MICHAEL E. SOLOFF (SBN 116550)
mike.soloff@mto.com
LAUREN A. BILOW (SBN 344970)
lauren.bilow@mto.com
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071
Telephone: (213) 683-9100
Facsimile: (213) 687-3702

DANIEL RUBIN (SBN 359920)
daniel.rubin@mto.com
MUNGER, TOLLES & OLSON LLP
560 Mission Street, 27th Floor
San Francisco, California 94105
Telephone: (415) 512-4000
Facsimile: (415) 512-4077

DEEPIKA SHARMA (SBN 256589)
dsharma@law.usc.edu
USC Gould School of Law
699 Exposition Boulevard
Los Angeles, CA 90089
Telephone: (213) 821-7472

FAIZAH MALIK (SBN 320479)
fmalik@publiccounsel.org
JONATHAN JAGER (SBN 318325)
jjager@publiccounsel.org
RAYMOND FANG (SBN 352221)
rfang@publiccounsel.org
PUBLIC COUNSEL
610 S. Ardmore Avenue
Los Angeles, CA 90005
Telephone: (213) 385-2977
Facsimile: (213) 385-9089

Attorneys for Intervener SAJE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

MELVIA HARRIS and ROBERTA KNIGHTEN,

Plaintiffs,

vs.

CITY OF LOS ANGELES,

Defendant.

Case No. 5:24-cv-02679-JGB-SHK

[1] NOTICE OF MOTION AND MOTION OF INTERVENER SAJE TO DISMISS UNDER FRCP 12(b)(1) AND 12(b)(6); AND

[2] MEMORANDUM OF POINTS AND AUTHORITIES

[Declaration of Michael Soloff and Request for Judicial Notice filed concurrently]

Date: July 28, 2025
Time: 9:00 a.m.
Place: Riverside Courtroom 1
Judge: Hon. Jesus G. Bernal

NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on July 28, 2025, at 9:00 a.m. or as soon thereafter as the matter may be heard in Courtroom 1 of the above-entitled Court, located at 3470 Twelfth Street, 2nd Floor, Riverside, CA 92501, Intervener SAJE will move, and hereby does move, the Court for an order dismissing the entire Complaint (ECF No. 1), and each and every individual cause of action therein, on the following grounds pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure:

1. Plaintiffs' physical takings claim based on the "FMR Eviction Restriction" fails to allege a compensable taking and therefore fails to state a claim on which relief can be granted (Count One);

2. Plaintiffs' regulatory takings claim based on the "FMR Eviction Restriction" is not ripe and therefore the Court lacks subject matter jurisdiction to hear that claim (Count One);

3. Plaintiffs' regulatory takings claim based on the "FMR Eviction Restriction" fails to allege a compensable taking and therefore fails to state a claim on which relief can be granted (Count One);

4. Plaintiffs' takings claim based on the "FMR Eviction Restriction" fails to allege a violation of the Fifth Amendment's Takings Clause and the Fourteenth Amendment and therefore fails to state a claim on which relief can be granted (Count One);

5. Plaintiffs' physical takings claim based on the "4% Rent-Increase Cap" is barred by the statute of limitations and therefore fails to state a claim on which relief can be granted (Count Two);

6. Plaintiffs' physical takings claim based on the "4% Rent-Increase Cap" fails to allege a compensable taking and therefore fails to state a claim on which relief can be granted (Count Two);

7. Plaintiffs' regulatory takings claim based on the "4% Rent-Increase Cap" is not ripe and therefore the Court lacks subject matter jurisdiction to hear that claim (Count Two);

8. Plaintiffs' regulatory takings claim based on the "4% Rent-Increase Cap" fails to allege a compensable taking and therefore fails to state a claim on which relief can be granted (Count Two);

9. Plaintiffs' takings claim based on the "4% Rent-Increase Cap" fails to allege a violation of the Fifth Amendment's Takings Clause and the Fourteenth Amendment and therefore fails to state a claim on which relief can be granted (Count Two);

