

**25-5029**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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**Melvia Harris and Roberta Knighten**

*Plaintiffs and Appellants,*

vs.

**City of Los Angeles**

*Defendant and Appellee*

**SAJE**

*Intervener-Defendant-Appellee.*

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Appeal from United States District Court  
Central District of California  
Hon. Jesus Bernal  
U.S. District Court Case No. 5:24-CV-02679

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**ANSWERING BRIEF OF INTERVENER-DEFENDANT-APPELLEE SAJE**

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**FRAP Rule 26.1 Disclosure Statement**

In accordance with FRAP Rule 26.1, Intervener-Defendant-Appellee SAJE advises that it has no parent corporation and no publicly held corporation that owns 10% or more of its stock.

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## **I. INTRODUCTION**

In 1979, Defendant City of Los Angeles (“City”) first adopted the Los Angeles Rent Stabilization Ordinance (“LARSO”) in response to an acute housing shortage that continues to this day. From its inception, LARSO has sought to keep tenants in their existing homes by limiting the amount their landlords could raise the rent each year, and by restricting the grounds upon which their landlords can evict them. LARSO also has sought to assure that landlords earn fair and reasonable returns, and has included a procedure for landlords to seek additional rent increases beyond the yearly maximum as needed. LARSO further sought to mitigate the risk that it might discourage new construction by exempting units constructed after its adoption. State law subsequently made that exemption mandatory.

The plaintiffs in this action (“Plaintiffs”) are two small landlords who acquired a total of four rental properties at various times from 1984 through 2009. Each of these properties already was subject to LARSO at the time of acquisition.

Plaintiffs challenge the constitutionality of four aspects of LARSO (collectively, the “challenged LARSO provisions”).

First, Plaintiffs challenge the special temporary limitation of annual rent increases to 4% during the period of February through June 2024. In the District Court, Plaintiffs also initially challenged the resumption of the standard method of

calculating the permissible rent increase for the period of July 2024 through June 2025, a methodology added to LARSO in 1985 (which also equaled 4%), and referred to both of these distinct limitations as the “4% Rent-Increase Cap” (which created some confusion). But Plaintiffs have specifically disavowed any challenge to the resumed use of the standard methodology in this appeal. *See* Appellants’ Opening Brief (“AOB”) at 15 n.2. Accordingly, Intervener-Defendant SAJE will refer to the relevant temporary cap as the “4% Rent-Increase Cap” Ordinance.

Plaintiffs allege that their inability to evict existing tenants unwilling to pay market rents under this Ordinance constitutes either an uncompensated physical takings or an uncompensated regulatory takings in violation of the Takings Clause (Count II). Plaintiffs also allege that this Ordinance violates the Equal Protection Clause because the rent limitation imposed applies only to units built prior to the adoption of LARSO (Count III).

Second, Plaintiffs challenge a provision of LARSO precluding them from evicting tenants for non-payment of rent when the total amount owed is less than one month of HUD’s “fair market rent” for an equivalent size unit (at present, roughly \$1850 to \$2625 for Plaintiffs’ studio to two-bedroom units). Plaintiffs call this the “FMR Eviction Restriction” and allege it too constitutes an uncompensated physical or regulatory takings (Count I).

Third, Plaintiffs challenge the LARSO provisions imposing requirements (such as a relocation fee payment) that they must satisfy before evicting existing tenants in order to move family members into the units. Plaintiffs refer to these as the “Relocation-Fee Requirement” and again allege they constitute an uncompensated physical or regulatory takings (Count IV).

Fourth, Plaintiffs challenge the LARSO provision requiring them to post a notice prepared by the Los Angeles Housing Department (“LAHD”) summarizing the foregoing provisions. Plaintiffs refer to this as the “Renter Protections Notice Requirement” and allege it violates the First Amendment (Count V).

As this case is of vital importance to more than 600,000 Los Angeles renter households, SAJE successfully sought to intervene in the District Court in order to give those tenants a direct voice in defense of their rights and their homes. True to this mission, SAJE vigorously pursued a motion to dismiss below along side the City, and at times raised additional arguments and authorities. The District Court granted both motions to dismiss, in some cases with leave to amend. Plaintiffs declined to make any amendments, and this appeal followed.

## **II. STATEMENT OF AGREEMENT AS TO JURISDICTION**

SAJE incorporates by reference the City’s statement of agreement as to jurisdiction as its own as well.

### **III. SUMMARY OF ARGUMENT**

While all of Plaintiffs' claims are properly dismissed on the merits, most of Plaintiffs' claims fail at the threshold as either untimely or unripe.

All of Plaintiffs' challenges to the "4% Rent-Increase Cap" Ordinance are so barred. Plaintiffs' physical takings claim and their equal protection claim are both time-barred under this Court's controlling precedent because Plaintiffs' alleged injury—an inability to evict tenants unwilling to pay market rents—results from provisions of LARSO in place since its adoption that can no longer be challenged. And even if the adoption of the "4% Rent-Increase Cap" Ordinance were relevant to these claims, it represented a mere continuation of LARSO provisions first adopted in May 2020, thereby making it too late to challenge the Ordinance.

Plaintiffs' regulatory takings claim also is barred as not ripe. Under this Court's and Supreme Court precedent, Plaintiffs first must seek a "just and reasonable return" rent increase. Removing the current uncertainty as to the degree to which the "4% Rent-Increase Cap" Ordinance reduced their rental income is required to allow a determination of the *Penn Central* factors of economic impact and interference with objectively reasonable investment-backed expectations.

Plaintiffs' takings challenges to the "Relocation-Fee Requirement" likewise are time-barred because every aspect of that requirement has remained the same since 2017. Under this Court's precedent those claims accrued no later than then

as the requirements themselves caused the alleged transfer of Plaintiffs’ right to exclude—and the alleged diminution in the value of their properties.

Finally, Plaintiffs’ regulatory takings claim as to the “FMR Eviction Restriction” is not ripe. Removing uncertainty regarding the extent to which a “just and reasonable return” rent request would offset the rent loss from the “FMR Eviction Restriction”, as well as how the fixed amount of the direct loss compares to overall rental income, is needed for a determination of the economic impact prong of the *Penn. Central* analysis.

Turning to the merits, controlling precedents from the Supreme Court (Yee and *FCC*) and from this Court (*Ballinger*) establish that none of the challenged LARSO provisions are physical takings. Plaintiffs’ suggestion that the Supreme Court’s *Cedar Point* decision somehow undermines these precedents is simply wrong. Consistent with these precedents, *Cedar Point* expressly recognizes that regulating how a business treats persons invited onto its premises—including the circumstances in which they can thereafter be excluded—is not a physical takings. *Cedar Point* also recognizes that restrictions on the right to exclude that are consistent with longstanding property law principles are not physical takings. One such principle is the Supreme Court’s recognition more than a century ago in *Block* that where the police power permits rent regulation, the power to exclude tenants can itself be regulated so long as it does not go so far as to constitute a regulatory

takings. This principle, as Justice Holmes explained in *Block*, is consistent with even more ancient doctrines of property and landlord-tenant law.

Plaintiffs also fail to allege that any of the challenged LARSO provisions are regulatory takings. Plaintiffs have failed to allege facts rendering plausible that the challenged provisions have caused the severe deprivation in property values this Court requires to find a regulatory takings. Plaintiffs likewise have failed to allege facts that plausibly overcome this Court's well-established rule that it is not objectively reasonable for owners of rental housing to believe that rent control will not be imposed where it does not already exist, and will not be strengthened where it does already exist. And this Court's precedent establishes that rent control is deemed more a regulation of land use, and not akin to a physical takings. Therefore, Plaintiffs have failed to adequately allege any of the *Penn. Central* factors.

Furthermore, Plaintiffs fail to adequately allege an equal protection claim. The City's inability under State to impose rent control on housing built after LARSO's adoption means—under this Court's precedent—that owners of such housing are not similarly situated with LARSO owners which ends the equal protection claim at the threshold. And even if that were not the case, this Court's precedent establishes that no suspect class or fundamental right is at issue, thereby triggering rational basis scrutiny only. The exemption for new construction easily

satisfies such review, as the Supreme Court concluded more than a century ago (*Marcus Brown*).

Finally, Plaintiffs have failed to state a First Amendment claim. The obligation to host the “Renter Protection Notice”—which is clearly the City’s own speech and not the Plaintiffs—does not violate the First Amendment under *Fair*. And even if the Notice was compelled speech, it is commercial speech under this Court’s precedent and easily passes either of the two commercial speech tests (*Zauderer* and *Central Hudson*).

This Court therefore should affirm the judgment below.

**IV. MOST OF PLAINTIFFS’ CLAIMS EITHER ARE BARRED BY THE STATUTE OF LIMITATIONS OR ARE NOT RIPE**

**A. All Of Plaintiffs’ Challenges To The LARSO “4% Rent-Increase Cap[s]” Are Either Untimely Or Unripe**

**1. Plaintiffs’ Physical Takings Claim Is Untimely**

1. Plaintiffs allege that the “4% Rent-Increase Cap[s]” are physical takings *because* those caps purportedly “appropriate[] *the right*” from Plaintiffs “to exclude tenants *who do not pay market-based rates.*” ER82-83 (Compl. ¶¶111-113) (*italics added*). This claim is untimely because LARSO eliminated Plaintiffs’

right to exclude tenants who do not pay market-based rents *when it was adopted in 1979*, well outside the applicable limitations period.<sup>1</sup>

Section 1983 borrows the forum state's statute of limitations period for personal injury, which in California is two years. *See Action Apartment Ass'n, Inc. v. Santa Monica Rent Control Bd.*, 509 F.3d 1020, 1026 (9th Cir. 2007)..

Federal law determines when a Section 1983 claim accrues. *See Norco Constr., Inc. v. King County*, 801 F.2d 1143, 1145 (9th Cir. 1986). The applicable federal rule of accrual for a takings claim depends upon whether it is a facial or an as-applied takings challenge. "A facial challenge involves a claim that the mere enactment of a statute constitutes a taking, while an as-applied challenge involves a claim that the particular impact of a government action on a specific piece of property requires the payment of just compensation." *Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 686 (9th Cir. 1993) (internal quotation marks omitted). The statute of limitations for a facial takings challenge to an ordinance runs from the time of its adoption. *See Colony Cove Props., LLC v. City of Carson*, 640 F.3d 948, 956-57 (9th Cir. 2011) ("*Colony Cove I*"); *Action*, 509 F.3d at 1027. The statute of limitations for an as-applied challenge to an ordinance runs from when

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<sup>1</sup> Because Plaintiffs acquired all of their properties by no later than 2009, it is not necessary to determine whether or not any earlier accruing claims passed to them or instead belong to those who earlier owned the properties.

the claim *is ripe*—that is, from when there is a final governmental determination as to how the ordinance applies to the specific piece of property at issue. *See Norco*, 801 F.2d at 1146.

