

1 Rick Richmond
2 LARSON LLP
3 555 S. Flower St.
4 Suite 4400
5 Los Angeles, CA 90071
6 (213) 436-4888
7 rrichmond@larsonllp.com

8 Paul D. Clement
9 Andrew Lawrence
10 Darina Merriam*
11 Mitchell K. Pallaki
12 CLEMENT & MURPHY, PLLC
13 706 Duke Street
14 Alexandria, VA 22314
15 (202) 742-8900
16 paul.clement@clementmurphy.com

17 *Supervised by principals of the firm who are
18 members of the Virginia bar

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 MOTION OF**
28 v.) **INTERVENOR SAJE TO DISMISS**
) **UNDER FRCP 12(B)(1)**
) **AND 12(B)(6)**
CITY OF LOS ANGELES,)
) Hearing Date: Monday, July 28, 2025
) Time: 9:00 am
Defendant.) Courtroom: 1

TABLE OF CONTENTS

1

2

3 TABLE OF AUTHORITIES..... ii

4 INTRODUCTION 1

5 BACKGROUND 2

6 A. Legal Background 2

7 B. Factual Background..... 7

8

9 ARGUMENT 8

10 I. The FMR Eviction Restriction Violates The Takings Clause..... 9

11 II. The 4% Rent-Increase Cap Is Doubly Unconstitutional 16

12 A. The 4% Rent-Increase Cap Violates the Takings Clause 16

13 B. The 4% Rent-Increase Cap Violates the Equal Protection

14 Clause 20

15

16 III. The Relocation-Fee Requirement Violates The Takings Clause 22

17 IV. The Renter Protections Notice Requirement Is Unconstitutional 24

18 CONCLUSION 25

19

20

21

22

23

24

25

26

27

28

TABLE OF AUTHORITIES

Cases

1

2

3

4 *74 Pinehurst LLC v. New York,*

5 59 F.4th 557 (2d Cir. 2023).....20

6 *Action Apartments Ass’n v. Santa Monica Rent Control Bd.,*

7 509 F.3d 1020 (9th Cir. 2007).....19

8 *Ala. Ass’n of Realtors v. HHS,*

9 594 U.S. 758, 765 (2021).....9, 11, 17

10 *Anderson v. United States,*

11 2022 WL 12427679 (C.D. Cal. Aug. 18, 2022).....9

12 *Ariix, LLC v. NutriSearch Corp.,*

13 985 F.3d 1107 (9th Cir. 2021).....25

14 *Att’y Gen. of N.Y. v. Soto-Lopez,*

15 476 U.S. 898 (1986).....20

16 *Ballinger v. City of Oakland,*

17 24 F.4th 1287 (9th Cir. 2022).....23

18 *Bell v. Maryland,*

19 378 U.S. 226 (1964).....12

20 *Blakelick Props. v. Vill. of Glen Ellyn,*

21 2025 WL 1348569 (N.D. Ill. May 8, 2025).....14

22 *Block v. Hirsh,* 256 U.S. 138 (1921)..... 3, 13, 17

23 *Boquist v. Courtney,*

24 32 F.4th 764 (9th Cir. 2022).....8

25 *Cedar Point Nursery v. Hassid,*

26 594 U.S. 139 (2021)..... *passim*

27 *Chastleton Corp. v. Sinclair,*

28 264 U.S. 543 (1924).....13

1 *City of Los Angeles v. Los Olivos Mobile Home Park,*
 2 213 Cal.App.3d 1427 (1989)21

3 *Clark v. City of Seattle,*
 4 899 F.3d 802 (9th Cir. 2018).....15

5 *Cwynar v. City & Cnty. of San Francisco,*
 6 109 Cal.Rptr.2d 233 (Cal. Ct. App. 2001)12

7 *Darby Dev. Co. v. United States,*
 8 112 F.4th 1017 (Fed. Cir. 2024).....10, 11, 17

9 *Del Toro v. Juncos Cent. Co.,*
 10 276 F. 894 (1st Cir. 1921)14

11 *Donahue Schriber Realty Grp. v. Nu Creation Outreach,*
 12 181 Cal.Rptr.3d 577 (Cal. Ct. App. 2014)11

13 *Ellis v. Salt River Project Agric. Improv. & Power Dist.,*
 14 24 F.4th 1262 (9th Cir 2022) 19, 21, 22

15 *FCC v. Florida Power Corp.,*
 16 480 U.S. 245 (1987).....1, 11, 18

17 *Flynt v. Shimazu,*
 18 940 F.3d 457 (9th Cir. 2019)..... 19, 24

19 *Fresh Pond Shopping Ctr. v. Callahan,*
 20 464 U.S. 875 (1983).....14

21 *Green v. Miss U.S.A., LLC,*
 22 52 F.4th 773 (9th Cir. 2022).....25

23 *Guggenheim v. City of Goleta,*
 24 638 F.3d 1111 (9th Cir. 2010)14

25 *Heights Apartments, LLC v. Walz,*
 26 30 F.4th 720 (8th Cir. 2022)..... 10, 14, 17

27 *Levin v. City & Cnty. of San Francisco,*
 28 71 F.Supp.3d 1072 (N.D. Cal. 2014)23

1 *Lindsey v. Normet*,
 2 405 U.S. 56 (1972).....12

3 *Loretto v. Teleprompter Manhattan CATV Corp.*,
 4 458 U.S. 419 (1982).....11, 12

5 *Marcus Brown Holding Co. v. Feldman*,
 6 256 U.S. 170 (1921).....3, 21

7 *Nat’l Ass’n of Wheat Growers v. Bonta*,
 8 85 F.4th 1263 (9th Cir. 2023).....25

9 *Nat’l Inst. of Fam. & Life Advocs. v. Becerra*,
 10 585 U.S. 755 (2018).....24

11 *Pakdel v. City & Cnty. of San Francisco*,
 12 594 U.S. 474 (2021)..... 15, 20

13 *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*,
 14 551 U.S. 701 (2007).....22

15 *Penn Cent. Transp. Co. v. City of New York*,
 16 438 U.S. 104 (1978)..... 1, 15, 18

17 *Plyler v. Doe*,
 18 457 U.S. 202 (1982).....20

19 *PruneYard Shopping Ctr. v. Robins*,
 20 447 U.S. 74 (1980).....12

21 *Rancho de Calistoga v. City of Calistoga*,
 22 800 F.3d 1083 (9th Cir. 2015)..... 13, 14

23 *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*,
 24 487 U.S. 781 (1988).....24

25 *Roman Cath. Diocese of Brooklyn v. Cuomo*,
 26 592 U.S. 14 (2020).....3

27 *Ruckelshaus v. Monsanto Co.*,
 28 467 U.S. 986 (1984).....14

1 *Rumsfeld v. FAIR*,
 2 547 U.S. 47 (2006).....24

3 *Sheetz v. Cnty. of El Dorado*,
 4 601 U.S. 267 (2024).....9, 16

5 *Tahoe-Sierra Pres. Council v. Tahoe Reg'l Plan. Agency*,
 6 535 U.S. 302 (2002).....17