10. Plaintiffs' equal protection claim based on the "4% Rent-Increase Cap" is barred by the statute of limitations and therefore fails to state a claim on which relief can be granted (Count Three);

11. Plaintiffs' equal protection claim based on the "4% Rent-Increase Cap" fails to allege a violation of the Fourteenth Amendment's Equal Protection Clause and therefore fails to state a claim on which relief can be granted (Count Three);

12. Plaintiffs' physical takings claim based on the "Relocation-Fee Requirement" is barred by the statute of limitations and therefore fails to state a claim on which relief can be granted (Count Four);

13. Plaintiffs' physical takings claim based on the "Relocation-Fee Requirement" is not ripe and therefore the Court lacks subject matter jurisdiction to hear that claim (Count Four);

14. Plaintiffs' physical takings claim based on the "Relocation-Fee Requirement" fails to allege a compensable taking and therefore fails to state a claim on which relief can be granted (Count Four);

15. Plaintiffs' regulatory takings claim based on the "Relocation-Fee Requirement" is barred by the statute of limitations and therefore fails to state a claim on which relief can be granted (Count Four);

16. Plaintiffs' regulatory takings claim based on the "Relocation-Fee Requirement" is not ripe and therefore the Court lacks subject matter jurisdiction to hear that claim (Count Four);

17. Plaintiffs' regulatory takings claim based on the "Relocation-Fee Requirement" fails to allege a compensable taking and therefore fails to state a claim on which relief can be granted (Count Four);

18. Plaintiffs' takings claim based on the "Relocation-Fee Requirement" is barred by the statute of limitations and therefore fails to state a claim on which relief can be granted (Count Four);

19. Plaintiffs' takings claim based on the "Relocation-Fee Requirement" is not ripe and therefore the Court lacks subject matter jurisdiction to hear that claim (Count Four);

20. Plaintiffs' takings claim based on the "Relocation-Fee Requirement" fails to allege a violation of the Takings Clause and the Fourteenth Amendment and therefore fails to state a claim on which relief can be granted (Count Four);

21. Plaintiffs' First Amendment claim based on the "Renter Protections Notice Requirement" fails to allege a violation of the First Amendment and therefore fails to state a claim on which relief can be granted (Count Five).

This Motion is based upon this Notice of Motion; the supporting Memorandum of Points and Authorities; the concurrently filed declaration of Michael E. Soloff; the concurrently filed request for judicial notice; all documents and pleadings on file in this action; and such other oral and documentary evidence and argument as the Court may entertain at the hearing of this motion.

This motion is made following the conference with Plaintiffs' counsel pursuant to L.R. 7-3 that took place on March 28, April 30, May 1, and May 2, 2025. *See* Declaration of Michael E. Soloff ¶ 2. Plaintiffs and Intervener were unable to reach a resolution that eliminates the necessity for a hearing on this motion.

DATED: May 14, 2025

MUNGER, TOLLES & OLSON LLP

By: */s/ Michael E. Soloff*
Michael E. Soloff
Attorneys for Intervener SAJE

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

OTHER AUTHORITIES

MEMORANDUM OF POINTS AND AUTHORITIES

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 they challenge the special temporary limitation of annual rent increases to 4% during February through June 2024, as well as the standard limitation of annual rent increases pursuant to a formula based on the Consumer Price Index ("CPI") during July 2024 through June 2025 (which also equaled 4%). Plaintiffs refer to both of these distinct limitations as the "4% Rent-Increase Cap", and allege that these caps violate the Equal Protection Clause because they only apply to units built prior to the adoption of LARSO (Count III). Plaintiffs also allege that their inability to evict existing tenants unwilling to pay more than the rent levels allowed under the "4% Rent-Increase Cap[s]" constitutes either an uncompensated physical takings or an uncompensated regulatory takings in violation of the Takings Clause (Count II).

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) they must satisfy before evicting tenants in order to move family members into their 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).

By this motion, Intervener SAJE seeks dismissal of the entire complaint and each and every claim in it. As explained herein, all of Plaintiffs' claims regarding both the "4% Rent Increase Cap[s]" and the "Relocation-Fee Requirement" are either untimely or not ripe. And more fundamentally, all of Plaintiffs' claims fail to allege facts establishing any physical takings, regulatory takings, equal protection violation or First Amendment violation.

