See* Compl. ¶124. Undeterred, the City
22 claims that its discrimination is rational because the absence of a City-imposed rent
23 cap on post-1978 properties “encourage[s] the construction of new rental units in

1 order to expand the City’s stock of affordable housing.” *City of Los Angeles v. Los*
2 *Olivos Mobile Home Park*, 213 Cal.App.3d 1427, 1438 (1989). But that is a rational
3 basis for foreswearing all rent control, not a justification for discrimination. If “af-
4 fordable housing” flourishes without the 4% Rent-Increase Cap, the rational way to
5 create more of that housing is to eliminate the 4% Rent-Increase Cap.⁹ Indeed, the
6 City’s illogic may explain why “[i]t is no secret that the City of Los Angeles is grap-
7 pling with a housing shortage and homelessness crisis” despite regulating rents in
8 pre-1978 properties “for over 45 years.” MTD.1

9 2. Lacking coherent merits arguments, the City shifts gears, asserting a
10 timeliness objection. *See* MTD.20-21. That argument fares no better. The limita-
11 tions period starts when the claim accrues under federal law—*i.e.*, when the City’s
12 actions cause the complained-of injury. *Ellis v. Salt River Project Agric. Improv. &*
13 *Power Dist.*, 24 F.4th 1262, 1271-72 (9th Cir 2022). Plaintiffs’ equal-protection
14 claim challenges the 2023 ordinance imposing the 4% rent-increase only on RSO-
15 regulated units. Compl.¶¶122-29; ¶¶59-60. Plaintiffs sued in 2024—well within the
16 two-year limitations period.

17 The City ignores these details and instead emphasizes that it has discriminated
18 against pre-1978 properties since the RSO’s enactment in the 1970s. MTD.20-21.
19 But the City cannot insulate challenges to irrational discrimination by adding new

⁹ The City posits that, because of state law (the Costa-Hawkins Act), it “cannot expand the RSO’s protections to newer buildings to avoid Plaintiffs’ equal protection arguments.” MTD.21. That purported dilemma is easily resolved by *eliminating* the discriminatory treatment embodied in provisions like the 4% Rent-Increase Cap—*i.e.*, removing the more burdensome restrictions on older properties *entirely*.

1 restrictions to the disfavored side of the ledger. The City could not treat women less
2 favorably for a specific purpose, wait for the limitations period to run, and then pile
3 on new disabilities with immunity. The same is true here. Plaintiffs are not chal-
4 lenging “the RSO” itself—their equal-protection claim is leveled specifically at the
5 2023 4% Rent-Increase Cap.¹⁰ Compl.¶128. While there may be an exception for
6 the “inevitable consequences” of earlier discrimination, *Ellis*, 24 F.4th at 1272, there
7 was nothing inevitable about a rent-cap that the City waited 40+ years to impose.

8 **III. The Relocation-Fee Requirement Violates The Takings Clause.**

9 1. The Relocation-Fee Requirement effects a taking too. It provides that,
10 even where the fixed term of a lease has expired, landlords may not exclude existing
11 tenants to recover their own property for family use, unless those landlords first pay
12 the existing tenants anywhere between \$9,900 and \$25,700. And that is the best-
13 case scenario. If the tenant in the relevant unit has resided there for at least 10 years
14 and is either at least 62 years old or disabled, that tenant is deemed a “protected
15 tenant.” *See* L.A. Mun. Code §151.30(D). As a result of that “protected” status, the
16 landlord can reclaim the unit for family use only by withdrawing that unit and *all*
17 others on the property from the rental market and by providing a notice of the intent
18 to withdraw one year in advance. *See id.* §§151.09(A)(10), 151.23(B). The City
19 also requires the landlord to immediately pay the tenants in the withdrawn units
20 relocation fees. *See id.* §151.09(G), (G)(2). Only after the landlord jumps through

¹⁰ Plaintiffs’ equal-protection claim thus is unlike the untimely claim in *Action Apartments Association v. Santa Monica Rent Control Board* that facially challenged an ordinance enacted outside the limitations period. 509 F.3d 1020 (9th Cir. 2007). Here, Plaintiffs challenge only the discriminatory choice the City made in 2023.

1 those hoops and waits a year—during which time the tenants are free to continue to
2 physically remain in their units—can she reclaim her property for family use.

3 That is a taking under any understanding of the concept. First, the Relocation
4 Fee Requirement plainly “hold[s] hostage” the “basic and familiar” “right to
5 exclude” and thus amounts to a *per se* taking. *Cedar Point*, 594 U.S. at 158, 162. It
6 is also a regulatory taking under the *Penn Central* test: (1) paying tens of thousands
7 of dollars to reclaim one’s own property is a severe economic impact; (2) it interferes
8 with reasonable investment-backed expectations, as no property owner reasonably
9 expects that the government will forever require them to pay hefty (and ever-
10 increasing) sums to exercise their fundamental property rights; and (3) government-
11 approved physical occupation by unwanted tenants is most accurately characterized
12 as a physical invasion by government. *See* Compl. ¶¶137-40.