7 *Thornton v. City of St. Helens*,
 8 425 F.3d 1158 (9th Cir. 2005).....20

9 *Wooley v. Maynard*,
 10 430 U.S. 705 (1977).....25

11 *Yee v. City of Escondido*,
 12 503 U.S. 519 (1992).....1, 11, 17

13 **Constitutional Provision**

14 U.S. Const. amend. V..... 9

15 **Statutes**

16 L.A. Mun. Code §151.00, *et seq.*3

17 L.A. Mun. Code §151.06(C)..... 5

18 L.A. Mun. Code §151.09(A) (1979).....3

19 L.A. Mun. Code §151.09(A)(1)..... 4, 6, 10

20 L.A. Mun. Code §151.09(A)(8)..... 6

21 L.A. Mun. Code §151.09(A)(10).....6

22 L.A. Mun. Code §151.09(G).....6

23 L.A. Mun. Code §151.10(B).....6

24 L.A. Mun. Code §151.23(B).....6

25 L.A. Mun. Code §151.283

26

27

28

1 L.A. Mun. Code §151.30(D).....6
 2 L.A. Mun. Code §151.30(E)6
 3 L.A. Mun. Code §151.345
 4 L.A., Cal., Ordinance 187,109 (2021)6
 5 L.A., Cal., Ordinance 187,763 (2023)4
 6 L.A., Cal., Ordinance 188,071 (2024)5, 19
 7
 8 **Other Authorities**
 9
 10 Douglas I. Brandon, et al., *Self-Help: Extrajudicial Rights,*
 11 *Privileges and Remedies in Contemporary American Society,*
 37 Vand. L. Rev. 845 (1984).....12
 12 Richard Epstein, *A Bombshell Decision on Property Takings,*
 13 Hoover Inst. (June 28, 2021), <https://rebrand.ly/jnjgrh>..... 17
 14 Abigail K. Flanigan, Note, *Rent Regulations After Cedar Point,*
 15 123 Colum. L. Rev. 475 (2023)16
 16 4 Geo. II c.28 (1731), <https://tinyurl.com/2xze4mah> 12
 17 Charlotte Kramon, *L.A. Tenants Welcomed the Rent Freeze, But*
 18 *Landlords Are Tired of Restrictions,* L.A. Times (Aug. 23, 2023),
 19 <https://rebrand.ly/hdlmatu>.....4
 20 L.A. Hous. Dep’t, *City of Los Angeles Renter Protections Notice*
 21 (rev. Oct. 1, 2024), <https://rebrand.ly/xkc988z>.....7
 22 L.A. Hous. Dep’t, *Just & Reasonable Rent Adjustment Program*
 23 (Apr. 2, 2024), <https://rebrand.ly/xdfilq8>.....5
 24 L.A. Hous. Dep’t, *Protections Notice,* <https://rebrand.ly/nfrnu6z>
 25 (last visited Mar. 13, 2025).....7, 8
 26 Louis M. Rea & Dipak K. Gupta, *The Rent Control Controversy:*
 27 *A Consideration of the California Experience,*
 4 Glendale L. Rev. 105 (1982)..... 3
 28

1 **INTRODUCTION**

2 In a near carbon copy of the motion to dismiss filed by the City of Los Angeles
3 (City), Intervenor Strategic Actions for a Just Economy (SAJE) seeks to dismiss this
4 complaint principally by raising the same frivolous timeliness and ripeness objec-
5 tions to the claims filed by Plaintiffs Melvia Harris and Roberta Knighten. That
6 sequel to the first misguided effort to circumvent the merits is no more compelling
7 than the original. In reality, the City has plainly violated Plaintiffs’ constitutional
8 rights, and Plaintiffs are plainly entitled to vindicate them.

9 After *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021), it is no longer
10 debatable that, whenever the government prevents property owners from excluding
11 third parties from their properties, it has effected a *per se* taking. That is precisely
12 what the City has done here—thrice over. The FMR Eviction Restriction prevents
13 Plaintiffs from *excluding* non-paying tenants until they are far behind on rent. The
14 4% Rent-Increase Cap prevents Plaintiffs from *excluding* tenants who pay artificially
15 low rates or from re-renting to those willing to pay market rates. And the Relocation-
16 Fee Requirement prevents Plaintiffs from *excluding* tenants to use their own prop-
17 erty for their own use unless they pay their tenants handsome sums. SAJE invokes
18 cases like *Yee v. City of Escondido*, 503 U.S. 519 (1992), and *FCC v. Florida Power*
19 *Corp.*, 480 U.S. 245 (1987), but none involves the same kind of draconian re-
20 strictions on the right to exclude, and all pre-date *Cedar Point*, which makes clear
21 that the City has effected quintessential *per se* takings. In all events, Plaintiffs have
22 stated regulatory-takings claims under *Penn Central Transportation Co. v. City of*
23 *New York*, 438 U.S. 104 (1978), and SAJE fails to demonstrate otherwise.

1 SAJE’s arguments regarding Plaintiffs’ other claims do not move the dial ei-
2 ther. SAJE admits that the City discriminates against rental properties in existence
3 as of October 1, 1978, by imposing the 4% Rent-Increase Cap on those properties
4 alone, but it insists that the discrimination survives rational-basis review. Because
5 the discrimination implicates fundamental, constitutionally protected property
6 rights, however, it triggers heightened scrutiny—which no one in this case has ever
7 tried to satisfy. Regardless, the City’s discrimination is not even rational. And SAJE
8 cannot evade those conclusions on the theory that this 2024 suit stemming from a
9 policy decision made in 2023 falls outside the two-year limitations period.

10 SAJE’s effort to dismiss the First Amendment claim is equally unavailing.
11 SAJE theorizes that a restriction compelling a landlord to use space inside her prop-
12 erty to amplify the City’s property-rights-destroying policies does not force Plaintiffs
13 to speak at all. That assertion is as wrong as it sounds and is impossible to square
14 with binding caselaw. The Court should deny SAJE’s motion to dismiss in full.

15 BACKGROUND

16 A. Legal Background

17 1. Rent control dates only to the World War I era and promptly generated
18 skepticism. *See* Compl.¶31. Los Angeles, for example, introduced its first rent-
19 control ordinance in 1921, only to have it declared unconstitutional. *See* Compl.¶33.
20 Other jurisdictions achieved more success before the courts—but only barely. While
21 the Supreme Court in 1921 rejected Takings Clause challenges to rent-control laws
22 enacted by other jurisdictions, it did so on the ground that “rent control could be
23 justified only as a temporary measure passed in response to a war-generated crisis.”

1 Louis M. Rea & Dipak K. Gupta, *The Rent Control Controversy: A Consideration*
2 *of the California Experience*, 4 Glendale L. Rev. 105, 109 (1982) (discussing *Block*
3 *v. Hirsh*, 256 U.S. 138 (1921), and *Marcus Brown Holding Co. v. Feldman*, 256 U.S.
4 170 (1921)). That approach to constitutional rights has not withstood the test of
5 time. More recently, the Supreme Court admonished that “the Constitution cannot
6 be put away and forgotten” “even in” emergencies. *Roman Cath. Diocese of Brook-*
7 *lyn v. Cuomo*, 592 U.S. 14, 19 (2020) (per curiam).

8 2. Although Los Angeles experimented with rent control in the decades
9 after World War I, its modern rent-control story began in 1979, when it enacted the
10 Rent Stabilization Ordinance (RSO), which it made permanent in 1982. *See* L.A.
11 Mun. Code §151.00, *et seq.*; Compl.¶¶41-42. The RSO applies only to rental prop-
12 erties built on or before October 1, 1978—properties that today comprise approxi-
13 mately 76% of the City’s multi-family rental units (or 624,000 units in 118,000 prop-
14 erties). Compl.¶¶42-43. In other words, except in narrow circumstances, *see, e.g.*,
15 L.A. Mun. Code §151.28, the RSO operates as a bizarre reverse-grandfather clause
16 that leaves rental properties built after October 1, 1978, unregulated.