II. MOST OF PLAINTIFFS' CLAIMS ARE EITHER BARRED BY THE STATUTE OF LIMITATIONS OR UNRIPE

A. All Of Plaintiffs' Challenges To The LARSO "4% Rent-Increase Cap[s]" Are Either Untimely Or Not Ripe

1. Plaintiffs' Equal Protection Claim Is Untimely

Plaintiffs allege that the "4% Rent-Increase Cap[s]" violate the Equal Protection Clause because they apply only to rental properties built on or before

October 1, 1978. *See* Compl. ¶ 122. But LARSO's rent regulations *always* have applied *only* to such properties (including Plaintiffs' properties, *see* Compl. ¶¶ 25-26), and not to subsequently built properties. *See* Ordinance 152,120 (1979) (Dkt. 20-2) at 9 of 38 (L.A.M.C. § 151.02, at definition of "Rental Units," ¶ 6). Thus, the two year statute of limitations applicable to Plaintiffs' Equal Protection claim ran more than 40 years ago.[1] *See Action Apartment Ass'n, Inc. v. Santa Monica Rent Control Bd.*, 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.").

Plaintiffs attempt to avoid this result by tying their claim to two recent LARSO-only rent-increase caps. But the attempt is futile. *First*, Plaintiffs fail to allege that these recent caps discriminated against them in some new and different way. Rather, all of their allegations of unconstitutional discrimination apply to all LARSO rent regulation since 1979. *See* Compl. ¶¶ 122-126. Even substantive amendments to LARSO "will give rise to a new cause of action *only if those amendments alter the effect of the ordinance upon the plaintiffs*." *Action*, 509 F.3d at 1027 (emphasis added; internal quotation marks omitted).

Second, the only City actions that Plaintiffs allege occurred within the two year limitations period are: (1) the adoption of the special provision temporarily limiting the maximum annual rent increase to 4% (for LARSO buildings only) during the period from February 1 to June 30, 2024, *see* Compl. ¶ 60 (citing City ordinance adopting L.A.M.C. § 151.34); and (2) LAHD's announcement that the

[1] Facial challenges to a LARSO provision accrue when the provision was adopted. *See Action*, 509 F.3d at 1027. As-applied challenges accrue when they are ripe—that is, once there is a final determination of how the LARSO provision applies to Plaintiffs' specific properties. *See Norco Constr., Inc. v. King County*, 801 F.2d 1143, 1146 (9th Cir. 1986). Both types of Equal Protection claims accrued in 1979.

permissible annual rent increase (for LARSO buildings only) is 4% during the period from July 1, 2024 through June 30, 2025. *See* Compl. ¶ 64 (citing LAHD notice). Under no circumstances can either of these actions support a *timely* equal protection claim.

The adoption of the temporary 4% rent-increase cap was nothing more than *an extension* of the City's pre-existing pandemic-era restriction on landlords exercising the rights they otherwise had under LARSO to annual rent increases calculated pursuant to the statutory formula. *See* L.A.M.C. § 151.32 (original LARSO rent-increase limitation will expire one year after end of local COVID emergency declaration); LAHD, *COVID-19 Renter Protections* (SAJE RFJN Ex. T) (emergency COVID declaration terminated on February 1, 2023); L.A.M.C. § 151.34 (temporary 4% rent-increase cap begins on February 1, 2024). The two-year statute of limitations plainly bars any challenge by Plaintiffs to the original May 2020 decision to temporarily preclude altogether otherwise automatically permitted LARSO annual rent increases. But it also bars any challenge to the January 2024 extension of that restriction through the temporary 4% rent-increase cap *because* the Ninth Circuit has held that mere temporal extensions of existing rent limitations do *not* restart the statute of limitations. *See De Anza Properties X, Ltd. v. County of Santa Cruz*, 936 F.2d 1084, 1086 (9th Cir.1991).[2]