Plaintiffs’ claim that LARSO effectuates a physical takings by appropriating from Plaintiffs *the right* to exclude tenants who do not pay market-based rents clearly is a “facial challenge” for purposes of the applicable federal rule of accrual. Plaintiffs’ physical takings claim depends *solely* on LARSO’s express terms—specifically, the LARSO provisions that (1) make it applicable to Plaintiffs’ properties,<sup>2</sup> (2) prohibit the owners of those properties from charging rents to existing tenants that are higher than a regulated maximum,<sup>3</sup> and (3) preclude the owners of those properties from evicting tenants for failing to pay more than the regulated maximum rent.<sup>4</sup> LARSO has included all of these same substantive provisions since its adoption in 1979.<sup>5</sup> Plaintiffs’ physical takings claim therefore

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<sup>2</sup> *See* L.A.M.C. § 151.02 (definition of “Rental Units”).

<sup>3</sup> *See* L.A.M.C. § 151.02 (definitions of “Rent”, “Maximum Rent” and “Maximum Adjusted Rent”); *id.* § 151.04.A (“It shall be unlawful for any landlord to demand, accept or retain more than the maximum adjusted rent permitted pursuant to this chapter or regulation or orders adopted pursuant to this chapter.”).

<sup>4</sup> *See* L.A.M.C. § 151.09.A (“A landlord may bring an action to recover possession of a rental unit only upon one of the following grounds: 1. The tenant has failed to pay rent to which the landlord is entitled . . .”).

<sup>5</sup> *See* SAJE Supplemental Excerpts of Record, SSER-7-9 (Ordinance 152,120 (1979) at L.A.M.C. § 151.02 (definitions of “Rental Unit”, “Rent”, “Maximum

accrued in 1979 and is untimely. *Action*, 509 F.3d 1020, 1026-27 (9th Cir. 2007) (“Because Action’s claim rests on provisions of the rent control ordinance that have been in effect since 1979, its 2004 complaint was filed well beyond California’s two-year statute of limitations for § 1983 claims.”); *accord Colony Cove I*, 640 F.3d at 955-57; *De Anza Properties X, Ltd. v. County of Santa Cruz*, 936 F.2d 1084, 1086-87 (9th Cir.1991).

Nor would this result differ *even if* Plaintiffs’ physical takings claim somehow is deemed an “as-applied” challenge for purposes of the applicable federal rule of accrual. LARSO’s passage in 1979 finally determined that its provisions eliminating the owners’ right to exclude existing tenants who do not pay market-based rents applies to the Plaintiffs’ specific properties. The same physical takings claim therefore was ripe in 1979, and so accrued at that time. *See Norco*, 801 F.2d at 1146.

2. Plaintiffs assert that their physical takings claim nevertheless is timely because it was filed less than two years after the “4% Rent-Increase Cap” Ordinance was enacted. *See* AOB at 45; L.A.M.C. § 151.34 (added by Ordinance 188,071). Plaintiffs are wrong. The adoption of the Ordinance is irrelevant to their claim that LARSO appropriated their right to exclude tenants *who do not pay*

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Rent” and “Maximum Adjusted Rent”)); SSER-13 (Ordinance 152,120 (1979) at L.A.M.C. § 151.04); SSER-31 (Ordinance 152,120 (1979) at L.A.M.C. 151.09.A).

*market-based rents*. It therefore did not restart the statute of limitations on that claim. And even if adoption of this ordinance somehow were relevant, Plaintiffs' challenge to that ordinance is untimely under controlling precedent.

By way of relevant background, in 1985 the City added to LARSO a formula for calculating the maximum annual rent increase that landlords automatically may impose on existing tenants each year during the period from July 1 through the following June 30. LAHD is required to calculate and publish the relevant figure for the upcoming twelve-month period by May 30 of each year. *See* L.A.M.C. §§ 151.06D, 151.07A.6.

After the pandemic struck, the City adopted a new LARSO provision (effective May 14, 2020) that precluded *any* rent increases (except when necessary for landlords to obtain a just and reasonable return) until one year following the end of the City's local declaration of emergency. *See* L.A.M.C. § 151.32. Because that emergency declaration ended as of February 1, 2023, LARSO landlords stood to regain the right to raise rents pursuant to the 1985 LARSO formula starting on February 1, 2024. LAHD calculated that a 7% rent increase would be allowed through June 30, 2024 under the 1985 LARSO formula. *See* ER-58 (Compl. ¶61).

In response, a motion was introduced at City Council to extend the existing ban on rent increases for six additional months (through July 31, 2024). That motion was amended instead to permit 4% rent increases during the period from

February 1 to June 30, 2024 (the same rent increase that would thereafter be permitted pursuant to the 1985 LARSO formula during the period from July 1, 2024 through June 30, 2025). The City then adopted this motion in the ordinance Plaintiffs rely upon to assert the timeliness of their physical takings claim.

In light of this background, it is clear that Plaintiffs' physical takings claim remains untimely.

*First*, the City's adoption of the "4% Rent-Increase Cap" Ordinance did not restart the statute of limitations on Plaintiffs claim that LARSO's appropriation of their right to exclude tenants *who do not pay market-based rents* constituted a physical takings Plaintiffs do not allege—and indeed cannot allege—that they would have had the right to exclude tenants who do not pay market-based rents if the City had not adopted the "4% Rent-Increase Cap" Ordinance, and Plaintiffs therefore instead had the right to raise rents in accordance with the 1985 LARSO formula by 7% from February 1 to June 30, 2024, . *See, e.g.*, ER-83-84 (Compl. ¶115) (alleging that Plaintiffs' existing rents 50% or more below market rates"). In other words, the injury Plaintiffs allege—the appropriation of their right to exclude tenants *who do not pay market-based rents*—was caused by the earlier adopted LARSO provisions, not by the loss of an additional 3% rent increase caused by adoption of the "4% Rent-Increase Cap" Ordinance. Plaintiffs' physical

takings claim therefore remains time-barred.<sup>6</sup> *Action*, 509 F.3d at 1027 (“The only question that remains is *whether [plaintiff’s] asserted injury arises from provisions that were enacted in 1979 or from substantive amendments that were enacted [within the limitations period] and that altered ‘the effect of the ordinance on’ [plaintiff]. If [plaintiff] challenges either the substance of the 1979 provisions or the mere re-enactment of those provisions [], then its claim is time-barred.*”) (emphasis and brackets added); *cf. Gissendaner v. Commissioner, Georgia Dept. of Corrections*, 779 F.3d 1275, 1280-81 (11th Cir. 2015) (under Section 1983, “a claim that accrues by virtue of a substantial change in a state’s execution protocol *is limited to the particular part of the protocol that changed*. In other words, a substantial change to one aspect of a state’s execution protocol does not allow a prisoner whose complaint would otherwise be time-barred to make a wholesale challenge to the State’s protocol.”) (italics added; citations and internal quotation marks omitted).

*Second*, even if the “4% Rent-Increase Cap” Ordinance somehow was relevant to Plaintiffs’ physical takings claim, that claim still is untimely. As

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<sup>6</sup> Because Plaintiffs only pled a “market-based rents” physical takings claim, and only asserted that claim in their briefing below and in the AOB, they have waived and forfeited any right to assert instead a claim limited to the loss of the right to a 7% rent increase, as opposed to a 4% increase. *See, e.g., Moran v. Screening Pros, LLC*, 25 F.4th 722, 728 n.6 (9th Cir. 2022); *AlohaCare v. Hawaii, Dept. of Human Services*, 572 F.3d 740, 744-45 (9th Cir. 2009).

demonstrated, the Ordinance was nothing more than a four-month extension of the temporary pandemic-era suspension of landlords’ statutory right to automatic annual rent increases pursuant to the 1985 LARSO formula that was first adopted in May 2020. The two-year statute of limitations plainly bars any challenge by Plaintiffs to that original suspension decision. But it also bars any challenge to the December 2023 extension of that temporary suspension. This is because this Court has held that a mere temporal extensions of existing rent limitations do *not* restart the statute of limitations. *See De Anza*, 936 F.2d at 1086 (1987 ordinance making permanent a temporary rent control ordinance first adopted in 1982 did not restart limitations period for a physical takings claim).<sup>7</sup>

In short, Plaintiffs’ physical takings claim with respect to the “4% Rent-Increase Cap” Ordinance is time-barred.

## **2. Plaintiffs’ Regulatory Takings Claim Is Not Ripe**

1. Plaintiffs alternatively allege that the “4% Rent-Increase Cap” Ordinance constitutes a regulatory takings under *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 124 (1978). *See* ER-83-84 (Compl. ¶¶114-117). This claim is not ripe because Plaintiffs have not pled any attempt to obtain

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<sup>7</sup> The fact that the original suspension precluded *any* automatic rent increases, while the extension of that suspension was *more lenient* because it permitted some rent increase, does not alter this result. *See id.* (distinguishing aviation cases where a subsequent use of the airspace in a manner that is *more intensive and noisy* is considered a second physical takings subject to a new limitations period).

a “just and reasonable return” rent increase under L.A.M.C. § 151.07B. *See Amberhill Props. v. City of Berkeley*, 814 F.2d 1340, 1341 (9th Cir. 1987) (affirming dismissal of regulatory takings claim because “until the [Rent Stabilization] Board has an opportunity to consider whether [plaintiff landlord] has been denied a fair return due to inflation and, if so, to use its regulatory powers to make an appropriate adjustment, we cannot decide whether application of these regulations to [plaintiff landlord] would effect an unconstitutional ‘taking’.”) (brackets added); *Little Woods Mobile Villa LLC v. City of Petaluma*, 736 F. Supp. 3d 757, 765-68 (N.D. Cal. 2024) (dismissing regulatory takings claims because, *inter alia*, “the application of the City’s Rent Control Law has not been conclusively determined: Plaintiffs have not sought an exception from the maximum rent increase through the process they allege is set out in the law.”).

2. Plaintiffs assert that their regulatory takings claim nevertheless is ripe because it is certain that any application for a “just and reasonable return” rent increase will not result in a right to charge *market* rents. *See* AOB at 46; ER-83 (Compl. ¶113). But Plaintiffs do not dispute that it remains *uncertain* whether such an application will result in a right to charge rents above their current levels, and if so at what particular level short of market rents. Resolving *that* uncertainty plainly is material to adjudication of Plaintiffs’ regulatory takings claim *because* Plaintiffs expressly tie their allegations of both severe economic harm, and

frustration of reasonable expectations, *to just how far their current rents are below market* (and not to the mere fact that their rents are not equal to market rents). *See* ER-83-84 (Compl. ¶¶115-116); Plaintiffs’ Opposition to SAJE’s Motion to Dismiss at 18;<sup>8</sup> AOB at 46. Plaintiffs’ regulatory takings claim therefore is not yet ripe. *Williamson Cnty. Reg’l Plan. Comm’n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 191, 199-200 (1985) (regulatory takings claim not ripe because “this Court consistently has indicated that among the factors of particular significance in the inquiry are the economic impact of the challenged action and the extent to which it interferes with reasonable investment-backed expectations,” and “[t]hose factors simply cannot be evaluated until the administrative agency has arrived at a final, definitive position regarding how it will apply the regulations at issue to the particular land in question.”), *overruled in part on other grounds by Knick v. Twp. of Scott*, 473 U.S. 172 (1985); *accord MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 348-49, 350-51 (1986) (emphasizing importance of waiting

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<sup>8</sup> “It is inconceivable to think that a 4% cap on rent increases for 17 months after four years of no increases—all while inflation hit a 40-year high—did not impose severe economic burdens on Plaintiffs. . . . [T]he City *deviated* from the rent-cap formula that it has used for decades when initially adopting the artificially low 4% cap at issue here. Plaintiffs had no reason to expect *that* kind of digression to what practically amounts to a ‘confiscatory’ rate given the recent hyperinflationary market conditions.” *Id.* (italics in original; citations omitted).

for final application of regulation because existence of a regulatory takings “is a question of degree”).