17 From the outset, the RSO regulated all manner of details of the landlord-tenant
18 relationship wherever it applied, such as by enumerating an exclusive list of the
19 “only” permissible grounds for eviction. *See id.* §151.09(A) (1979); Compl.¶45.
20 And while the RSO had glaring constitutional defects on day one, the original ver-
21 sion at least allowed landlords to increase rents to some degree annually, to evict
22 tenants who refused to make timely rent payments, and to re-rent at market rates
23 those units vacated by evicted, non-paying tenants. *See* Compl.¶46.

1 3. Lately, however, the City has taken an increasingly anti-landlord (and
2 anti-property-rights) stance. After the onset of the COVID-19 pandemic, the City
3 prohibited rent increases and evictions between March 2020 and January 2024—
4 when inflation skyrocketed by 20% to a 40-year high. *See* Compl.¶¶47-50. Unable
5 to increase rents to keep pace, and unable to exclude non-paying tenants in favor of
6 new tenants willing to pay market rates, Los Angeles-area landlords had “to dip into
7 savings and let tenants fall tens of thousands of dollars behind in rent.” Charlotte
8 Kramon, *L.A. Tenants Welcomed the Rent Freeze, But Landlords Are Tired of Re-*
9 *strictions*, L.A. Times (Aug. 23, 2023), <https://rebrand.ly/hdlmatu>; Compl.¶¶50-53.

10 4. As the pandemic receded, the City could have taken the prudent and
11 constitutional course of making amends with landlords, recognizing their sacrifices,
12 and treating them all equally. Instead, it amended the RSO in certain relevant re-
13 spects to double down on its anti-landlord position. *See* Compl.¶54.

14 To begin, in 2023, the City enacted the FMR Eviction Restriction. Although
15 the RSO (from 1979 to 2020) had long allowed landlords to evict tenants for non-
16 payment of rent, the FMR Eviction Restriction permanently overturned that policy:
17 Landlords of RSO-regulated buildings may now evict non-paying tenants *only*
18 “where the amount due exceeds one month of fair market rent for the Los Angeles
19 metro area set annually by the U.S. Department of Housing and Urban Development
20 [HUD] for an equivalent sized rental unit as that occupied by the tenant.” L.A. Mun.
21 Code §151.09(A)(1); L.A., Cal., Ordinance 187,763 (2023). To be clear, that “fair
22 market rent” threshold is not the same as the below-market rent that Los Angeles
23 allows property owners to charge, but instead is generally a higher amount due to

1 the rate-suppressing effects of rent control. Between October 2023 and September
2 2024, HUD’s “fair market rents” ranged from \$1,777 for a studio to \$3,600 for a
3 four-bedroom unit. *See* Compl.¶57. Between October 2024 and September 2025,
4 the range is \$1,856 to \$3,698. *See* Compl.¶57. The upshot is that—unless one of
5 the limited number of reasons for eviction under the RSO applies (and a landlord’s
6 mere desire to rent to a different tenant is not a valid reason, even if the fixed term
7 in the lease for the current tenant has expired), *see* L.A. Mun. Code §151.09—ten-
8 ants may serially underpay their rent, and landlords are powerless to exclude them
9 from their properties. *See* L.A. Mun. Code §151.06(C); Compl.¶¶58, 75-76.

10 After enacting the FMR Eviction Restriction, the City in 2024 enacted the 4%
11 Rent-Increase Cap, which caps rents in RSO-regulated properties (*i.e.*, pre-October
12 1, 1978, properties only) at breathtakingly low levels by barring rent increases of
13 more than 4% between February 2024 and June 2025. *See* L.A. Mun. Code §151.34;
14 L.A., Cal., Ordinance 188,071 (2024); Compl.¶64. The City imposed this cap even
15 though it prohibited *any* rent increases for the four prior years and even though non-
16 RSO-regulated properties governed by state law could increase rents between 8.8%
17 and 10% from 2022 to 2025. *See* Compl.¶¶61-62. And although “rent adjustment”
18 is nominally available for landlords, it is no option for those seeking to charge market
19 rates: The City has stated that it will “not” make adjustments to enable landlords to
20 “bring the rents to market rate.” L.A. Hous. Dep’t, *Just & Reasonable Rent Adjust-*
21 *ment Program* (Apr. 2, 2024), <https://rebrand.ly/xdfilq8>; Compl.¶¶65-66.

22 The City has expressed its intent to vigorously enforce these provisions. Dur-
23 ing the COVID-19 pandemic, it amended the RSO to state that “[a]ny person

1 violating any of the provisions, or failing to comply with any of the requirements, of
2 [the RSO] shall be guilty of a misdemeanor.” L.A. Mun. Code §151.10(B); *see* L.A.,
3 Cal., Ordinance 187,109 (2021). Each misdemeanor is punishable by a fine of up to
4 \$1,000 or by a six-month prison term—“or both.” L.A. Mun. Code §151.10(B). The
5 RSO states that “each day during which [a] violation is committed, or continues,
6 shall constitute a separate offense,” *id.*, and authorizes a tenant to obtain treble dam-
7 ages from a landlord who violates the 4% Rent-Increase Cap. *See id.* §151.10(A).

8 Given these obstacles, many Los Angeles landlords are contemplating leaving
9 the rental business altogether. *See* Compl.¶69. But the City does not make exit easy.
10 For example, if landlords wish to regain the use of rental units for their own family’s
11 use, they must satisfy the Relocation-Fee Requirement, which requires them to pay
12 between \$9,900 and \$25,700 in “relocation assistance” to tenants. *See* L.A. Mun.
13 Code §§151.09(A)(8), (G), 151.30(E). Furthermore, if any tenants have “protected”
14 status (*i.e.*, they have lived in their units for at least 10 years and are either at least
15 62 or disabled), the landlord must remove all units from the rental market, pay all
16 tenants relocation fees, and then wait an entire year to reclaim the property. *See id.*
17 §151.09(A)(10), (G), 151.23(B), 151.30(D). Compl.¶¶70-71.

18 In short, once a tenant gets a foot in the door of an RSO-regulated rental unit,
19 it is exceedingly difficult for a landlord to get him out, even if the fixed term of the
20 lease has ended. Thus, unless owners sell their properties to third parties (who will
21 find themselves subject to the same restrictions, thus depressing the sales price), they
22 have no choice but to live with the consequences of the FMR Eviction Restriction,
23 4% Rent-Increase Cap, and Relocation-Fee Requirement. Those consequences

1 include informing tenants of those three policies under the Renter Protections Notice
2 Requirement, which requires RSO-regulated landlords to “post[] ... in an accessible
3 common area of the property” a City-drafted notice highlighting those policies. L.A.
4 Hous. Dep’t, *Protections Notice*, <https://rebrand.ly/nfrnu6z> (last visited Mar. 13,
5 2025); L.A. Hous. Dep’t, *City of Los Angeles Renter Protections Notice* (rev. Oct. 1,
6 2024), <https://rebrand.ly/xkc988z>. Hence, the City is not content to erect a scheme
7 that erodes fundamental property rights; it conscripts landlords to act as accomplices
8 in the effort, converting their properties into workplace bulletin boards and forcing
9 them to convey controversial, property-rights-destroying messages to their tenants.