Similarly, LAHD's announcement of a 4% cap on annual LARSO rent increases during the period from July 1, 2024 through June 30, 2025—i.e., during the first annual period immediately following the June 30, 2024 end of the temporary 4% rent-increase cap, *see* L.A.M.C. § 151.34—was nothing more than

[2] Because *De Anza* establishes that an extension of the City's complete preclusion of otherwise automatically permissible LARSO annual rent increases would not have restarted the limitations period, *a fortiori* the extension of that restriction in a less restrictive form that permitted some automatic annual rent increase (albeit still less than LARSO otherwise would have permitted) could not possibly have restarted the limitations period for landlords to challenge the restriction.

the routine implementation of the LARSO annual rent increase mechanism in use since 1985. *See* L.A.M.C. §§ 151.06D, 151.07A.6; SAJE RFJN Ex. V (CPI data for October 2022 through September 2023[3]). The statute of limitations bars any challenge to this LAHD action as well *because* the Ninth Circuit has held that the mere implementation of a pre-existing set of statutory rules regarding permissible rent increases does not restart the statute of limitations. *See Colony Cove Props., LLC v. City of Carson*, 640 F.3d 948, 957 (9th Cir. 2011).

2. Plaintiffs' Physical Takings Claim Is Untimely

Plaintiffs also allege that the LARSO "4% Rent-Increase Cap[s]" constitute a physical taking because they appropriate from Plaintiffs the right "to exclude tenants who do not pay market-based rates". Compl. ¶¶ 111-112 (citing L.A.M.C. § 151.04A). But LARSO *always* has prohibited the owners of LARSO properties (including Plaintiffs' properties) from excluding tenants who do not pay more than the maximum regulated rental rate. *See* Ordinance 152,120 (1979) (Dkt. 20-2) at 12 of 38 (L.A.M.C. § 151.04). Thus, the two year statute of limitations applicable to Plaintiffs' physical takings claim also ran more than 40 years ago.[4] *See Action*, 509 F.3d at 1026-27; *De Anza*, 936 F.2d at 1086.

As with the Equal Protection claim, Plaintiffs futilely attempt to avoid the statute of limitations by tying their claim to the recent "4% Rent-Increase Cap[s]". But Plaintiffs do not allege that these caps appropriated their right "to exclude tenants who do not pay market-based rates" in some new way, *see* Compl. ¶¶ 111-112, so these caps could not restart the statute of limitations. *See Action*, 509 F.3d at

[3] LARSO provides that the average of this monthly CPI data for this period—rounded to the nearest whole number—is the permissible increase for the period July 1, 2024 through June 30, 2025. *See* L.A.M.C. §§ 151.06D, 151.07A.6. That figure is 4%.

[4] As there never was any question that this limitation on the right to exclude applied to Plaintiffs' properties, their physical takings claim accrued upon LARSO's passage in 1979. *See* footnote 1 above.

1027. And the statute of limitations in any event bars claims based on the temporary 4% rent-increase cap because it is merely an extension of the May 2020 pandemic-era restriction on rent increases otherwise permitted by LARSO. *See De Anza*, 936 F.2d at 1086. Likewise, the statute of limitations in any event bars claims based on LAHD's announcement of a 4% rent-increase cap for the current year because that is merely the routine implementation of the LARSO statutory rent increase mechanism that has been in place since 1985. *See Colony Cove*, 640 F.3d at 957.

3. Plaintiffs' Regulatory Taking Claim Is Not Ripe

Plaintiffs further allege that the LARSO "4% Rent-Increase Cap[s]" constitute a regulatory taking under *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 124 (1978). *See* Compl. ¶¶ 114-117. This claim is not ripe because Plaintiffs have not pled any attempt to obtain 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."). *See generally Pakdel v. City & County of San Francisco*, 594 U.S. 474, 479 (2021) ("[B]ecause a plaintiff who asserts a regulatory taking must prove that the government 'regulation has gone 'too far,' the court must first 'kno[w] how far the regulation goes.'") (quoting *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 348 (1986)).