### 3. Plaintiffs’ Equal Protection Claim Is Untimely

Plaintiffs further allege that the “4% Rent-Increase Cap]” Ordinance violates equal protection *because* it interferes with the rights to exclude that belong to owners of housing built prior to LARSO, while at the same time “the City imposes no rent-increase caps at all” on later built units. ER-86 (Compl. ¶122); *see* AOB at 25-26, 47. This claim is subject to the same two-years limitations period, and the same federal rules of accrual, as apply to Plaintiffs’ physical takings claim. *See Norco*, 801 F.2d at 1145-46 (9th Cir. 1986) (adopting same limitations period and accrual rule for as-applied takings claim, and related equal protection and due process claims, challenging a land use decision); *Rancho de Calistoga v. City of Calistoga*, No. C 11–05015 JSW, 2012 WL 2501075, \*3 (N.D. Cal. Jun. 27, 2012) (adopting same limitations period and accrual rule for facial takings claim, and related equal protection and due process claims, challenging rent control ordinance); *cf. Action*, 509 F.3d at 1027 (adopting facial takings accrual rule for substantive due process challenge to rent control ordinance). Therefore, for the reasons explained in Part IV.A.1 above, (1) to the extent that Plaintiffs’ equal protection claim is based on Plaintiffs’ inability to exclude tenants *who do not pay market-based rents*, the claim accrued outside the limitations period when LARSO

was adopted in 1979, *see Action*, 509 F.3d at 1027, and (2) to the extent Plaintiffs’ equal protection claim somehow is based on Plaintiffs’ inability to raise rents 7% (rather than 4%) during the period from February 1 to June 30, 2024, the claim accrued outside the limitations period when Plaintiffs’ right to raise rents pursuant to the 1985 LARSO formula was first suspended in May 2020. *See De Anza*, 936 F.2d at 1086.

**B. All Of Plaintiffs’ Challenges To The LARSO “Relocation-Fee Requirement” Are Untimely**

1. Plaintiffs allege that LARSO’s “Relocation-Fee Requirement” constitutes a physical takings *because* the conditions imposed on landlords’ right to “evict and reclaim the unit for family use” constitute “a significant interference with the right to exclude.” *See* ER-92-94 (Compl. ¶¶133-136). Plaintiffs further allege that the City adopted every aspect of the “Relocation-Fee Requirement” by 2017. *See* ER-94 (Compl. ¶139). Therefore, Plaintiffs’ physical takings claim relies solely on the restrictions on their rights to exclude imposed by LARSO provisions adopted outside the two-year limitations period, and that claim is time-barred. *See Colony Cove I*, 640 F.3d at 955-57; *De Anza*, 936 F.2d at 1086; Part IV.A.1 above.

Plaintiffs also allege that the “Relocation-Fee Requirement” is a regulatory takings. *See* ER94-95 (Compl. ¶¶137-140). Both here and below, Plaintiffs similarly base this claim solely on the impact on their right to exclude of LARSO

provisions adopted outside the two-year limitations period. *See* Plaintiffs’ AOB at 53. Accordingly, Plaintiffs’ regulatory takings claim also is untimely. *Levald*, 998 F.2d at 688-89; *see Colony Cove*, 640 F.3d at 955-57.

2. Plaintiffs assert that both of their takings claims nevertheless are timely because under *Flynt v. Shimazu*, 940 F.3d 457, 462-63 (9th Cir. 2019), a new claim purportedly arises—and a new limitation period purportedly commences—each time they abstain from removing an existing tenant to make way for a family member. AOB at 54-55. But this is wrong because *Flynt* did *not* involve a takings claim, and this Court already has held that *different* accrual rules apply to takings claims:

In other contexts, the harm inflicted by the statute is continuing, or does not occur until the statute is enforced—in other words, until it is applied. In the takings context, the basis of a facial challenge is that the very enactment of the statute has reduced the value of the property or has effected a transfer of a property interest. *This is a single harm, measurable and compensable when the statute is passed.*

*Levald*, 998 F.2d at 688 (emphasis added); *accord Fallini v. U.S.*, 56 F.3d 1378, 1382-83 (Fed. Cir. 1995) (“If a landowner owns a parcel of beachfront property and the government enacts legislation demanding that the landowner allow others to walk along the shore, the government has effected a taking of an easement on the landowner's property. For purposes of claim accrual, such a taking occurs on the date of enactment of the legislation. Every instance of a beachcomber using

the public easement does not constitute a separate taking, even though each use may inflict psychic or economic injury on the landowner.”).

Indeed, the very Sixth Circuit case that *Flynt* principally relied upon as support for its continuing accrual rule actually followed *Levald* and held that the continuing accrual rule does *not* apply to takings claims. *Compare Kuhnle Bros., Inc. v. County of Geauga*, 103 F.3d 516, 521 (6th Cir. 1997) (takings claim accrued upon statute’s passage) *with id.* at 521-22 (deprivation of liberty without substantive due process claim is subject to continuing accrual rule).

Desperate, Plaintiffs attempt to invoke *Cedar Point* as contrary authority. But no one raised the statute of limitations in *Cedar Point*, and, as Plaintiffs are well aware, “[q]uestions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.” *Webster v. Fall*, 266 U.S. 507, 511 (1925).

In short, as Plaintiffs themselves allege, the “Relocation-Fee Requirement” restricted their right to exclude when adopted, and has depressed the sales price of their properties ever since. *See* ER63-64 (Compl. ¶72); AOB at 18. As the amendments to LARSO imposing these consequences all occurred outside the limitation period, Plaintiffs’ physical and regulatory takings claims are time-barred.

**C. Plaintiffs’ Regulatory Takings Claim With Respect To The “FMR Eviction Restriction” Is Not Ripe**

1. Plaintiffs’ allege that the “FMR Eviction Restriction”—which *was* adopted by the City within the two-year limitations period—likewise constitutes both a physical and regulatory taking. Plaintiffs’ regulatory takings claim is not ripe, however, because the Court cannot evaluate the “economic impact” prong until Plaintiffs’ seek a “just and reasonable return” rent increase. *See Amberhill*, 814 F.2d at 1341; *Little Woods*, 736 F. Supp. 3d at 765-68; Part IV.A.2 above.

In particular, Plaintiffs allege that (1) “the FMR Eviction Restriction has ‘deprived’ Plaintiffs of their ability to ‘receiv[e] rental income,’” ER-78 (Compl. ¶¶99), and (2) “[b]ecause tenants can use the restriction to serially underpay rent, Plaintiffs cannot recover rental income to cover the properties’ basic operating costs,” Plaintiffs’ Opposition to SAJE’s Motion to Dismiss (citing Compl. ¶¶75-76). Plaintiffs contend that these allegation plead a sufficient “economic impact” under *Penn. Central*. *See* AOB at 35-36.

However, the alleged loss of income from the “FMR Eviction Restriction” could potentially be replaced by a “just and fair return” rent increase. Indeed, assuring that owners recover their basic operating costs is an express ground for granting such an increase. *See* City’s SER-071 (RAC Reg. 244.01). Moreover, the amount of income lost due to the “FMR Eviction Restriction” is small—it is capped for each rental unit at a maximum of a single month of HUD’s “fair market

rent” over the entire life of the tenancy. *See* ER-55-56 (Compl. ¶¶56-57). A “just and reasonable return” rent increase therefore would not have to approach market rents to make up for the rental income allege they lost due to the “FMR Eviction Restriction”. Until this uncertainty is resolved through final action by the City, Plaintiffs’ regulatory takings claim is not ripe.

2. Plaintiffs nevertheless assert that their regulatory takings claim is ripe because a “just and reasonable return” rent increase will have no effect on the absolute dollar amount of rental income they have lost due to the “FMR Eviction Restriction” itself. *See* AOB at 39-40. But that is not the legally relevant question. In order to evaluate the severity of the economic impact of that absolute dollar loss, the court needs to know what percentage of income that absolute dollar loss represents. *See* Part V.B.1 below. Indeed, the Complaint effectively concedes as much when it alleges “the City’s 4% Rent-Increase Cap . . . precluded [Plaintiff Knighten] from obtaining market-based rents that could provide the revenue necessary to make continued ownership sustainable,” and that it is the combination of the low rents and the “FMR Eviction Restriction” that allegedly renders the properties economically distressed. ER-67-68 (Comp. ¶76).

In short, Plaintiffs’ “FMR Eviction Restriction” regulatory takings claim is not ripe.

**V. ALL OF PLAINTIFFS' CLAIMS ARE PROPERLY DISMISSED FOR FAILURE TO STATE A VALID CLAIM ON THE MERITS**

**A. Plaintiffs Have Not Stated Any Valid Physical Takings Claims**

**1. Binding Precedent Establishes That The Challenged LARSO Provisions Do Not Effect Physical Takings**

Binding precedent mandates dismissal of all of Plaintiffs' physical takings claims.

*First, Yee v. City of Escondido*, 503 U.S. 519 (1992), mandates dismissal of Plaintiffs' physical takings claim as to the "4% Rent Increase Cap" Ordinance. In *Yee* the Supreme Court considered and rejected a physical takings challenge to a local law regulating mobile home park rents. Like LARSO, the local law—combined with California's Mobilehome Residency Law—precluded landlords from raising rents to market for existing tenants, and precluded eviction of tenants merely because their leases expired. Indeed, the laws at issue in *Yee* went much further than LARSO—they also precluded landlords from raising rents to market for *new* tenants, and precluded landlords from refusing to rent to any new tenants *selected by the existing tenants* to take over their below-market rent leases. *See id.* at 524-25. A unanimous Supreme Court nevertheless held that these laws did not impose a physical taking:

Petitioners voluntarily rented their land to mobile home owners. At least on the face of the regulatory scheme, neither the city nor the State compels petitioners, once they have rented their property to tenants, to continue doing so. To the contrary, the Mobilehome Residency Law provides that a park owner who wishes to change the

use of his land may evict his tenants, albeit with 6 or 12 months notice. Put bluntly, no government has required any physical invasion of petitioners' property. Petitioners' tenants were invited by petitioners, not forced upon them by the government. While the "right to exclude" is doubtless, as petitioners assert, "one of the most essential sticks in the bundle of rights that are commonly characterized as property," we do not find that right to have been taken from petitioners . . . .