10 **B. Factual Background**

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

17 Plaintiffs have long sought to use these properties to benefit their families, but
18 those goals are now impeded by the City’s onerous restrictions. For example, both
19 Plaintiffs have tenants who refused to pay their full rent following the enactment of
20 the FMR Eviction Restriction. *See* Compl.¶¶75-76. But Plaintiffs could not evict
21 those tenants because they studiously kept their arrearages below the much higher
22 “fair market rent” threshold—presumably because the City required Plaintiffs to in-
23 form the tenants of the FMR Eviction Restriction via the Renter Protections Notice

1 Requirement. See Compl.¶¶75-76. L.A. Hous. Dep’t, *Protections Notice, supra*.
2 Plaintiffs would also like to increase rents to market rates to counteract ballooning
3 costs, but the 4% Rent-Increase Cap—which they would not have to abide by if only
4 they owned properties built after October 1, 1978—has prohibited them from doing
5 so. See Compl.¶¶75-76. Due to these restrictions, in 2024, Plaintiffs each sold one
6 of their properties. See Compl.¶¶75-76. And while Plaintiff Harris wants to reclaim
7 two units in her remaining property for family use, she cannot do so unless she pays
8 each of the “protected” tenants living in her units \$25,700 under the Relocation-Fee
9 Requirement (and waits a year to remove the property from the market). See
10 Compl.¶75. Plaintiff Harris cannot afford those payments, however, because she is
11 currently living paycheck-to-paycheck. See Compl.¶¶75, 135.

12 2. Plaintiffs sued to vindicate their constitutional rights on December 19,
13 2024. They allege that the FMR Eviction Restriction (Count I), Compl.¶¶77-103,
14 the 4% Rent-Increase Cap (Count II), Compl.¶¶104-18, and the Relocation-Fee Re-
15 quirement (Count IV), Compl.¶¶130-41, violate the Takings Clause. They allege
16 that the 4% Rent-Increase Cap’s discriminatory treatment of pre- and post-1978
17 rental properties violates the Equal Protection Clause (Count III). Compl.¶¶119-29.
18 And they allege that the Renter Protections Notice Requirement violates the First
19 Amendment by unlawfully compelling their speech (Count V). Compl.¶¶142-50.

20 ARGUMENT

21 To survive a motion to dismiss under Rule 12(b)(6), the complaint “must con-
22 tain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plau-
23 sible on its face.’” *Boquist v. Courtney*, 32 F.4th 764, 773 (9th Cir. 2022). For a

1 motion to dismiss under Rule 12(b)(1), the plaintiff need show only that the court
2 “has jurisdiction to hear his claims.” *Anderson v. United States*, 2022 WL 12427679,
3 at *1 (C.D. Cal. Aug. 18, 2022). Plaintiffs still readily satisfy those standards.

4 **I. The FMR Eviction Restriction Violates The Takings Clause.**

5 The Takings Clause provides that “private property [shall not] be taken for
6 public use, without just compensation.” U.S. Const. amend. V. “By requiring the
7 government to pay for what it takes, the Takings Clause saves individual property
8 owners from bearing ‘public burdens which, in all fairness and justice, should be
9 borne by the public as a whole.’” *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267, 273-
10 74 (2024). Government action that triggers the Takings Clause is divided into “*per*
11 *se* takings” and “regulatory takings.” *See Cedar Point*, 594 U.S. at 146-49. The
12 FMR Eviction Restriction works a taking on both fronts, and nothing in SAJE’s sub-
13 mission suggests otherwise.

14 1. The government effects a *per se* taking that automatically “trigger[s]”
15 the “right to compensation” when it “appropriat[es] property or otherwise inter-
16 fere[s] with the owner’s right to exclude others from it.” *Sheetz*, 601 U.S. at 274.
17 As the Supreme Court explained in *Cedar Point*, a property owner’s ability to decide
18 whom she wants to grant access to and whom she wants to exclude is “the ‘*sine qua*
19 *non*’ of property.” 594 U.S. at 149-50; Compl.¶84. And as the Supreme Court em-
20 phasized in *Alabama Association of Realtors v. HHS*, one way in which the govern-
21 ment “intrudes” on “the right to exclude” is by “preventing [landlords] from evicting
22 tenants” who fail to pay rent. 594 U.S. 758, 765 (2021). Consistent with those
23 pronouncements, at least two courts of appeals have held that government

1 regulations that “forc[e]” property owners “to house non-rent-paying tenants” give
2 rise to *per se* takings, as such regulations “remov[e] their ability to evict.” *Darby*
3 *Dev. Co. v. United States*, 112 F.4th 1017, 1035 (Fed. Cir. 2024); *see Heights Apart-*
4 *ments, LLC v. Walz*, 30 F.4th 720, 733 (8th Cir. 2022).

5 Those principles doom the FMR Eviction Restriction. After all, under that
6 restriction, the City prohibits a landlord from evicting a tenant who has refused to
7 pay rent unless the overdue amount measures in the thousands of dollars. *See* L.A.
8 Mun. Code §151.09(A)(1). The FMR Eviction Restriction thus is a government
9 mandate that landlords bear the physical presence of unwanted third parties—a clear
10 *per se* taking under *Cedar Point* and its progeny. In fact, the taking here is even
11 more obvious than in *Cedar Point*. There, the state authorized third parties (union
12 organizers) to enter agricultural property for only three hours a day for at most 120
13 days a year. *See Cedar Point*, 594 U.S. at 152. Here, the FMR Eviction Restriction
14 deprives a landlord of her right to exclude by enabling a defaulting tenant to maintain
15 a *permanent* presence in the unit for as long as the HUD-defined rent threshold is
16 not breached (*i.e.*, potentially *indefinitely*). There is simply no way to “reconcile
17 how forcing property owners to occasionally let union organizers on their property
18 infringes their right to exclude, while forcing them to house non-rent-paying tenants
19 (by removing their ability to evict) would not.” *Darby Dev.*, 112 F.4th at 1035.

20 SAJE whispers not a word about *Alabama Association of Realtors*, *Darby De-*
21 *velopment*, or *Heights Apartments* in its motion to dismiss. That omission is telling.
22 Had it wrestled with those cases, it would have faced the insuperable problem that
23 the FMR Eviction Restriction plainly interferes with Plaintiffs’ exclusion right by

1 denying them the right to *exclude* non-paying tenants from their properties. *See Ala.*
2 *Ass’n of Realtors*, 594 U.S. at 765. Instead, SAJE hangs its hat on *FCC v. Florida*
3 *Power Corp.*, 480 U.S. 245 (1987), in which the FCC set the rates that operators
4 could charge for leased space on telephone poles. *Id.* at 252; *see* SAJE.MTD.9-10.
5 But the FCC did not “require[] utilities, over objection, to ... refrain from terminat-
6 ing pole attachment agreements.” *Id.* at 251 n.6. The Supreme Court therefore had
7 no occasion to address what would happen if the FCC barred the lessor from termi-
8 nating the relationship due to a lessee’s non-payment—*i.e.*, the scenario that Plain-
9 tiffs face here and one that the Supreme Court has repeatedly viewed with skepti-
10 cism, *see Yee*, 503 U.S. at 524, 527-28.¹ *Florida Power* thus is irrelevant here.