B. All Of Plaintiffs' Challenges To The LARSO "Relocation-Fee Requirement" Are Either Untimely Or Not Ripe

Plaintiffs allege that LARSO's "Relocation-Fee Requirement" constitutes a physical taking 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* Compl. ¶¶ 133-136. Plaintiffs alternatively allege that LARSO's "Relocation-Fee Requirement" constitutes a regulatory taking under *Penn Central*. *See* Compl. ¶¶ 137-140. However, as Plaintiffs allege, the City adopted every aspect of the "Relocation-Fee Requirement" by 2017. *See* Compl. ¶ 139. Therefore, to the extent Plaintiffs' takings claims rely solely on the LARSO-imposed restrictions, the claims accrued no later than 2017 and they are untimely. *See Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 688-89 (9th Cir. 1993) (regulatory takings claim); *De Anza*, 936 F.2d at 1086 (physical takings claims).

It is possible that Plaintiffs also intend to rely on the economic impact of the "4% Rent-Increase Cap[s]" when making their takings claims with respect to the "Relocation-Fee Requirement", as they mention those caps when pleading those claims. *See* Compl. ¶¶ 75, 135 (physical takings claim); *id*. ¶ 138 (regulatory takings claim). If so, then these claims are not ripe because the impact of those caps is not yet determined due to Plaintiffs' failure to allege any attempt to obtain a "just and reasonable return" rent increase. *See Amberhill*, 814 F.2d at 1341; *Little Woods*, 736 F. Supp. 3d at 765-68.

C. Plaintiffs' Regulatory Takings Claim With Respect To The "FMR Eviction Restriction" Is Not Ripe

Plaintiffs' claim that the "FMR Eviction Restriction"—which was adopted by the City within two-years prior to the filing of this suit—likewise constitutes both a physical and regulatory taking. *See* Compl. ¶¶ 89-92, 98-101. Plaintiffs' regulatory taking claim is not ripe, however, because (1) the "severe" economic impact alleged includes that "the FMR Eviction Restriction has 'deprived' Plaintiffs of their ability

to 'receiv[e] rental income'", Compl. ¶ 99, and (2) Plaintiffs to date have failed to apply for a "just and reasonable return" rent increase in light of this lost income, thereby precluding a determination of the precise economic impact of the "FMR Eviction Restriction". *See Amberhill*, 814 F.2d at 1341; *Little Woods*, 736 F. Supp. 3d at 765-68.

III. 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[s]". 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 Plaintiffs voluntarily rented their units to tenants, and 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[s]" is properly dismissed under *Yee*. *Accord Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 322-23 (2002) ("When 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), 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.

FCC's reasoning applies here because Plaintiffs invited their tenants to lease their units, and 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). Therefore, Plaintiffs' physical takings claim based on the "FMR Eviction Restriction" is properly dismissed under *FCC*.

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* the Ninth Circuit 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. Following the reasoning of *Yee* and *FCC*, the Ninth Circuit rejected the claim. *Id*. at 1292-94. 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 Plaintiffs' physical takings claims, the Complaint repeatedly invokes *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 a Ninth Circuit panel decided after expressly considering *Cedar Point*. *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

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. *Cedar Point* therefore is fully consistent with *Yee*, *FCC*, and *Ballinger*.

Plaintiffs attempt to avoid this conclusion by alleging in their Complaint that (1) *Cedar Point* only recognized that there is no physical taking by laws regulating the right to exclude held by businesses that are "generally open to the public" (like the shopping mall in *PruneYard*), 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* 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). 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

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 those engaging in the rental housing business may not exclude tenants in violation of a rent and eviction control system that is validly adopted pursuant to the police power, and does not constitute a regulatory taking.

The Supreme Court first recognized this principle more than 100 years ago in *Block v. Hirsh*, 256 U.S. 135 (1921). 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*. 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*)*.[5] *Block*, 256 U.S. at 156; *see id*. at 155-58; *Cedar Point*, 594 U.S. at 148-49 (discussing regulatory takings).

[5] 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 *[fn. continues on next page]*

In reaching this conclusion, Justice Holmes drew on two 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.