*Id.* at 527-28 (citations omitted); *see id.* at 528-32.

*Yee*'s reasoning applies here because (1) Plaintiffs voluntarily rented their units to tenants, *and* (2) LARSO permits landlords who wish to change the use of their land to evict their tenants, albeit with four or twelve months notice. *See* L.A.M.C. §§ 151.09A.10, 151.23, 151.24. Therefore, Plaintiffs' physical takings claim based on the "4% Rent-Increase Cap" Ordinance is properly dismissed under *Yee*. *Accord Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 322-23 (2002) (stating, as part of the Supreme Court's reasoning, that "[w]hen the government physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the former owner . . . . But a government regulation that merely prohibits landlords from evicting tenants unwilling to pay a higher rent . . . does not constitute a categorical taking.") (citations omitted).

*Second, FCC v. Fla. Power Corp.*, 480 U.S. 245 (1987), in combination with *Yee*, mandates dismissal of Plaintiffs' physical takings claim as to the "FMR Eviction Restriction". In *FCC*, the Supreme Court considered and rejected a

physical takings claim directed at a FCC decision that reduced by 75% the rents that owners of utility poles could charge the cable television operators who already had leased pole space for their cables. The pole owners contended that, under the reasoning of *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), it constituted a physical taking “for a tenant invited to lease at a rent of \$7.15 to remain at the regulated rent of \$1.79.” *FCC*, 480 U.S. at 252. A unanimous Supreme Court disagreed:

But it is the invitation, not the rent, that makes the difference. The line which separates these cases from *Loretto* is the unambiguous distinction between a commercial lessee and an interloper with a government license.

*Id.* at 252-53.

While *FCC* thereby established that the government’s compelled reduction of the rent an owner can collect from a tenant is not itself a physical takings, *FCC* expressly left open the question of whether a physical taking would occur “if the FCC in a future case required utilities, over objection, to enter into, renew, or refrain from terminating pole attachment agreements.” *Id.* at 251 n.6. The Supreme Court then expressly took up that question in *Yee* and concluded that “[a] different case would be presented were the statute, on its face or as applied, to compel a landowner over objection to rent his property or to refrain in perpetuity from terminating a tenancy.” *Yee*, 503 U.S. at 528. But as explained above, the Supreme Court further unanimously held that the rent control ordinance at issue in

*Yee* did neither of those things, and therefore concluded that “[w]ith respect to physical takings[], this case is not far removed from *FCC*.” *Yee*, 503 U.S. at 532.

The reasoning of *FCC* and *Yee* apply here with respect to the “FMR Eviction Restriction” because (1) Plaintiffs invited their tenants to lease their units, (2) the “FMR Eviction Restriction” *at most* equates to a reduction in agreed rent far less severe than the ongoing 75% rent-reduction at issue in *FCC* (although Plaintiffs in fact can still recover *all* of the agreed rent using debt collection tools other than eviction), and (3) LARSO permits landlords who wish to change the use of their land to evict their tenants, albeit with four or twelve months notice.. Therefore, Plaintiffs’ physical takings claim based on the “FMR Eviction Restriction” is properly dismissed under the combination of *FCC* and *Yee*.

*Third, Ballinger v. City of Oakland*, 24 F.4th 1287 (9th Cir. 2022), mandates dismissal of Plaintiffs’ physical takings claim as to the “Relocation-Fee Requirement”. In *Ballinger* this Court considered and rejected a physical takings claim directed at a local ordinance that—like LARSO—required landlords to pay a relocation fee in order to recover rented units for their own occupancy. *Id.* at 1291. The plaintiffs asserted that this constituted a physical takings of their money. But this Court rejected that physical takings claim by first reasoning that *Yee* and *FCC* establish that ordinary rent control and other “legislative enactments ‘regulating

the economic relations of landlords and tenants are not *per se* takings”, and then reasoning that:

Here, the Ordinance imposes a transaction cost to terminate a lease agreement. We see little difference between lawful regulations, like rent control, and the Ordinance's regulation of the landlord-tenant relationship here. Thus, the relocation fee is not an unconstitutional physical taking—it “merely regulate[s] [the Ballingers'] *use* of their land by regulating the relationship between landlord and tenant.”

*Ballinger*, 24 F.4th at 1292-93 (quoting first *FCC*, and then *Yee*). This Court further recognized that “[a] different case would be presented were the statute, on its face or as applied, to compel a landowner over objection to rent his property or to refrain in perpetuity from terminating a tenancy.” *Id.*, 24 F.4th at 1293-94 (quoting *Yee*). This reasoning is binding. *See, e.g., Salas v. U.S.*, 116 F.4th 830, 842 & n.2 (9th Cir. 2024). Therefore, Plaintiffs’ physical takings claim based on the “Relocation-Fee Requirement” is properly dismissed under *Ballinger*. *Accord Kagan v. City of Los Angeles*, No. 21-55233, 2022 WL 16849064, at \*1 (9th Cir. Nov. 10, 2022) (following the reasoning of *Yee* to reject physical takings claim directed to LARSO provision precluding owner family move-in eviction of a protected status tenant); *Better Hous. for Long Beach v. Newsom*, No. 20-55373, 2022 WL 2287436, at \*1 (9th Cir. Jun. 24, 2022) (following *Ballinger* to reject physical taking claim directed to California state law requiring payment of relocation fees before landlords can recover rented units for no-tenant-fault reasons).

## 2. **Nothing In *Cedar Point* Undermines *Yee*, *FCC*, Or *Ballinger***

In support of their physical takings claims, Plaintiffs repeatedly invoke *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021), a case that did not involve the landlord-tenant relationship. But *Cedar Point* nowhere expressly overrules or limits *Yee* or *FCC*, and this Court therefore remains bound by those latter two decisions. *See, e.g., Nunez-Reyes v. Holder*, 646 F.3d 684, 692 (9th Cir. 2011) (en banc) (lower courts bound by directly controlling Supreme Court decisions until expressly overruled). This Court also remains bound by *Ballinger*, which this Court decided in express contemplation of *Cedar Point* (after supplemental briefing). *See, e.g., Miller v. Gammie*, 335 F.3d 889, 892-93, 899 (9th Cir. 2003) (en banc) (no authority to reconsider a Ninth Circuit panel decision outside en banc process except when it is “clearly irreconcilable” with a *later* Supreme Court decision). In any event, *Cedar Point* is fully consistent with *Yee*, *FCC*, and *Ballinger*.

### (a) ***Cedar Point* Recognizes That No Physical Taking Occurs When A Law Simply Regulates How Businesses Treat Those They Invite Onto Their Premises**

1. In *Cedar Point*, the Supreme Court held that a California law granting to *uninvited* union organizers a right of access to farms constituted a physical taking. *Cedar Point*, 594 U.S. at 152. When doing so, the Supreme Court explained why this result was not inconsistent with *PruneYard Shopping Ctr. v.*

*Robins*, 447 U.S. 74 (1982), its prior decision holding that no compensable taking had occurred when the California Constitution precluded a private shopping mall from removing members of the public who engaged in political leafleting on the premises:

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

*Cedar Point*, 594 U.S. at 157.

This distinction between laws that do and do not effect a physical taking is precisely the same distinction drawn in *Yee*, *FCC*, and *Ballinger*. Each of those cases similarly held that laws that merely impose limitations on how landlords treat the tenants they have invited to occupy their premises (including limitations on when landlords may remove those previously invited tenants) do not effect physical takings, *so long as* they do not preclude the owners *in perpetuity* from excluding those tenants. *Cedar Point* therefore is fully consistent with *Yee*, *FCC*, and *Ballinger*.

2. In the District Court, Plaintiffs attempt to avoid this conclusion by asserting that (1) *Cedar Point* only recognized that there is no physical taking by laws regulating the right to exclude belonging to businesses that are “generally open to the public” (like the shopping mall in *Prune Yard*), and (2) this portion of *Cedar Point* therefore is inapplicable to the rental housing business because

landlords only invite a “finite group” of tenants onto their properties. *See* ER-76-77 (Compl. ¶95). But Plaintiffs’ assertions are wrong. *Cedar Point* expressly rejected the idea that the number of persons at issue, or the length and frequency of their time on the property, can determine whether a law imposes a physical taking or instead imposes a use restriction. 594 U.S. at 154 (“The fact that the regulation grants access only to union organizers and only for a limited time does not transform it from a physical taking into a use restriction.”); *see id.* at 152-54. And a unanimous Supreme Court in *Yee* concluded that the principle underlying *PruneYard* does apply to the rental housing business, and therefore cited *PruneYard* (among other decisions) in support of its holdings that (1) “[w]hen a landowner decides to rent his land to tenants, the government may place ceilings on the rents the landowner can charge, or require the landowner to accept tenants he does not like, without automatically having to pay compensation,” and (2) “[b]ecause they voluntarily open their property to occupation by others, [landlords] cannot assert a *per se* right to compensation based on their inability to exclude particular individuals.” *Yee*, 503 U.S. at 529, 531 (citations omitted). Indeed, more than a century ago Justice Holmes rejected the notion that rental housing was less subject to rent regulation because each building was not subject to “use by the public generally”. *Block v. Hirsh*, 256 U.S. 135, 155 (1921).

In short, Plaintiffs’ attempt to manufacture some inconsistency between *Cedar Point* on the one hand, and *Yee, FCC*, and *Ballinger* on the other, is futile.

**(b) *Cedar Point Recognizes That No Physical Taking Occurs When Laws Are Consistent With Longstanding Background Restrictions On The Right To Exclude***

1. Even if *Cedar Point*’s discussion of *PruneYard* was not decisive (but it is), *Cedar Point* still is fully consistent with *Yee, FCC*, and *Ballinger*. *Cedar Point* acknowledged that “many government-authorized physical invasions will not amount to takings because they are consistent with longstanding background restrictions on property rights.” 594 U.S. at 160. One such longstanding background restriction is that when those engaging in the rental housing business are properly subject to rent control under the police power, their right to exclude tenants may properly be restricted so long as those restrictions do not go so far as to constitute a regulatory taking.

The Supreme Court first recognized this property law principle more than 100 years ago in *Block v. Hirsh*. At issue was a Congressional statute that limited residential rents in the District of Columbia to amounts deemed fair and reasonable by a commission, and that precluded the eviction of existing tenants when their leases expired. *Id.*, 256 U.S. at 153-54; 41 Stat. 297. A landlord who was prevented from regaining possession upon expiration of the lease asserted that the statute violated the Takings Clause. But Justice Holmes, writing for the majority,

concluded that no taking had occurred because the statute was a valid exercise of the police power under the circumstances, and it did not “go[] too far” (i.e., it did not effect what now is often referred to as a regulatory taking).<sup>9</sup> *Block*, 256 U.S. at 156; *see id.* at 155-58; *Cedar Point*, 594 U.S. at 148-49 (discussing regulatory takings).