11 As the City did before, SAJE thus shifts gears, claiming that Plaintiffs have
12 lost all Takings Clause protections because they initially “invited their tenants to
13 lease.” SAJE.MTD.10, 12. That argument still does not land a punch: “[J]ust be-
14 cause tenants (or other occupiers of property) were at one point ‘invited’ does not
15 mean that their continued, government-compelled occupation cannot ... be treated
16 as a physical taking.” *Darby Dev.*, 112 F.4th at 1036; *cf. Donahue Schriber Realty*
17 *Grp. v. Nu Creation Outreach*, 181 Cal.Rptr.3d 577, 582 (Cal. Ct. App. 2014) (“[A]
18 trespass may occur if the party, entering pursuant to a limited consent, ... proceeds

¹ Accordingly, that landlords have debt-collection procedures available to them, SAJE.MTD.10—“with no guarantee of eventual recovery,” *Ala. Ass’n of Realtors*, 594 U.S. at 765—is irrelevant. The takings problem does not arise because tenants accrue substantial debts. It is caused by their government-sanctioned occupancy of the property over the landlord’s objection. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 440 n.19 (1982) (finding a taking even if the owner could seek indemnity for any property damage caused by the cable box installation).

1 to exceed those limits[.]”). Indeed, the Supreme Court rejected a variation of SAJE’s
2 theory in *Loretto v. Teleprompter Manhattan CATV Corp.* There, the building’s prior
3 owner had granted a utility company “permission to install a cable on the building.”
4 458 U.S. 419, 421 (1982). Notwithstanding that initial invitation, the Supreme Court
5 had no trouble finding that the subsequent owner’s desire but inability to exclude
6 these cable facilities from her property under state law meant the state had effected
7 a *per se* taking. *Id.* In other words, for takings purposes, it is the *government* au-
8 thorization for tenants to physically occupy the property over the property owner’s
9 objection that is relevant—not whether the owner initially allowed the tenant to en-
10 ter. *See Cwynar v. City & Cnty. of San Francisco*, 109 Cal.Rptr.2d 233, 249 (Cal.
11 Ct. App. 2001). *Contra* SAJE.MTD.10-11.²

12 SAJE next posits that the Supreme Court already held in *Block v. Hirsch* that
13 the FMR Eviction Restriction accords with “longstanding property law princi-
14 ple[s].”³ SAJE.MTD.13-16. Not so. *Block* made eminently clear that its limited

² *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980), is of no help either. *See* SAJE.MTD.11-12. *Cedar Point* found *PruneYard* “distinguishable” for the same reason that other cases have: It “involv[ed] ‘an already publicly accessible’ business.” 594 U.S. at 157. Plaintiffs’ properties are plainly not “publicly accessible” businesses. *See* Compl.¶95. *Contra* SAJE.MTD.15 (citing *Bell v. Maryland*, 378 U.S. 226, 297 (1964) (White, J., concurring) (discussing public inns)).

³ The historical record regarding a landlord’s authority to evict tenants with no right to remain is hardly as pro-tenant as SAJE’s portrayal (primarily of a 1731 law) seems. *See* SAJE.MTD15-16; 4 Geo. II c.28, §§2-4, <https://tinyurl.com/2xze4mah>. The common law authorized landlords to use self-help remedies against defaulting tenants, including forcible reentry and seizure of a tenant’s property via distraint to compel payment of past-due rent. *See Lindsey v. Normet*, 405 U.S. 56, 71 (1972); Douglas I. Brandon, et al., *Self-Help: Extrajudicial Rights, Privileges and Remedies in Contemporary American Society*, 37 Vand. L. Rev. 845, 937-49 (1984).

1 holding pertained only to the emergency housing situation surrounding the war ef-
2 fort. *See* 256 U.S. at 157 (“The regulation is put and justified *only as* a temporary
3 measure.” (emphasis added)). The City adopted the FMR Eviction Restriction with-
4 out an exigency finding. *See* Dkt.20-12 at 2. And as already explained, *see* pp.2-3,
5 *supra*, *Block’s* emergencies-are-different approach no longer holds sway in consti-
6 tutional law. *Block* thus does not undermine Plaintiffs’ takings claim. It rejected a
7 takings challenge to rent control on reasoning that is no longer a valid basis for dis-
8 regarding constitutional rights—all based on factual circumstances not even present
9 here. *See Chastleton Corp. v. Sinclair*, 264 U.S. 543, 548-49 (1924) (reversing a
10 decision upholding a rent control law under *Block* as “the exigency ... upon which
11 the continued operation of the law depended” appeared to have ended). Plaintiffs
12 have stated a plausible *per se* takings claim vis-à-vis the FMR Eviction Restriction.

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

19 The FMR Eviction Restriction’s economic burdens are palpable. Because ten-
20 ants can use the restriction to serially underpay rent, Plaintiffs cannot recover rental
21 income to cover the properties’ basic operating costs. *See* Compl.¶¶75-76. That
22 economic loss is more than sufficient to satisfy the first *Penn Central* factor, *see*
23 *Heights*, 30 F.4th at 734, especially since the restriction has rendered it infeasible for

1 Plaintiffs to continue renting certain units, *see* Compl.¶¶75-76; *Blakelick Props. v.*
2 *Vill. of Glen Ellyn*, 2025 WL 1348569, at *3 (N.D. Ill. May 8, 2025). While SAJE
3 claims that Plaintiffs did not allege “the requisite economic impact,” SAJE.MTD.17,
4 it mistakenly reads the caselaw to require Plaintiffs to allege “a percentage diminu-
5 tion in value,” SAJE.MTD.17, even though *Penn Central* just “identif[ies] several
6 factors, not a set formula,” for courts to use, *Rancho*, 800 F.3d at 1090.

7 The FMR Eviction Restriction also interferes with “distinct investment-
8 backed expectations.” *Guggenheim v. City of Goleta*, 638 F.3d 1111, 1120 (9th Cir.
9 2010). Not only had the City always preserved the right to evict non-paying tenants
10 before the FMR Eviction Restriction (outside the pandemic), *see* Compl.¶100, but
11 that traditional right to evict for non-payment of rent has common-law origins, *see*
12 p.12 n.3, *supra*—as even SAJE concedes, *see* SAJE.MTD.15-16. *See Fresh Pond*
13 *Shopping Ctr. v. Callahan*, 464 U.S. 875, 876 (1983) (Rehnquist, J., dissenting); *Del*
14 *Toro v. Juncos Cent. Co.*, 276 F. 894, 895 (1st Cir. 1921). Plaintiffs thus justifiably
15 believed that their right to evict for non-payment remained secure. *See Ruckelshaus*
16 *v. Monsanto Co.*, 467 U.S. 986, 1011-12 (1984); *Heights*, 30 F.4th at 734. In re-
17 sponse, SAJE insists that Plaintiffs should have predicted that the City’s restrictions
18 might “later be expanded or strengthened.” SAJE.MTD.18. But background prop-
19 erty rights principles emphasizing the fundamental nature of the right to exclude and
20 the decades in which the City refrained from intruding on the right to exclude non-
21 paying tenants make Plaintiffs investment-backed expectations entirely reasonable.

22 The character-of-government action prong similarly weighs in favor of a tak-
23 ing because the FMR Eviction Restriction otherwise effects a *per se* taking. *See*

1 *Penn Cent.*, 438 U.S. at 124. SAJE offers no new theory to dispute that straightforward
2 conclusion. *See* SAJE.MTD.20.⁴ The regulatory-takings claim is viable.