13 The City again musters only a single paragraph of argument in response,
14 which does not get the job done. The City asserts that “Plaintiffs’ takings claim also
15 fails on its merits for the same reasons already discussed.” MTD.23. It is not clear
16 which reasons those are, but regardless, all of the City’s already-discussed arguments
17 are deficient. And while the City additionally claims that at least Plaintiffs’ *per se*
18 takings challenge is “foreclosed” by *Ballinger v. City of Oakland*, 24 F.4th 1287 (9th
19 Cir. 2022), MTD.23, that argument badly misses the mark. *Ballinger* involved an
20 alleged “physical taking of ... money,” 24 F.4th at 1292, and did not even mention
21 the right to exclude, which is the basis of Plaintiffs’ physical-takings claim here.

22 2. In the end, the City seeks refuge in another timeliness objection.
23 MTD.22. But when a law that “operate[s] on an ongoing basis” causes plaintiffs to

1 “abstain from [conduct] ... for fear that the [City] will enforce” it, “a new claim
2 arises (and a new limitations period commences) with each new injury.” *Flynt v.*
3 *Shimazu*, 940 F.3d 457, 462-63 (9th Cir. 2019). That principle is particularly appo-
4 site to a restriction on reclaiming property for personal use, as a property owner
5 would not have reason to challenge it, let alone a ripe claim, until she wanted to
6 repossess. It is also dispositive. Plaintiff Harris is *currently* prevented from reclaim-
7 ing her property for her own use due to the fees imposed by the Relocation-Fee Re-
8 quirement. *See* Compl.¶135; MTD.22. Her ongoing decision to “abstain” from re-
9 claiming her own property “for fear that the [City] will enforce the [Relocation-Fee
10 Requirement]”—including via harsh penalties, *see* p.6, *supra*—thus presents a new
11 injury that she may seek to remedy in this lawsuit. *Flynt*, 940 F.3d at 463.

12 **IV. The Renter Protections Notice Requirement Violates The First Amend-** 13 **ment.**

14 Lastly, the City seeks to dismiss the First Amendment claim by likening the
15 Renter Protections Notice to required workplace notices. *See* MTD.23-25. That is
16 unavailing as a First Amendment matter and underscores the physical takings here.

17 The First Amendment protects individuals’ right to decide “both what to say
18 and what *not* to say.” *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781,
19 796-97 (1988). When the government “compel[s] individuals to speak a particular
20 message,” it must satisfy heightened scrutiny. *Nat’l Inst. of Fam. & Life Advocs. v.*
21 *Becerra*, 585 U.S. 755, 766 (2018). The City does not dispute that requirements here
22 affect the content of Plaintiffs’ speech. Nor does the City argue that it satisfies
23 heightened scrutiny (it does not, Compl.¶¶147-48). That is the end of the matter.

1 The City attempts to evade this result by likening the Renter Protections No-
2 tice Requirement to mandatory workplace postings that compel only “commercial”
3 speech. *See* MTD.23. That argument is doubly unavailing. First, Plaintiffs’ speech
4 is not commercial: They are not advertising products or even motivated by profit
5 when they choose what to include in the common area of their buildings. *See Ariix,*
6 *LLC v. NutriSearch Corp.*, 985 F.3d 1107, 1115-17 (9th Cir. 2021). Such decisions
7 are protected expressive activity, not commercial speech. *See Green v. Miss U.S.A.,*
8 *LLC*, 52 F.4th 773, 783 n.10 (9th Cir. 2022). But the analogy to workplace notices
9 underscores a deeper problem. Rental units are nothing like commercial workplaces,
10 and essentially converting common areas into a bulletin board where the government
11 can compel all manner of pro-tenant speech would amount to one more physical
12 taking. Indeed, in a choice between the mandatory cable hook-up in *Loretto* and a
13 mandatory bulletin board where the government can force landlords to remind ten-
14 ants of all the ways that the government has limited the landlords’ property rights,
15 any landlord would choose the former. But they both would be physical takings.

16 Finally, and setting these other flaws aside, even the *Zauderer* standard allows
17 the government only to compel speech that is “factual and uncontroversial” and not
18 “unjustified or unduly burdensome.” *Nat’l Ass’n of Wheat Growers v. Bonta*, 85
19 F.4th 1263, 1275 (9th Cir. 2023). Forcing landlords to remind tenants of rights the
20 landlord believes to be unconstitutional and the City concedes have been controver-
21 sial “[s]ince World War I,” MTD.1, is flatly unconstitutional.

22 CONCLUSION

23 For the foregoing reasons, the Court should deny the City’s motion to dismiss.

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