In reaching this conclusion, Justice Holmes drew on two already then-longstanding principles of property law. *First*, Justice Holmes relied on the principle that, when evolving circumstances demonstrate that a business sufficiently impacts the public interest, the government has police power to regulate that business consistent with the Constitution. *See Block*, 256 U.S. at 155-57. In support of this principle, Justice Holmes cited *Munn v. Illinois*, 94 U.S. 113 (1870), a case upholding the constitutionality of imposing rate regulation on the grain silo business in Chicago.

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<sup>9</sup> While the origin of the regulatory takings doctrine is typically traced to Justice Holmes’s opinion the following year in *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922), it is clear he applied the same standard in *Block*. *Compare Mahon*, 260 U.S. at 415 (“The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.”), *with Block*, 256 U.S. at 157 (“The only matter that seems to us open to debate is whether the statute goes too far. For just as there comes a point at which the police power ceases and leaves only that of eminent domain, it may be conceded that regulations of the present sort pressed to a certain height might amount to a taking without due process of law.”).

In *Munn*, the Supreme Court had identified as “an essential element in the law of property” that:

[p]roperty does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. *He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control.*

*Id.* at 126 (italics added). *Munn* noted that this property law principle had permitted rate regulation of various businesses (including innkeepers) from time immemorial in England, in the English colonies, and in America. *Id.* at 125, 129. And *Munn* held that when other businesses sufficiently affect the public interest, they too become subject to rate regulation under this longstanding property law principle. *Id.* at 133.

Justice Holmes concluded in *Block* that the *Munn* principle not only rendered the D.C. rent regulation constitutional, but also the statute’s restriction on evicting tenants: “The preference given to the tenant in possession is an almost necessary incident of the policy . . . . If the tenant remained subject to the landlord’s power to evict, the attempt to limit the landlord’s demands would fail.” *Block*, 256 U.S. at 157-58. Although not cited in *Block*, this conclusion was consistent with the fact that from time immemorial, innkeepers not only were subject to rate regulation, but—again because their business was affected with a

public interest—*had their right to exclude sharply curtailed as well. See, e.g., Bell v. State of Maryland*, 378 U.S. 226, 297-98 & n.17 (1964) (White, J., concurring) (collecting illustrative historical authorities).

*Second*, Justice Holmes also relied in *Block* on the fact that “[t]he preference given to the tenant in possession . . . is traditional in English law.” *Block*, 256 U.S. at 157. This referenced traditional English law preference included both common law and statutory restrictions on landlords’ ability to dispossess their tenants. For example, under neither the common law or later statute did a landlord have an inherent property right to evict a tenant for non-payment of rent. Rather, there had to be a written lease provision making non-payment of rent a ground for terminating the tenancy. Moreover, even when there was such a lease provision, the landlord seeking to bring an ejectment action against the tenant had to first either strictly comply with the exacting common law requirements regarding the making of a demand for rent, or proceed instead under a statute dispensing with those burdensome requirements in cases where (a) at least six months of rent was owed, and (b) there was not enough personal property on the premises that the landlord could seize to cover the rent owed. Even then, tenants could retain possession of the premises—notwithstanding their failure to timely pay the rent—by tendering the back rent plus interest and court costs any time prior to execution of an eviction judgment, and could recover possession *even after* being evicted by

tendering those same sums (originally, at any time after being evicted, but later for only for six months after being evicted if landlord proceeded pursuant to the statute).<sup>10</sup> Similar legal rules generally prevailed in early America.<sup>11</sup>

In short, more than one hundred years ago, the Supreme Court held in *Block* that—consistent with even more ancient doctrines—when those engaging in the rental housing business are properly subject to rent control under the police power, their right to exclude tenants may properly be restricted so long as those restrictions do not go so far as to constitute a regulatory taking. *Yee, FCC*, and *Ballinger* are fully consistent with this longstanding background restriction, and so also with the reasoning of *Cedar Point*.

2. In the District Court, Plaintiffs sought to avoid this conclusion by asserting that *Block* used a no-longer valid “emergencies-are-different approach”, and therefore *Block* purportedly is not the type of longstanding background restriction on property rights that *Cedar Point* acknowledges would preclude a finding that rent control constituted a physical takings. Opp. to SAJE MTD at 17 & n.5; *see id.* at 12-13. This too is error. *Block* relied on the exigent conditions created by WWI

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<sup>10</sup> *See, e.g.*, SSER-53-73 (Robert Buckley Comyn & George Chilton, *Treatise on the Law of Landlord* (2d ed. 1830) at 324, 327-29, 497, 501-05, 565-66, 568-70, and William Woodfall, *Law of Landlord and Tenant: Including Leases, Assignments, Tenants in Fee* (1802) at 409-13).

<sup>11</sup> *See, e.g.*, SSER-74-81 (John N. Taylor, *Treatise on the American Law of Landlord and Tenant* (1844) at 57-58, 338-42).

to conclude that the police power allowed temporary price controls on rental housing, a narrow view of the police power to regulate pricing that the Supreme Court repudiated long ago. *See, e.g., Birkenfeld v. City of Berkeley*, 17 Cal.3d 129, 153-59 (1976). But that does not undermine the *relevant* background principle that *whenever* those engaging in the rental housing business are properly subject to rent control under the police power, their right to exclude tenants may properly be restricted so long as those restrictions do not go so far as to constitute a regulatory taking. *Compare, e.g., Cedar Point*, 594 U.S. at 160-61 (*whenever* searches comply with the Fourth Amendment, they are not physical takings). Indeed, as noted above, the Supreme Court confirmed as part of its reasoning in *Tahoe-Sierra* that *Block* stands for the proposition that “a government regulation that merely prohibits landlords from evicting tenants unwilling to pay a higher rent” is not a physical taking. *Tahoe-Sierra.*, 535 U.S. at 321-22.

### **3. Nothing In Plaintiff’s Remaining Authorities Undermines *Yee*, *FCC*, Or *Ballinger***

Plaintiffs’ remaining authorities likewise do not provide a basis for this Court to ignore the controlling holdings and reasoning of *Yee*, *FCC*, and *Ballinger*.

*First*, Plaintiffs pluck from *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267, 274 (2024), the statement that “the right to compensation is triggered if [the States] ‘physically appropriat[e]’ property or otherwise interfere with the owner’s right to exclude others from it.” *See* AOB at 28-29. The language is overbroad, of

course—*Cedar Point*, on which *Sheetz* relies as authority for the statement, itself states that many types of limitations on the right to exclude are *not* physical takings, *see Cedar Point*, 594 U.S. at 156-57, 159-62 (2021). And *Sheetz* did not even consider—let alone discuss or decide—when a limitation on the right to exclude is or is not a physical takings.

*Second*, Plaintiffs highlight the statement from *Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758, 765 (2021), that "preventing [landlords] from evicting tenants who breach their leases intrudes on one of the most fundamental elements of property ownership—the right to exclude," and that in doing so the Supreme Court cited to of *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982), a physical takings case. *See* AOB at 31. But *Yee* also stated that the right to exclude is one of the most essential property rights, citing the same even earlier Supreme Court case that *Loretto* cited on the page cited in *Alabama Ass'n*. Simply acknowledging the importance of the right to exclude does not answer whether any particular limitation on that right is a physical takings, and *Alabama Ass'n* made no effort to answer that question.

*Third*, Plaintiffs attempt to rely on language from both *Loretto*, 458 U.S. at 439 n.17, and *Horne v. Dep't of Agric.*, 576 U.S. 350, 365 (2015) (quoting *Loretto*) to suggest that—notwithstanding the clear holding of *Yee*— Plaintiffs' right to evict their tenants and change their land use, albeit on 4 to 12 months notice, is not

sufficient to establish that the relevant LARSO provisions do not impose a physical takings. *See* AOB at 35. What Plaintiffs fail to grasp is that *Yee* found that there was no physical takings due to the presence in that case of *both* the owners' initial invitation, *and* the owners' right to evict in order to change the use of the land. *Loretto* is fully consistent with *that* holding because—unlike the statutes at issue in *Yee* (and unlike LARSO)—the statute at issue in *Loretto* did *not* permit the landlord to go out of the cable TV hookup rental business and thereby remove the cable TV hookup from its property. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 53 N.Y.2d 124, 131 & n.4, 134-36 (1981), *rev'd* 458 U.S. 419, 421, 439 & n.17 (1982). That is why, notwithstanding an initial invitation for the cable company to hook up, the Supreme Court found a physical takings.

Indeed, *Yee* expressly recognized this factual distinction when it explained that the cable TV hookup statute in *Loretto* *had* caused a physical taking, and therefore it was no answer in *that* case to say the landlord could go out of the separate rental housing business to end the occupation, whereas in *Yee* the rent control system did not create a physical taking through the occupation of the housing by tenants given the owners' right to go out of the mobile home rental business. *See Yee*, 503 U.S. at 531-32.

*Horne's* physical takings conclusion likewise is consistent with *Yee* because—unlike the situation in *Yee* (and under LARSO)—the grower in *Horne*

did not invite the initial government seizure of a portion of its crop. Similarly, in *Cienega Gardens v. United States*, 331 F.3d 1319, 1338 (Fed. Cir. 2003)—another case cited by Plaintiffs, *see* AOB at 30, but which did not even consider *Yee*—it appears that the owner could not exit low-income rental housing business precisely because its federal mortgage required its participate and the law at issue prohibited the owner from pre-paying that mortgage.

In short, all of these cases simply confirm *Yee*'s hold that it requires *both* the invitation by the owner of an initial physical occupation *and* the ability of the owner to rescind that invitation to go out of the business for which the invitation was issued.<sup>12</sup> Note that also is fully consistent with *Munn*.

*Fourth*, and finally, Plaintiffs rely on *Darby Dev. Co. v. U.S.*, 112 F.4th 1017, 1035-37 (Fed. Cir. 2024), and on *Heights Apartments, LLC v. Walz*, 30 F.4th 720, 733 (8th Cir. 2022). *See* AOB at 29-33. But *Darby* is not persuasive here because (1) it failed even to consider *Cedar Point*'s recognition of the continued validity of *PruneYard* (i.e., that regulation of the grounds for exclusion of persons a business invites onto its premises is *not a per se* takings); (2) it concerned a COVID eviction moratorium, rather than rent control, which has long been upheld as not a takings under *Block*; and (3) it expressly cabined the scope of its holding

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<sup>12</sup>This is true as well of the Court of Appeal cases cited by amicus National Association of Homebuilders.

to extraordinary cases where there is no path to eviction at all, which is not the case here. Finally, the Eighth Circuit’s similar conclusion in *Heights Apartments, LLC v. Walz*, 30 F.4th 720, 733 (8th Cir. 2022), is likewise unpersuasive because (1) it is based on an inaccurate statement of the facts in *Yee*, (stating that the landlord in *Yee* did not want to exclude existing tenants) and (2) for the same reasons *Darby* is not persuasive.