3 3. Lacking plausible merits argument, SAJE attempts to thwart Plaintiffs’
4 regulatory-takings claim (but not the physical-takings claim) by asserting that it is
5 “not ripe.” SAJE.MTD.7-8. That argument did not occur to the City, likely because
6 it is a non-starter. Ripeness ensures that courts do not “entangl[e] themselves in
7 abstract disagreements.” *Clark v. City of Seattle*, 899 F.3d 802, 808-09 (9th Cir.
8 2018). And a regulatory-takings claim is ripe once “the government is committed to
9 a position,” as “potential ambiguities” about the impact of its decision on property
10 rights “evaporate.” *Pakdel v. City & Cnty. of San Francisco*, 594 U.S. 474, 479
11 (2021). Here, there are no “ambiguities,” *id.* at 478, about how the FMR Eviction
12 Restriction operates: It allows a tenant to physically remain on the property while
13 depriving Plaintiffs of rental income until the arrearages hit the fair market threshold
14 and eviction is allowed. *See* SAJE.MTD.2.

15 SAJE insists that Plaintiffs needed to apply for a rent adjustment and that their
16 failure to do so means that the “precise economic impact” is uncertain.
17 SAJE.MTD.7-8. But even setting aside that Plaintiffs plausibly alleged that they did
18 not need to apply for a rent adjustment, as the City’s rent-adjustment program will
19 *never* allow Plaintiffs to charge the desired market rates, *see* Compl.¶113, obtaining
20 a marginal rent adjustment would not change the calculus here. The relevant rent
21 for FMR Eviction Restriction purposes is the so-called fair market rate set by HUD,

⁴ If the FMR Eviction Restriction somehow survives under *Penn Central*, that is all the more reason for the Supreme Court to revisit the test. *See* Compl.¶102.

1 not the tenants’ actual monthly rent. Upwardly adjusting the actual rent would still
2 leave tenants free to underpay and let their arrearages approach the same ceiling.

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

4 The 4% Rent-Increase Cap effects both a *per se* and regulatory taking and
5 violates the Equal Protection Clause. SAJE’s contrary views are unpersuasive.

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

7 The *per se* taking effected by the 4% Rent-Increase Cap is self-evident. After
8 *Cedar Point*, “the right to compensation is triggered if [governments] ‘physically
9 appropriat[e]’ property or otherwise interfere with the owner’s right to exclude oth-
10 ers from it.” *Sheetz*, 601 U.S. at 274 (quoting *Cedar Point*, 594 U.S. at 149-152).
11 “[L]aws that limit landlords’ ability to control whom they rent their property to [and]
12 how much they rent their property for ... appropriates from the landlords their right
13 to exclude for the enjoyment of the occupying tenants, who may remain in situ de-
14 spite the landlord’s desire to rent ... at market rate.” Abigail K. Flanigan, Note, *Rent*
15 *Regulations After Cedar Point*, 123 Colum. L. Rev. 475, 498 (2023). That is what
16 the 4% Rent-Increase Cap purports to do: Plaintiffs must rent to current tenants at
17 submarket rates and cannot (given the threat of penalties and treble damages) evict
18 them for this City-approved underpayment. *See* Compl. ¶¶57, 75-76, 111. “That sort
19 of intrusion on property rights is a *per se* taking.” *Sheetz*, 601 U.S. at 274.

20 SAJE’s primary response is to invoke *Yee v. Escondido*. SAJE.MTD.8-9, 12.
21 In *Yee*, the Court rejected a physical-takings argument “predicated on the unusual
22 economic relationship between [mobile-home] park owners and mobile home own-
23 ers,” while highlighting several features of the legal regime at issue without parallel

1 here: (1) it did not prohibit evictions for “nonpayment of rent”; (2) it did not “com-
2 pel[]” the park owners, “once they have rented their property to tenants, to continue
3 doing so”; and (3) it facially did not “compel a landowner over objection to rent his
4 property or to refrain in perpetuity from terminating a tenancy.” 503 U.S. at 524,
5 527-28; *see Darby Dev.*, 112 F.4th at 1035-36; *Heights*, 30 F.4th at 733. Those fea-
6 tures allowed the Court to liken tenants to invited guests in that very specific context.
7 But *Yee* did “not” address “ordinary rent control statutes.” 503 U.S. at 526. And
8 “after *Cedar Point*,” “[i]t is pure sophistry to claim that the state does not engage in
9 a taking when it authorizes a tenant to stay continuously in possession of the leased
10 premises after the expiration of the lease at a rent that is consciously set below mar-
11 ket value.” Richard Epstein, *A Bombshell Decision on Property Takings*, Hoover
12 Inst. (June 28, 2021), <https://rebrand.ly/jnjgrh>.

13 SAJE cannot avoid the force of *Cedar Point* by asserting that Plaintiffs for-
14 feited their takings protections by working as landlords or by vaguely referencing
15 the City’s police powers. *See* SAJE.MTD.9, 11-13. A property owner does not forgo
16 constitutional protection just because she puts her property to productive use. *See*
17 pp.11-12, *supra*. And SAJE’s reliance on *Block*’s (suspect) use of the police powers
18 to justify an emergency restriction on property rights,⁵ *see Ala. Ass’n of Realtors*,
19 594 U.S. at 765, to substantiate its theory that the City can broadly impose all manner
20 of restrictions on Plaintiffs’ properties conflicts with the well-established rule that

⁵ The dicta in *Tahoe-Sierra Pres. Council v. Tahoe Regional Planning Agency*, 535 U.S. 302, 322-23 (2002), describing *Block*’s holding more broadly than *Block* did, SAJE.MTD.9, does not negate the fact that the Supreme Court upheld the challenged law based solely on the exigencies of wartime, *see Block*, 256 U.S. at 157.

1 the City cannot “by *ipse dixit*” use its police powers to “transform private property
2 into public property without compensation.” *Cedar Point*, 594 U.S. at 155. In short,
3 Plaintiffs have stated a viable *per se* takings claim to the 4% Rent-Increase Cap.

4 2. SAJE barely tries to argue that the 4% Rent-Increase Cap does not ef-
5 fect a regulatory taking. It is inconceivable to think that a 4% cap on rent increases
6 for 17 months after four years of *no* increases—all while inflation hit a 40-year
7 high—did not impose severe economic burdens on Plaintiffs. *See* Compl.¶¶75-76,
8 114. Again, SAJE is wrong to claim that Plaintiffs must allege a specific diminution
9 in value. *See* SAJE.MTD.17; *see* p.14, *supra*. And while it thinks that the 4% Rent-
10 Increase Cap did not interfere with reasonable investment-backed expectations be-
11 cause inflation outpaced the RSO’s rent-increase formula during its first four years,
12 *see* SAJE.MTD.18, SAJE does not (and cannot) dispute that the City *deviated* from
13 the rent-cap formula that it has used for *decades* when initially adopting the artifi-
14 cially low 4% cap at issue here, *see* Compl.¶¶61, 115-16. Plaintiffs had no reason
15 to expect *that* kind of digression to what practically amounts to a “confiscatory” rate
16 given the recent hyperinflationary market conditions. *Florida Power*, 480 U.S. at
17 253. The 4% Rent-Increase Cap thus plainly interferes with Plaintiffs’ reasonable
18 investment-backed expectations. And as noted, the 4% Rent-Increase Cap amounts
19 to “a physical invasion by government,” *Penn Cent.*, 438 U.S. at 124, confirming
20 that Plaintiffs have stated a plausible regulatory-takings claim.