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. *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

---

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.").

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 preference included restrictions on landlords' ability to dispossess their tenants. For example, a landlord could not evict a tenant for non-payment of rent unless (1) there was a written lease provision making non-payment of rent a ground for terminating the tenancy, and (2) the landlord either strictly complied with the exacting common law requirements regarding the making of a demand for rent, or proceeded instead under a statute dispensing with those 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 only for six months afterwards if

evicted pursuant to the statute).[6] Similar legal rules existed in early America.[7]

In short, more than one hundred years ago, the Supreme Court held in *Block* that—consistent with even more ancient doctrines—those engaging in the rental housing business may not exclude tenants in violation of a rent and eviction control system that is validly adopted pursuant to the police power, and does not 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*.

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). Only a very extreme diminution in value will potentially support a regulatory takings claim. *See id*. (Ninth Circuit "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 finding a taking when less than 50% diminution in value).

[6] *See, e.g.*, 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 (Ex. A to Soloff Decl.); William Woodfall, Law of Landlord and Tenant: Including Leases, Assignments, Tenants in Fee (1802) at 409-13 (Ex. B to Soloff Decl.).

[7] *See, e.g.*, John N. Taylor, Treatise on the American Law of Landlord and Tenant (1844) at 57-58, 338-42 (Ex. C to Soloff Decl.).

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 even alleged a percentage diminution in value. Plaintiffs therefore have failed to allege the requisite economic impact. *See id*. at 451-53. This alone requires dismissal of their regulatory takings claims. *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"); *Williams v. Alameda Cnty.*, No. 3:22-CV-01274-LB, 2024 WL 4050393, at *4-5 (N.D. Cal. Sept. 3, 2024) (dismissing claim where plaintiffs did "not allege[] any before-and-after values").

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*, 888 F.3d at 452. No such interference is 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*, 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 v. City of Calistoga*, 800 F.3d 1083, 1090-91 (9th Cir. 2015) (following *Concrete Pipe*).

Here, Plaintiffs acquired their properties after the 1979 adoption of LARSO, and the 1982 removal of any sunset provision. *See* 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.

Plaintiffs nevertheless allege that the "4% Rent-Increase Cap[s]" interfere with their supposedly reasonable expectation that LARSO annual rent increases would always keep pace with the general inflation rate. *See* Compl. ¶ 116. But Plaintiffs allege no supporting facts, and any such expectation 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.[8] Plaintiffs also allege 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 agreed rent. *See* Compl. ¶ 116. But Plaintiffs again allege no supporting facts, and any such expectation is particularly *unreasonable* given that (1) by 1982, several other of the original grounds for eviction in LARSO already had been *narrowed*, and (2) the Rent Adjustment Commission always has had the express power to *reduce* rents to advance LARSO's purposes.[9] Plaintiffs further allege that the "Relocation-Fee

[8] *See* Ordinance No. 152,120 (1979 adoption of LARSO) (Dkt. 20-2) at 14-15 of 38; Ordinance No. 156,597 (1982 adoption of LARSO without sunset date) (SAJE RFJN Ex. P) at 12; Consumer Price Index (SAJE RFJN Ex. V) (data for March 1979 through April 1982).

[9] *Compare* Ordinance No. 152,120 (1979 adoption of LARSO) (Dkt. 20-2) at 31-32 of 38 (Sections 151.09A.8 & .9), *with* Ordinance No. 156,597 (1982 adoption of

Requirement" interferes with their supposedly reasonable expectation that they would not have to pay such fees. *See* Compl. ¶ 139. But Plaintiffs yet again allege no supporting facts, and 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,[10] 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*.[11] *See 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 expections 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

---

LARSO without sunset date) at 24-25 (same) (SAJE RFJN Ex. P); *see* L.A.M.C. § 151.08A (authorizing RAC to reduce rents).

[10] *See id.*; Ordinance No. 160,791 (1986 LARSO amendments) at 7-11 (revising L.A.M.C. § 151.09G) (SAJE RFJN Ex. Q).