**B. Plaintiffs Have Not Stated Any Valid Regulatory Takings Claims**

Binding precedent also demonstrates that the Complaint fails to allege facts that could plausibly support a finding that any of the challenged LARSO provisions effected a regulatory taking under *Penn Central*’s multi-factor balancing test.

**1. Plaintiffs Fail To Allege The Requisite Economic Impact Of The Challenged LARSO Provisions**

The first *Penn Central* factor is the economic impact of the challenged LARSO regulations. “[E]conomic impact is determined by comparing the total value of the affected property before and after the government action.” *Colony Cove Props., LLC v. City of Carson*, 888 F.3d 445, 451 (9th Cir. 2018) (“*Colony Cove IP*”). Only a very extreme diminution in value will potentially support a regulatory takings claim. *See id.* (Ninth Circuit itself “ha[s] observed that diminution in property value because of governmental regulation ranging from 75% to 92.5% does not constitute a taking,” and “is aware of no case in which a

court has found a taking where diminution in value was less than 50 percent”) (internal quotation marks and citations omitted).

While Plaintiffs need not prove their case at the pleading stage, they are required to allege facts sufficient to make it plausible that the challenged LARSO provisions caused the requisite severe diminution in the value of their properties. *See GHP Mgmt. Corp. v. City of Los Angeles*, No. 23-55013, 2024 WL 2795190, at \*2 (9th Cir. May 31, 2024) (dismissing claim because plaintiffs “failed to allege the diminution in property values they suffered”); *Rancho de Calistoga v. City of Calistoga*, 800 F.3d 1083, 1090-91 (9th Cir. 2015) (dismissing claim because, *inter alia*, a diminution in value of just 28.53% alleged).

Here, Plaintiffs have not alleged the value of any of their properties either before or after adoption of the challenged LARSO provisions. Nor have they alleged a percentage diminution in value. Furthermore, as detailed below, none of their factual allegations render it plausible that the challenged LARSO provisions caused the requisite severe diminution in the value of their properties.

*First*, Plaintiffs assert that they have plausibly alleged the requisite severe economic impact of the “4% Rent-Increase Cap” Ordinance because they allege (1) their current rents are 50% or more below HUD’s monthly “fair market rate” for comparable units, and (2) the City imposed the restriction after precluding rent

increases for four years during which time there was 20% inflation. *See* AOB at 43. But these allegations are inadequate.

In order to use a reduction in rental income to demonstrate the requisite severe diminution in property value, it is necessary to “compar[e] the lost net income due to the restriction . . . with the total net income without the restriction over the entire useful life of the property.” *Colony Cove II*, 888 F.3d at 451. That comparison does *not* show that the “4% Rent-Increase Cap” Ordinance reduced Plaintiffs’ rents by 50% or more. Rather, as Plaintiffs allege, the “4% Rent-Increase Cap” Ordinance did no more than reduce the rent increase available to Plaintiffs during February 1 to June 30, 2024 from 7% (without the Ordinance) to 4% (with the Ordinance). *See* AOB at 15 & n.2, 44.

Moreover, even this minimal 3% decrease in Plaintiffs’ rents as a result of the Ordinance will not continue “over the entire useful life of the property”. Rather, as Plaintiffs allege, they will be free to re-rent each of their units at the market rate as soon as the existing tenant in the unit departs. *See* ER-50 (Compl. ¶50, quoting L.A.M.C. § 151.06.C.1). Further, as Plaintiffs’ allege, they have the ability before then to seek an additional rent increase as necessary to assure they are receiving the constitutionally mandated just and reasonable return on their properties. *See* ER-113 (Compl. ¶ 113); L.A.M.C. § 151.07.B; SER-61-76 (RAC regulations governing “just and reasonable return” rent increase requests).

Accordingly, Plaintiffs have not plausibly alleged that the “4% Rent-Increase Cap” Ordinance caused the requisite severe diminution in property value required for a regulatory takings.

*Second*, Plaintiffs similarly assert that they have plausibly alleged the requisite severe economic impact of the “FMR Eviction Restriction” because they allege (1) each Plaintiff has one tenant who used that restriction to underpay the rent, and (2) these losses prompted them to cease renting financially non-viable units altogether. *See* AOB at 35-36; ER-65-68 (Compl. ¶¶75-76). But these allegations again are inadequate. As Plaintiffs allege, the maximum amount of rent the two delinquent tenants could underpay over the entire length of their tenancies is \$2,081 for Ms. Harris’s one-bedroom tenant, and \$1,856 for Ms. Knighten’s studio tenant. *See* ER-56 (Compl. ¶57). These amounts represent less than 5% and 7%, respectively, of the alleged current aggregate rent for a single year at each of the relevant properties, and therefore necessarily a far smaller fraction of the total rent over the entire remaining useful of these properties (particularly given Plaintiffs’ ability to re-rent at market rate when an existing tenant leaves, and to seek a “just and reasonable return” rent increase to cover net operating costs, as discussed above). *See* ER-42-44, 65-68 (Compl. ¶¶25-26, 75-76). Furthermore, Plaintiffs retain the right to seek the delinquent sums by other means, such as a small claims court action. Accordingly, Plaintiffs have not plausibly alleged that

the “FMR Eviction Restriction” causes the requisite severe diminution in property value required for a regulatory takings.

Furthermore, nothing in the out-of-circuit authorities Plaintiffs cite supports a contrary conclusion. None of those cases involved facts remotely like those Plaintiffs have alleged, and none of those cases hold that even those wholly different facts plausibly alleged the severe diminution in value that this Court requires to find a regulatory takings.

*Third*, Plaintiffs further assert that they have plausibly alleged the requisite severe economic impact of the “Relocation-Fee Requirement” because they allege (1) Plaintiff Harris would like to evict two existing tenants to make way for her family members, and (2) she cannot afford to pay to each of those tenants the required \$25,700 in relocation assistance. *See* AOB at 53. But these allegations do not even plausibly allege that leaving the existing tenants in place (the alleged result of the “Relocation-Fee Requirement”) will reduce Ms. Harris’s rental stream. This is because there is no allegation that her family members would pay any rent, let alone pay more rent than the existing tenants. Accordingly, Plaintiffs have not plausibly alleged that the “FMR Eviction Restriction” causes the requisite severe diminution in property value required for a regulatory takings.

**2. Plaintiffs Have Failed To Allege That The Challenged LARSO Provisions Impact Their Objectively Reasonable Investment-Backed Expectations**

The second *Penn Central* factor is the extent to which the challenged LARSO provisions interfere with Plaintiffs’ “objectively reasonable” investment-backed expectations. *Colony Cove II*, 888 F.3d at 452. No such interference is plausibly alleged here.

When an owner acquires rental property that already is subject to a rent and eviction control system, that owner does not have an objectively reasonable expectation that the restrictions imposed will be removed in the future. *See Guggenheim v. City of Goleta*, 638 F.3d 1111, 1120, 1122 (9th Cir. 2010) (en banc). Nor does the owner have an objectively reasonable expectation that the provisions of that system will remain unchanged. *See Colony Cove II*, 888 F.3d at 452-54. Rather, those “who do business in the regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the legislative end.” *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 645 (1993). Indeed, for this same reason, even an owner who acquires rental property that is *not* at that time subject to a rent and eviction control system has no objectively reasonable expectation that the property will remain free of such controls in the future. *See Rancho de Calistoga*, 800 F.3d at 1090-91 (following *Concrete Pipe*).

Here, Plaintiffs acquired their properties after the 1979 adoption of LARSO, and the 1982 removal of any sunset provision. *See* ER-31,42-43,49 (Compl. ¶¶2, 25-26, 41). Thus, absent some special facts, Plaintiffs could not have had an objectively reasonable expectation either that the rent and eviction controls existing at acquisition would later be removed, or that those controls would not later be expanded or strengthened. But Plaintiffs allege no such special facts plausibly supporting an objectively reasonable expectation that any of the challenged LARSO provisions would not be adopted.

*First*, Plaintiffs assert that the “4% Rent-Increase Cap” Ordinance interferes with their supposedly objectively reasonable expectation that the City would not deviate from the 1985 LARSO formula after so many years (even one time by a mere 3%). *See* AOB at 43-44. But Plaintiffs fail to explain how such an expectation could possibly be objectively reasonable when this Court has held that an owner of rental housing that has never before been subject to any rent control cannot reasonably expect that rent control would not be adopted. *See Rancho de Calistoga*, 800 F.3d at 1090-91. Nor could the fact that inflation had outpaced annual rent increases in the immediately preceding years possibly make that expectation objectively reasonable. Rather, it is particularly unreasonable given that LARSO’s original 7% rent-increase cap was less than the prevailing general

rate of inflation when LARSO was first adopted in 1979, when it was extended in 1980 and again in 1981, and when LARSO's sunset date was removed in 1982.<sup>13</sup>

*Second*, Plaintiffs also assert that the “FMR Eviction Restriction” interferes with their supposedly reasonable expectation that they always would be able to evict a tenant for any failure to pay the full previously authorized rent, given that this precise eviction limitation had not previously been adopted. *See* AOB at 36-37. But LARSO always has precluded Plaintiffs from evicting tenants for not paying more than the amount authorized by LARSO, and LARSO always has expressly granted to the Rent Adjustment Commission the power to *reduce* rents in order to advance LARSO's tenant protection purposes. *See* L.A.M.C. §§ 151.04A, 151,08A. Moreover, by 1982, prior to Plaintiffs acquiring any of the properties, several other of the original grounds for eviction in LARSO already had been *narrowed*.<sup>14</sup> Given these facts, and the general rule that it is *not* objectively reasonable to expect that a regulatory scheme will not be strengthened to better serve its purposes, it plainly was not objectively reasonable for Plaintiffs to believe

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<sup>13</sup> *See* SSER-15-16 (Ordinance No. 152,120 (1979 adoption of LARSO)); SSER-97 (Ordinance No. 156,597 (1982 adoption of LARSO without sunset date)); SEER-121 (Consumer Price Index L.A-Long Beach-Anaheim data for March 1979 through April 1982)).

<sup>14</sup> *Compare* SSER-32-33 (Ordinance No. 152,120 (1979 adoption of LARSO) (Sections 151.09A.8 & .9)), *with* SSER-109-110 (Ordinance No. 156,597 (1982 adoption of LARSO without sunset date) (same)).

that a provision like the “FMR Eviction Restriction” would never be adopted. Nor is this conclusion undermined by Plaintiffs’ appeal to history—as explained in V.A.2.(c) above, statutes authorizing ejectment actions only when tenants were at least six months behind in their rent had been adopted in England, the English colonies, and early America. The “FMR Eviction Restriction” simply is not some shocking new concept.