21 3. SAJE raises threshold timeliness and ripeness objections to Plaintiffs’
22 *per se* and regulatory takings claims too, *see* SAJE.MTD.5-6, but neither succeeds.

23 The limitations period starts when the claim accrues under federal law—*i.e.*,

1 when the City’s actions cause the complained-of injury. *Ellis v. Salt River Project*
2 *Agric. Improv. & Power Dist.*, 24 F.4th 1262, 1271-72 (9th Cir 2022). And when a
3 law that “operate[s] on an ongoing basis” causes plaintiffs to “abstain from [conduct]
4 ... for fear that the [City] will enforce” it, “a new claim arises (and a new limitations
5 period commences) with each new injury.” *Flynt v. Shimazu*, 940 F.3d 457, 462-63
6 (9th Cir. 2019). Plaintiffs’ challenge here relates to the City’s 2023 choice to adopt
7 the 4% Rent-Increase Cap, which has enabled tenants to physically remain on the
8 property at artificially low rates. That less-than-two-year-old decision (backed by
9 stiff penalties, *see pp.5-6, supra*) is actively preventing Plaintiffs from removing
10 those tenants to make room for renters willing to pay market rates. *See Compl.* ¶116.
11 Plaintiffs are entitled to seek a remedy for those injuries now. *Flynt*, 940 F.3d at 463.
12 They certainly did not need to bring this claim “more than 40 years ago,”
13 SAJE.MTD.5, long before the 4% Rent-Increase Cap existed or harmed Plaintiffs.⁶
14 The City evidently agrees, as it has not pressed SAJE’s counterintuitive argument.

15 SAJE’s ripeness argument, *see SAJE.MTD.6—i.e.*, that Plaintiffs needed to
16 avail themselves of the City’s rent-adjustment program to make a dead-on-arrival

⁶ *Action Apartments Association v. Santa Monica Rent Control Board*, 509 F.3d 1020 (9th Cir. 2007), does not help SAJE, as it involved a facial challenge to a law enacted outside the limitations period. Here, by contrast, Plaintiffs’ challenge stems from the City’s 2023 decision to impose the 4% Rent-Increase Cap, and they seek compensation only for harm sustained within the two-year limitations period. SAJE also errs in claiming that the 4% cap “is merely an extension” of the pandemic-era ban on rent increases. SAJE.MTD.6. Calling a 4% cap on rent increases a mere extension of the prior categorical ban flunks the straight-face test, especially since the City never cited the pandemic as its justification for the cap. *See L.A., Cal., Ordinances 188,071 (2024); Dkt.20-13.*

1 request for a dispensation to charge market rates, Compl.¶113—fails for the same
2 reasons already given. *See* pp.15-16, *supra*. “[T]here is no question about the city’s
3 position” here, as market rates are categorically verboten. *Pakdel*, 594 U.S. at 478.
4 Plaintiffs did not need to engage in this futile exercise to press their regulatory-tak-
5 ings claim. *Cf. 74 Pinehurst LLC v. New York*, 59 F.4th 557, 565 (2d Cir. 2023).

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

7 1. Plaintiffs have plausibly alleged that the 4% Rent-Increase Cap violates
8 their equal-protection rights. SAJE concedes that the City discriminates between
9 properties built before and after October 1, 1978. *See* SAJE.MTD.20. Plus, the City
10 concedes that RSO-regulated properties are similarly situated to those not so regu-
11 lated.⁷ Compl.¶123. And given that the City discriminates on the basis of Plaintiffs’
12 right to exclude—a fundamental property right expressly protected by the Constitu-
13 tion, *Plyler v. Doe*, 457 U.S. 202, 216-17 & n.15 (1982)⁸—heightened scrutiny ap-
14 plies. Like the City, SAJE does not even try to justify the 4% Rent-Increase Cap
15 under heightened scrutiny and thus concedes the issue.

⁷ SAJE resists the equal-protection violation because state law (the Costa-Hawkins Act) bars “the City from imposing [the 4%] cap[.]” on non-RSO regulated properties. SAJE.MTD.20. But it is not as though non-RSO properties are outside the City’s jurisdiction, as in *Thornton v. City of St. Helens*, 425 F.3d 1158 (9th Cir. 2005). Thus, given that the City can still regulate aspects of those properties, they are proper comparators. And all the Equal Protection Clause requires here is that the City *eliminate* its discriminatory treatment of the older properties.

⁸ Given the Supreme Court has made clear that “[w]henver a state law infringes a constitutionally protected right ... intensified equal protection scrutiny” applies, *Att’y Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898, 904 (1986), SAJE cannot avoid heightened scrutiny by citing a substantive due process case, *see* SAJE.MTD.21.

1 Regardless, not even rational-basis review can save the bizarre reverse-grand-
2 father clause. As Plaintiffs have explained, grandfather clauses are used to safeguard
3 reliance interests. But when the City burdens *just* those reliance interests, it engages
4 in arbitrary action—and it has done that here by denying the owners of older prop-
5 erties the ability to charge the higher rental rates needed to cover expensive repairs
6 and upkeep. *See* Compl.¶124. SAJE attempts to save the restriction by claiming
7 that the City-imposed rent cap on post-1978 properties “encourage[s] the construc-
8 tion of new rental units in order to expand the City’s stock of affordable housing.”
9 *City of Los Angeles v. Los Olivos Mobile Home Park*, 213 Cal.App.3d 1427, 1438
10 (1989). That is effectively an admission that rent control injures existing property
11 owners and is at most a rational basis to forswear all rent control, not a justification
12 for discrimination. If “affordable housing” flourishes without the 4% Rent-Increase
13 Cap, the rational way to create more of that housing is to eliminate the cap.⁹

14 2. Lacking persuasive merits arguments, SAJE repeats the City’s uncon-
15 vincing timeliness objection. *See* SAJE.MTD.3-5. As explained, the limitations pe-
16 riod starts when the City causes the complained-of injury. *Ellis*, 24 F.4th at 1271-
17 72. Plaintiffs’ equal-protection claim challenges the 2023 ordinance that imposed
18 the 4% rent-increase only on RSO-regulated units. Compl.¶¶122-29; ¶¶59-60.
19 Plaintiffs sued in 2024, within the two-year limitations period. Their claim is timely.

20 Echoing the City’s motion to dismiss, SAJE emphasizes that the RSO has

⁹ SAJE incorrectly claims the Supreme Court rejected a similar equal-protection challenge to a rent-control regime that “exempt[ed] new construction” in *Marcus Brown*. SAJE.MTD.21. Like *Block*, *Marcus Brown* rejected the equal-protection claim on narrow emergency grounds not applicable here. 256 U.S. at 198-99.