[11] *See, e.g.*, Ordinance No. 155,397 (1981 amendments to L.A.M.C. §§ 47.06 & 47.07) (SAJE RFJN Ex. R) at 1-7 (monetary relocation payments required when tenants to be evicted for condominium conversion or demolition of building); *compare* Ordinance No. 152,120 (1979 adoption of LARSO) (Dkt. 20-2) at 32-33 of 38 (Sections 151.09A.8 & C), *with* Ordinance No. 156,597 (1982 adoption of LARSO without sunset date) (SAJE RFJN Ex. P) at 24-26 (Sections 151.09A.8 & C) (narrowing family move-in evictions and imposing owner declaration requirement).

too supports dismissal because (1) the Ninth Circuit 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 III.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[s]" violate the Equal Protection Clause because they apply only to rental units built prior to LARSO's adoption. *See* Compl. ¶ 122. This claim likewise is properly dismissed.

First, Plaintiffs' equal protection claim fails *ab initio* because they do not allege different treatment of 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) (affirming summary judgment on this basis). Owners of units built before LARSO's adoption are not similarly situated with owners of units built afterwards *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).[12] As the Ninth Circuit held in *Thornton v. City of St. Helens*, 425 F.3d 1158 (9th Cir. 2005), a city does not violate the Equal Protection Clause by extending regulation only to those whom it has the power to regulate under state law. *See id*. at 1167-68.

[12] 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.").

Second, 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; s*ee 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) (plaintiff landlords are not members of a suspect class). Plaintiffs' contrary allegation—that the "4% Rent-Increase Cap[s]" implicate the Takings Clause, *see* Compl. ¶ 126—is a non-starter because those caps do not effect any takings. *See* Parts III.A-B above.

In sum, Plaintiffs' equal protection claim should be dismissed.

D. <u>Plaintiffs Have Not Stated A Valid First Amendment Claim</u>

1. Plaintiffs Fail To Allege That The "Renter Protections Notice Requirement" Unconstitutionally Compels Them To Host The City's Message To Tenants

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." 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[13]). *See* Compl. ¶¶ 10, 73, 147; SAJE RFJN Ex. U (current referenced mandatory form); L.A.M.C. § 151.05I.[14]

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) (requirement that employer post standard Labor

---

[13] 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** or call **(866) 557-7368 (RENT).**

SAJE RFJN Ex. U (emphasis in original); *accord* Compl. ¶ 73.

[14] The Complaint mistakenly cites L.A.M.C. § 165.05, which applies to non-LARSO properties only. *See* L.A.M.C. § 165.04(A).

Department notices informing employees of statutory rights under NLRA does not violate First Amendment). Plaintiffs' First Amendment claim is properly dismissed.

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

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.

(a) The Notice Requirement Passes The Zauderer Test

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. S*ee* Compl. ¶ 147. 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* C*ompassCare*, 125 F.4th at 67; *SFAA*, 881 F.3d at 1178.

(b) The Notice Requirement Also Passes Central Hudson

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. SAJE RFJN Ex. J at 16 (Memorandum from City Admin. Off. to L.A. City Council); *see* Memorandum from LAHD to L.A. Mayor (Dkt. 20-10) at 18-19 of 51; Ordinance 180,769 (Dkt. 20-9) at 2 of 5. 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 requirements); *see, e.g.*, 27 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) (Exs. D-H to Soloff Decl.).

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* 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). Accordingly, Plaintiffs' First Amendment claim should be dismissed.

IV. CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiffs' Complaint.

DATED: May 14, 2025 MUNGER, TOLLES & OLSON LLP

By: */s/ Michael E. Soloff*
Michael E. Soloff
Attorneys for Intervener SAJE

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Intervener SAJE, certifies that this brief is 25 pages, which complies with the page limits (25 pages) set by Paragraph 9.b of the Court's Standing Order dated January 7, 2025 (ECF No. 17), and thereby also complies with Local Rule 11-6.1.

DATED: May 14, 2025

MUNGER, TOLLES & OLSON LLP

By: */s/ Michael E. Soloff*
Michael E. Soloff
Attorneys for Intervener SAJE