*Third*, Plaintiffs further allege that the “Relocation-Fee Requirement” interferes with their supposedly reasonable expectation that they would not have to pay such fees. *See* AOB at 53. But any such expectation is particularly *unreasonable* given that (1) a relocation payment requirement for family move-in evictions existed prior to Plaintiffs’ acquisition of three of their properties,<sup>15</sup> and (2) when the fourth property was acquired in 1984, a relocation payment requirement already existed for several other “no-fault” evictions, and other requirements for family move-in evictions already had been *increased*.<sup>16</sup> *See*

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<sup>15</sup> *See id.*; SSER-130-134 (Ordinance No. 160,791 (1986 LARSO amendments) (revising L.A.M.C. § 151.09G)).

<sup>16</sup> *See, e.g.*, SSER-142-148 (Ordinance No. 155,397 (1981 amendments to L.A.M.C. §§ 47.06 & 47.07) (monetary relocation payments required when tenants to be evicted for condominium conversion or demolition of building)); *compare* SSER-33-34 (Ordinance No. 152,120 (1979 adoption of LARSO) (Sections 151.09A.8 & C)), *with* SSER-109-111 (Ordinance No. 156,597 (1982 adoption of LARSO without sunset date) (Sections 151.09A.8 & C) (narrowing family move-in evictions and imposing owner declaration requirement)).

generally *74 Pinehurst LLC v. New York*, 59 F.4th 557, 567-68 (2d Cir. 2023)

(reasonable to expect recent rent control changes given history of past changes). In short, the lack of plausible allegations that the Challenged LARSO Provisions interfere with Plaintiffs’ objectively reasonable expectations at acquisition is “fatal” to their regulatory takings claims. *See Guggenheim*, 638 F.3d at 1120.

### **3. The Character Of LARSO Also Supports Dismissal**

The third *Penn Central* factor is that a regulatory taking is more likely “when the interference with property can be characterized as a physical invasion by government” rather than a “public program adjusting the benefits and burdens of economic life to promote the common good.” *Penn Cent.*, 438 U.S. at 124. This too supports dismissal because (1) this Court has repeatedly characterized rent control laws as “much more an adjust[ment of] the benefits and burdens of economic life to promote the common good than . . . a physical invasion of property,” *Rancho*, 800 F.3d at 1091 (brackets in original; citations and internal quotation marks omitted), and (2) as demonstrated above, none of the challenged LARSO provisions effect a physical taking. *See Part V.A above.*

In sum, Plaintiffs regulatory takings claims should be dismissed.

**C. Plaintiffs Have Not Stated A Valid Equal Protection Claim**

Plaintiffs allege that the “4% Rent-Increase Cap” Ordinance violates the Equal Protection Clause because they apply only to rental units built prior to LARSO’s adoption. This claim likewise is properly dismissed.

**1. “Similarly Situated” Owners Are Not Treated Differently**

1. In order to state a valid equal protection claim, Plaintiffs *initially* must allege differential treatment between groups that are *similarly situated* in all relevant respects. *See Wright v. Incline Vill. Gen. Improvement Dist.*, 665 F.3d 1128, 1140 (9th Cir. 2011). But Plaintiffs have failed to do so here. Owners of units built before LARSO’s adoption are *not* similarly situated in all relevant respects with owners of units built afterwards. This is *because* the City has the power to impose the “4% Rent-Increase Cap[s]” on the former, but State law *precludes* the City from imposing those caps on the latter. *See Cal. Civ. Code* §§ 1954.52(a)(1)-(2); *NCR Props., LLC v. City of Berkeley*, 89 Cal. App. 5th 39, 47, 51 (2023) (explaining how these statutory provisions apply to newly constructed units).<sup>17</sup> Plaintiffs’ equal protection claim therefore must be dismissed for this reason alone.

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<sup>17</sup> Cal. Civ. Code § 1954(a)(1) applies to the City because LARSO has always exempted newly constructed units. *Compare* Ordinance No. 152,120 (1979 adoption of LARSO) (Dkt. 20-2) at 6-8 of 38 (Section 151.02M.6, defining “Rental Units”), *with* L.A.M.C. § 151.02 (definition of “Rental Unit” at para. “6.”).

Indeed, this is the precise holding of *Thornton v. City of St. Helens*, 425 F.3d 1158 (9th Cir. 2005). In that case state law imposed a licensing requirement on wrecking yards, including a requirement of city approval of each annual renewal. *See id.* at 1161. The Thorntons owned the sole wrecking yard in the city and so were the only ones subject to the city’s licensing renewal approval requirements. The Thorntons alleged that this violated equal protection because they were being treated differently than both wrecking yards outside the city, and other businesses in the city’s “Heavy Industry” zone. But this Court dismissed Thornton’s claim because the city’s lack of power to regulate any of these other businesses under the state’s licensing scheme meant that they were *not* similarly situated:

The City has no authority to regulate wreckers located beyond its boundaries. Similarly, . . . [i]f the other businesses are not required to renew their respective certificates annually and are not directed to obtain the City's approval in the process, they are not similarly situated to the Thorntons. Evidence of different treatment of unlike groups does not support an equal protection claim.

*Id.* at 1167-68. *Thornton* compels dismissal of Plaintiffs’ equal protection claim.

2. Before this Court, Plaintiffs simply ignore this threshold “similarly situated” requirement. But below Plaintiffs asserted that the City’s power to regulate other aspects of housing built after LARSO’s adoption somehow satisfies that requirement. This is wrong because logic dictates—and *Thornton* held—that it is a city’s lack of power to impose the *specific* regulation at issue on a group that

makes the group not “similarly situated”. *Id.*; accord *Signs for Jesus v. Town of Pembroke*, 977 F.3d 93, 113-14 (1st Cir. 2020).

Plaintiffs’ equal protection claim therefore is properly dismissed.

## 2. LARSO’s Differential Treatment Is Rational

1. Plaintiffs’ equal protection claim also fails because LARSO’s exemption of newly constructed units is rational. *See Mont. Med. Ass’n v. Knudsen*, 119 F.4th 618, 630 (9th Cir. 2024) (explaining rational basis review). The City exempted new buildings “to encourage new construction and expansion of the City’s housing stock.” *City of Los Angeles v. Los Olivos Mobile Home Park*, 213 Cal. App. 3d 1427, 1432 (1989). The Supreme Court already held more than a century ago that this is a legitimate basis—consistent with the Equal Protection Clause—for exempting new construction from rent regulation. *See Marcus Brown Holding Co. v. Feldman*, 256 U.S. 170, 198-99 (1921), *affirming* 269 F. 306, 317-18 (S.D.N.Y. 1920). Nothing more is required because the “4% Rent-Increase Cap[s]” do not “implicate a ‘fundamental right’ or operate ‘to the particular disadvantage of a suspect class.’” *Mont. Med. Ass’n*, 119 F.4th at 630; *see Yim v. City of Seattle*, 63 F.4th 783, 798 (9th Cir. 2023) (neither right to exclude nor right to use property as one wishes is a fundamental right triggering heightened substantive due process scrutiny); *Hotop v. City of San Jose*, 982 F.3d 710, 717 (9th Cir. 2020) (landlords are not members of a suspect class). Plaintiffs’

contrary allegation—that the “4% Rent-Increase Cap” Ordinance implicates the Takings Clause, *see* ER-86 (Compl. ¶126)—is a non-starter because those caps do not effect any takings. *See* Parts V.A-B above.

2. Plaintiffs, and amicus National Association of Home Builders (“NAHB”), nevertheless assert that strict scrutiny applies because the “4% Rent-Increase Cap[s]” impinge on Plaintiffs’ purportedly “fundamental right” to exclude (per Plaintiffs) or to lease owned property (per NAHB). *See* AOB at 47; NAHB at 12. However, both ignore the distinction between something being a fundamental aspect of property ownership (e.g., the right to exclude), and something being a fundamental *constitutional* right triggering strict scrutiny when impinged upon.

More fundamentally, both ignore that their argument is foreclosed by this Court’s binding holding in *Yim*—made in the context of an ordinance regulating leases and evictions, *see id.*, 63 F.4th at 789—that neither the right to exclude nor the right to use one’s property as one wishes is a fundamental *constitutional* right triggering strict scrutiny. *Id.* at 798. And while Plaintiffs asserted in the District Court that *Yim* is not controlling because it involved a substantive due process claim, that assertion is wrong because “fundamental rights” that trigger strict scrutiny are the same for both substantive due process and equal protection claims. *See, e.g., Vacco v. Quill*, 521 U.S. 793, 799 (1997) (no fundamental right to die for equal protection), *citing Washington v. Glucksberg*, 521 U.S. 702, 719-28 (1997)

(same for substantive due process); *Bowers v. Whitman*, 671 F.3d 905, 909-10, 916-17 (9th Cir. 2012) (no fundamental right to use property for either).

3. Plaintiffs' further assert that it is irrational to exempt newly constructed apartments from LARSO. *See* AOB at 48-49. This assertion fails as Plaintiffs neither dispute that the goal of encouraging new rental housing construction is legitimate, or that the City could not conceivably believe that the LARSO new construction-only exemption would properly balance that goal with the City's goal of protecting renters from excessive rents. *See Mont. Med. Ass'n*, 119 F.4th at 630-31.

More fundamentally, Plaintiffs ignore that their argument is foreclosed by the Supreme Court's contrary conclusion in *Marcus Brown*. *See id.*, 256 U.S. at 198-99. And while Plaintiffs asserted in the District Court that *Marcus Brown* is not controlling because it involved a housing emergency, the reasoning of the Supreme Court upholding the exemption of new construction is equally applicable to the housing crisis LARSO addresses.

In short, Plaintiffs' equal protection claim is properly dismissed.

**D. Plaintiffs Have Not Stated A Valid First Amendment Claim**

**1. Plaintiffs Fail To Allege That The “Renter Protections Notice Requirement” Unconstitutionally Compels Them To Host The City’s Message To Tenants**

1. Plaintiffs’ First Amendment claim is premised on their allegation that “[t]he Renter Protections Notice Requirement compels RSO-regulated landlords to speak a particular message to third parties when they would not otherwise do so.” ER-97-98 (Compl. ¶147). But Plaintiffs’ other allegations conclusively disprove this premise. Rather, Plaintiffs only are required to post (i.e., host) on their property what Plaintiffs concede is *the City’s* summary of LARSO provisions (as is *unmistakably clear* from the face of the mandatory Renter Protections Notice form<sup>18</sup>). See ER- 36,,64,97-98 (Compl. ¶¶10, 73, 147); SSER151-152 (current referenced mandatory form); L.A.M.C. § 151.05I.

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<sup>18</sup> The top left hand corner of the Notice has “LAHD” in very large letters, with “Los Angeles Housing Department” directly underneath. The top right hand corner has the City’s seal. In the center below, in large letters, is “City of Los Angeles” and immediately below that “Renter Protections Notice.” The first sentence states:

This notice is provided in compliance with Ordinance No.187737, that requires landlords of residential properties to provide a summary of renters’ rights for tenancies that commenced or were renewed on or after January 27, 2023. This notice must also be posted in an accessible common area of the property. For more information, visit [housing.lacity.org](http://housing.lacity.org) or call **(866) 557-7368 (RENT)**.