1 discriminated against pre-1978 properties from the start. *See* SAJE.MTD.3. But
2 there is no “adverse possession” for constitutional violations, *Parents Involved in*
3 *Cnty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 779 (2007) (Thomas, J., con-
4 ccurring), and discrimination is not more palatable the longer the government engages
5 in it. In all events, Plaintiffs are not challenging “the RSO” itself; their equal-pro-
6 tection claim is leveled at the 2023 4% Rent-Increase Cap. Compl.¶116, 128. And
7 given that the new percentage that the City settled on in 2023 deviated from the
8 RSO’s own formula, SAJE errs in attempting to invoke “inevitable consequences”
9 exception. SAJE.MTD.3-4; *see Ellis*, 24 F.4th at 1272.¹⁰

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

11 1. The Relocation-Fee Requirement similarly runs afoul of the Takings
12 Clause. Landlords (even after a fixed lease’s term has expired) must pay the existing
13 tenants anywhere between \$9,900 and \$25,700, just to recover their own property
14 for family use. And that is to say nothing of the further burdens wrought on a land-
15 lord if a tenant is deemed “protected”—everything from forcing her to stop renting
16 other units to requiring that she pay every tenant eye-watering relocation fees. *See*
17 p.6, *supra*. And adding insult to constitutional injury, the landlord who succeeds in
18 navigating those restrictions must suffer the physical presence of her tenants for a
19 year before she can exercise her property rights again. That is a textbook example

¹⁰ This exception also does not apply to the City’s continuation of the 4% Rent-Increase Cap until July 2025. *Contra* SAJE.MTD.4-5. The City deviated from its own rules during the pandemic and in 2023. It is hard to see how one could view the City’s capricious decision to apply the 4% Rent-Increase Cap through July 2025 as the inevitable consequence of any foreordained decision.

1 of a *per se* taking under *Cedar Point*: The City has made it (nigh) impossible to
2 exercise the right to exclude for a substantial period of time and has ransomed that
3 right for a hefty fee given free of charge to tenants. 594 U.S. at 158, 162; *accord*
4 *Levin v. City & Cnty. of San Francisco*, 71 F.Supp.3d 1072 (N.D. Cal. 2014).

5 The regulatory takings analysis likewise weighs in Plaintiffs’ favor: (1) pay-
6 ing tens of thousands of dollars to reclaim one’s own property is a severe economic
7 impact; (2) no property owner reasonably expects that the government will forever
8 require her to pay substantial (and ever-increasing) sums to exercise her fundamental
9 property rights; and (3) government-approved physical occupation by unwanted ten-
10 ants is most accurately characterized as a physical invasion by government. *See*
11 *Compl.* ¶¶137-40. SAJE disputes this analysis first by mischaracterizing the caselaw.
12 It claims that the Ninth Circuit already rejected Plaintiffs’ *per se* takings challenge
13 in *Ballinger v. City of Oakland*, 24 F.4th 1287 (9th Cir. 2022). SAJE.MTD.10. It
14 did not. *Ballinger* involved an alleged “physical taking of ... money,” 24 F.4th at
15 1292, and never mentioned the right to exclude—the basis of the claim here.¹¹

16 SAJE also objects to Plaintiffs’ regulatory-takings claim. But it reiterates its
17 misguided theory of the economic impact and character-of-government prongs,
18 which fail for the same reasons provided above. *See* SAJE.MTD.16-17, 19-20. And
19 while SAJE emphasizes that the Relocation Fee Requirement is not a recent inven-
20 tion (though the amounts are new), *see* SAJE.MTD.18-19, it overlooks that the re-
21 quirement forces Plaintiffs to pay for the privilege of exercising their fundamental

¹¹ SAJE’s citation to unpublished, nonprecedential Ninth Circuit decisions that fail to cite *Cedar Point* are thus inapplicable. *See* SAJE.MTD.10.

1 rights, *see* Compl.¶139. No property owner reasonably expects the government to
2 extort them in that manner in perpetuity.

3 2. SAJE thus is left asserting its unavailing timeliness and ripeness objec-
4 tions. SAJE.MTD.7. Both fail yet again. The takings challenges are timely since a
5 property owner has no reason to challenge the Relocation-Fee Requirement (nor a
6 ripe claim) until she wants to repossess her property—and here, Plaintiff Harris is
7 *currently* unable to do so because it imposes substantial fees that she cannot afford.
8 *See* Compl.¶135; *Flynt*, 940 F.3d at 463. And the third time is not the charm for
9 SAJE’s suggestion that Plaintiffs had to apply for a rent adjustment (a futile act)
10 before pressing their claims. *See* pp.15-16, *supra*.

11 **IV. The Renter Protections Notice Requirement Is Unconstitutional.**

12 That leaves SAJE’s attempt to dismiss Plaintiffs’ First Amendment claim by
13 asserting that Plaintiffs merely host the City’s speech and do not speak themselves—
14 akin to a workplace bulletin board—SAJE.MTD.21-23, and that the Notice satisfies
15 the commercial-speech tests, SAJE.MTD.23-25. SAJE misses the mark here too.

16 The First Amendment protects individuals’ right to decide “both what to say
17 and what *not* to say.” *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781,
18 796-97 (1988). When the government “compel[s] individuals to speak a particular
19 message,” it must satisfy heightened scrutiny. *Nat’l Inst. of Fam. & Life Advoc. v.*
20 *Becerra*, 585 U.S. 755, 766 (2018). SAJE claims that the Notice that Plaintiffs must
21 hang in their common areas does not compel them to speak. *See* SAJE.MTD.21-23
22 (citing, *e.g.*, *Rumsfeld v. FAIR*, 547 U.S. 47 (2006)). But decisions about what to
23 include in such areas are protected expressive activity, *see Green v. Miss U.S.A.*,

1 LLC, 52 F.4th 773, 783 n.10 (9th Cir. 2022), and the government cannot force parties
2 to “use their private property as a ‘mobile billboard’” for its messages, *Wooley v.*
3 *Maynard*, 430 U.S. 705, 715 (1977).¹² Because SAJE does not argue that the Notice
4 that Plaintiffs want off their walls is not content based or that it satisfies heightened
5 scrutiny, the notice requirement violates the First Amendment.

6 SAJE’s backup contention that the Notice compels only “commercial” speech
7 is equally unavailing. *See* SAJE.MTD.23. Plaintiffs are not engaging in commercial
8 speech—they are not advertising products, or even motivated by profit, when they
9 choose what to include in their properties’ common areas. *See Ariix, LLC v. Nu-*
10 *triSearch Corp.*, 985 F.3d 1107, 1115-17 (9th Cir. 2021). *Zauderer’s* commercial-
11 speech test thus is inapplicable.¹³ But even assuming that it had a role here, the
12 government can compel speech only if it is “factual and uncontroversial” and not
13 “unjustified or unduly burdensome.” *Nat’l Ass’n of Wheat Growers v. Bonta*, 85
14 F.4th 1263, 1275 (9th Cir. 2023). SAJE asserts that the Notice is factual and uncon-
15 troversial. *See* SAJE.MTD.23-24. But rent control has faced pushback from the
16 start, *see* Compl.¶¶30-37, and the RSO’s version appropriates fundamental rights in
17 multiple ways. The notion that the Notice is not controversial blinks all reality.

18 CONCLUSION

19 For the foregoing reasons, the Court should deny SAJE’s motion to dismiss.

¹² That public-facing businesses historically had to post notices, SAJE.MTD.24-25, has no bearing on how Plaintiffs decorate their properties, *see* p.12 n.2, *supra*.

¹³ *Central Hudson*, which governs *restrictions* on commercial speech, is irrelevant. *See* SAJE.MTD.24-25. Plaintiffs do not want to engage in commercial speech; they simply want to stop trumpeting the City’s property-rights-destroying policies.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,

s/Rick Richmond
Rick Richmond
LARSON LLP
555 S. Flower St.
Suite 4400
Los Angeles, CA 90071
(213) 436-4888
rrichmond@larsonllp.com

Paul D. Clement
Andrew Lawrence
Darina Merriam*
Mitchell K. Pallaki
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
paul.clement@clementmurphy.com

*Supervised by principals of the firm
who are members of the Virginia bar

Counsel for Plaintiffs

June 13, 2025