SSER-153-154 (emphasis in original); *accord* ER-64 (Compl. ¶73).

As the Supreme Court explained in *Rumsfeld v. Forum for Academic & Institutional Rights, Inc. (FAIR)*, 547 U.S. 47 (2006), no First Amendment violation arises from the compelled hosting of government speech where—as here—(1) the City’s message does not affect Plaintiffs’ own speech because they are not speaking when they post (i.e., host) the Notice on their property (which is not expressive activity by Plaintiffs), *see id.* at 63-64, and (2) nothing about the Notice suggests that Plaintiffs agree with it, Plaintiffs remain free to say anything they want about LARSO and its underlying policies, and tenants can appreciate the difference between the Notice—which on its face says Plaintiffs are legally required to post it—and speech sponsored by Plaintiffs. *See id.* at 64-65; *accord Lake Butler Apparel Co. v. Sec’y of Lab.*, 519 F.2d 84, 85, 89 (5th Cir. 1975) (requirement that employer post standard OSHA poster informing employees of statutory safety rights does not violate First Amendment); *Nat’l Ass’n of Mfrs. v. Perez*, 103 F. Supp. 3d 7, 10, 15-19 (D.D.C. 2015) (“*NAM*”) (requirement that employer post standard Labor Department notices informing employees of statutory rights under NLRA does not violate First Amendment).

2. Plaintiffs assert that this analysis is wrong because the mere posting of the Notice in a common area purportedly is expressive conduct by landlords. *See* AOB at 58-59. But Plaintiffs fail to explain how this can be so when the Supreme Court in *FAIR* held that hosting live government speakers on campus was *not*

expressive conduct. *FAIR*, 547 U.S. at 63-64 (contrasting prior cases where requirement to host interfered with expressive conduct); *see NAM*, 103 F. Supp. 3d at 18 (*FAIR* not distinguishable: “If anything, mandating a government speaker's access to property is far more intrusive than requiring the posting of a rights notice.”).

Nor do Plaintiffs’ cited cases support their assertion. In *Green v. Miss U.S.A., LLC*, 52 F.4th 773 (9th Cir. 2022), this Court suggested in dicta that it potentially would violate the First Amendment to compel business owners operating their businesses as statements of their beliefs to display ideological posters (e.g., Black Lives Matter) with which they disagree. *See id.* at 820-21 (dissent expressing hypothetical); *id.* at 783 n.10 (majority responding to hypothetical). That hypothetical stands in stark contrast to *FAIR* and to this case, both because the hypothetical businesses sought to express the owners contrary ideological message through their names, and because of the substantial risk that patrons would believe the owners endorsed the displayed ideological message.

And in *Wooley v. Maynard*, 430 U.S. 705 (1977), the Supreme Court held that it violated the First Amendment to compel a Jehovah’s Witness to display on his personal car the state’s ideological motto which he found morally objectionable. *See id.* at 715. But requiring landlords to post on their rental properties a notice clearly labeled as a City summary that the landlords are legally

obligated to post consisting a summary of the tenants’ statutory rights (which form a part of their leases) is “simply not the same,” and “it trivializes the freedom protected in...*Wooley* to suggest that it is.” *NAM*, 103 F. Supp. 3d at 17 (quoting *FAIR*, 547 U.S. at 62).

Accordingly, Plaintiffs’ First Amendment claim is properly dismissed.

**2. Plaintiffs Fail To Allege That The “Renter Protections Notice Requirement” Unconstitutionally Controls Their Commercial Speech**

1. Even if Plaintiffs *were* being compelled to speak, they still would not have alleged a First Amendment violation. The “Renter Protections Notice Requirement” —which mandates disclosure of LARSO-imposed price and termination provisions governing the rental agreements between Plaintiffs and their tenants—regulates commercial speech. *See S.F. Apartment Ass’n v. City & County of San Francisco*, 881 F.3d 1169, 1175, 1177-78 (9th Cir. 2018) (“*SFAA*”) (analyzing requirement that landlords provide city-drafted form to tenants describing their buyout rights as regulation of commercial speech). And the Notice Requirement passes muster under either First Amendment test for commercial speech regulations.

2. Although silent regarding commercial speech doctrines in the AOB, Plaintiffs asserted in the trial court that the Notice is not commercial speech. But Plaintiffs offered no response to this Court’s holding in *SFAA*. Nor could

Plaintiffs. As recently confirmed in *Pharm. Research & Mfrs. of Am. v. Stolfi*, 153 F.4th 795 (9th Cir. 2025), compelled disclosures that “provide[] parties to ‘actual or potential’ commercial transactions with information about those transactions” are commercial speech. *Id.* at 820-21. That is precisely the case here as the LARSO terms summarized in the Notice as a matter of California law form a part of the lease between Plaintiffs and their tenants. *See In re Marriage of Walton*, 28 Cal.App.3d 108, 112 (1972) (existing and future law incorporated into contracts).

**(a) The Notice Requirement Passes The Zauderer Test**

1. The “Renter Protections Notice Requirement” does not violate the First Amendment because it passes the three-part test derived from *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626 (1985).

*First*, the contents of the mandated Notice are purely factual. *See SFAA*, 881 F.3d at 1177 (holding “form that describes tenants’ rights” was purely factual).

*Second*, the contents of the mandated Notice are uncontroversial because the Notice accurately describes various LARSO provisions and landlords’ obligation to follow them, and does not interfere with Plaintiffs’ expressive rights. *See CompassCare v. Hochul*, 125 F.4th 49, 54, 65-66 (2d Cir. 2025) (requirement to include in employee handbook notice of statutory right to be free from reproductive-choice discrimination not controversial, even if policy underlying adoption of statute is controversial); *CTIA – The Wireless Ass’n v. City of Berkeley*,

928 F.3d 832, 845 (9th Cir. 2019) (rejecting proposition that “any purely factual statement that can be tied in some way to a controversial issue is, for that reason alone, controversial”). This conclusion is not plausibly altered by Plaintiffs’ allegation that the mandated Notice erodes their fundamental property rights. As demonstrated above, all of the challenged LARSO provisions are constitutional.

*Third*, the “Renter Protection Notice Requirement” is neither unjustified nor unduly burdensome because it both is reasonably related to the City’s substantial interest in informing tenants of their legal rights, and it does not impair Plaintiffs’ expressive rights. *See CompassCare*, 125 F.4th at 65-66; *SFAA*, 881 F.3d at 1178.

2. Plaintiffs asserted in the District Court that the “Renter Protection Notice Requirement” fails the *Zauderer* because rent control is a controversial policy. This is wrong because posting the Notice—which does no more than accurately state the terms of currently operative law—does not compel Plaintiffs to take sides in the underlying policy debate. *See CompassCare*, 125 F.4th at 67; *CTIA*, 928 F.3d at 848.

**(b) *The Notice Requirement Also Passes Central Hudson***

1. Even if the “Renter Protection Notice Requirement” were controversial within the meaning of *Zauderer*, as Plaintiffs incorrectly allege, it still would not violate the First Amendment because it also passes the more demanding four-part test established in *Central Hudson Gas & Electric Corp. v.*

*Public Service Commission of New York*, 447 U.S. 557 (1980). *See SFAA*, 881 F.3d at 1177.

*First*, the mandated Notice is neither misleading nor related to unlawful activity.

*Second*, the City's asserted interest in the "Renter Protections Notice Requirement" is substantial. After being advised by LAHD that some tenants had lost their homes during the Great Recession due to a lack of knowledge of their rights, the City adopted the requirement to help "ensure that tenants are properly notified of their rights" under LARSO. SSER-155 et seq. (Memorandum from City Admin. Off. to L.A. City Council); *see* SSER 210 et seq. (Memorandum from LAHD to L.A. Mayor; SSER-153-54 (Ordinance 180,769)). The Ninth Circuit has held that a similar asserted interest by San Francisco was substantial for purposes of the *Central Hudson* test. *See SFAA*, 881 F.3d at 1177. And this is confirmed by the judgment of legislatures across the country that have enacted requirements to post notices disclosing statutory rights and obligations as part of a "'longstanding tradition in this country' supported by a 'historical warrant.'" *CompassCare*, 125 F.4th at 65 (quoting *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 795 (2011)) (collecting current examples of employer notice requirements); *see, e.g.*, SSER-281-291 (Del. Laws, ch. 176, § 25 (1915) (employers); Mass. Gen. Laws, ch. 338, § 3 (1870) (innkeepers); Md. Laws, ch. 296, § 260 (1878) (stable keepers); N.Y.

Laws, ch. 175, § 5 (1839) (steamboat operators); W. Va. Acts, ch. 227, § 82c (1872) (railroad operators)).

*Third*, the “Renter Protections Notice Requirement” directly advances this interest. Plaintiffs concede as much, including by alleging that their tenants learned their rights from the mandatory Notice. *See* ER-36,64-67 (Compl. ¶¶10, 73-76).

*Fourth*, the “Renter Protections Notice Requirement” is not more extensive than necessary. *Central Hudson* does not require that a regulation be the “least restrictive means” but instead seeks “a fit that is not necessarily perfect, but reasonable.” *Aargon Agency, Inc. v. O’Laughlin*, 70 F.4th 1224, 1233 (9th Cir. 2023) (quoting *Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989)). That test is easily met here because, apart from requiring posting of the City’s tenants’ rights summary, the notice requirement leaves Plaintiffs free to express any views about LARSO in any manner they see fit. *See SFAA*, 881 F.3d at 1177 (upholding more restrictive “targeted restrictions on landlord-tenant communications”); *Aargon*, 70 F.4th at 1233-34 (upholding more restrictive regulation that temporarily “prohibits speech” but “does not completely ban” it).

2. Plaintiffs baldly asserted in the District Court *Central Hudson* does not apply to compelled disclosures. Plaintiffs are wrong. *See, e.g., Nat’l Ass’n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1282-83 (9th Cir. 2021).

Accordingly, no matter which commercial speech test is applied, Plaintiffs' First Amendment claim is properly dismissed.

**VI. CONCLUSION**

For the foregoing reasons, the Court should affirm the dismissal in its entirety with prejudice of Plaintiffs' Complaint.

Dated: January 20, 2026

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**Statement of Related Cases**

Pursuant to Ninth Circuit Rule 28-2.6, Intervener-Defendant-Appelle SAJE states that it is not aware of any other cases pending in this Court that are related to the present case.

Dated: January 20, 2026

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**Certificate Of Compliance**

Counsel of Record hereby certifies that the foregoing ANSWERING BRIEF OF INTERVENER-DEFENDANT-APPELLEE SAJE is produced using 14-point Roman type, including footnotes; that it responds to more than one brief and contains 14,889 words; and that its form and length complies with all aspects of FRAP 32 (a)(5) and Ninth Circuit Rules 32-1(a) and 32-2(b). Counsel relies on the word count of the computer program used to prepare the brief.

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 20, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the ACMS system. I certify that all participants in this case are registered ACMS users and that service will be accomplished by the ACMS system.

*/s/ Michael E. Soloff*  
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