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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 PROPOSED INTERVENER SAJE TO INTERVENE AS A DEFENDANT; AND

[2] MEMORANDUM OF POINTS AND AUTHORITIES

[Declarations of Cynthia Strathmann, Dr. Kyle Nelson, and Michael Soloff filed concurrently]

Date: April 14, 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 April 14, 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, Proposed Intervener SAJE will move, and hereby does move the Court for an order permitting it to intervene as a defendant in this action.

The grounds for this motion, which are more fully set forth in the Memorandum of Points and Authorities filed herewith, are as follows.

Intervention as of right is warranted under Rule 24(a)(2) of the Federal Rules of Civil Procedure because (1) this motion is timely, (2) SAJE and the tenants SAJE represents claim a significantly protectable interest in this action, (3) the disposition of this action will as a practical matter impair or impede the ability of SAJE and the tenants SAJE represents to protect that interest; and (4) the interest of SAJE and the tenants SAJE represents may be inadequately represented by the other parties.

Permissive intervention also is warranted under Rule 24(b)(1)(B) of the Federal Rules of Civil Procedure because (1) the claims or defenses of SAJE and the tenants SAJE represents share a common question or law or fact with this action, (2) the court has an independent basis for jurisdiction, (3) this motion is timely, and (4) the Court should exercise its discretion in favor of intervention.

This Motion is based upon this Notice of Motion; the supporting Memorandum of Points and Authorities; the concurrently filed declarations of SAJE's Executive Director Cynthia Strathmann, SAJE's Senior Policy and Research Analyst Dr. Kyle Nelson, and SAJE's outside counsel in this matter Michael E. Soloff; 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 conferences of counsel pursuant to L.R. 7-3 that took place on February 26, 2025 with Plaintiffs' counsel, and on February 27, 2025 with Defendant's counsel. Soloff Decl. at ¶¶ 4-5. Plaintiffs oppose this motion. *Id.* ¶ 6. Defendant does not oppose this motion. *Id.* ¶ 5.

DATED: March 17, 2025 MUNGER, TOLLES & OLSON LLP

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

For the past 45 years, the Los Angeles Rent Stabilization Ordinance ("LARSO") has provided housing security and stability to millions of renters in the City of Los Angeles ("City"). LARSO prevents landlords from taking advantage of the City's acute housing shortage to impose exorbitant rent increases on their existing tenants. While this protection is important for all tenants, it is particularly important for those who already struggle to pay both their rent and the costs of purchasing life's other basic necessities. Absent LARSO, such tenants at best would have even less to spend on food, medicine, and childcare. At worst they would be displaced from their current homes (and in some cases end up homeless).

This case is a Section 1983 action filed by former United States Solicitor General Paul D. Clement on behalf of two small landlords ("Plaintiffs"). Plaintiffs allege that they are entitled to damages from the City because various provisions of LARSO purportedly violate the Takings Clause, the Equal Protection Clause and/or the First Amendment.

This case is just the latest in a series of recent attempts to overturn longstanding precedents establishing the constitutional validity of rent control. *See, e.g.*, Brief for Amicus Curiae California Business Roundtable in Support of Petitioners, *Cmty. Hous. Improvement Program v. City of New York*, No. 22-1095, 2023 WL 4002449 (U.S. 2023) (brief authored by Mr. Clement urging the Supreme Court to review and overturn a 2023 Second Circuit decision upholding New York's rent control law, reasoning in part that review is important because similar laws exist in California, including LARSO). To date these attempts have failed in the lower courts, and the Supreme Court has declined to grant review. *See Building and Realty Institute of Westchester and Putnam Counties, Inc. v. New York*, 2024 WL 1061142 (2d Cir. 2024), *cert. denied*, 145 S. Ct. 563 (2024); *74 Pinehurst LLC v. New York*, 59 F.4th 557 (2d Cir. 2023), *cert. denied*, 218 L.Ed.2d 66 (2024); *Cmty.*

Hous. Improvement Program v. City of New York, 59 F.4th 540 (2d Cir. 2023), *cert. denied*, 144 S. Ct. 264 (2023). But Justice Gorsuch would have granted review in the most recent of these cases. And Justice Thomas issued a statement in another that he favors granting review in a future case where it is clearer how the regulations at issue prevent the eviction of "actual tenants for particular reasons". Plaintiffs' action was filed two months after the most recent denial of review in these cases.

By this motion, SAJE (Strategic Actions for a Just Economy) seeks to intervene in order to defend LARSO's constitutionality. SAJE is a housing justice and tenants' rights organization that works in the South Los Angeles neighborhoods where Plaintiffs' rental properties are located. SAJE has hundreds of informal members who are tenants living in LARSO units, and serves thousands more such tenants. These include low- and very low-income multi-generational families and single seniors who are most at risk of eviction and even homelessness if success by Plaintiffs leads as a practical matter to the dismantling of the LARSO provisions they challenge. Indeed, as one recent study shows, this could literally be a matter of life or death for some of these extremely vulnerable tenants.[1]

Given that this case so fundamentally threatens the rights, after-rent incomes, homes, and lives of LARSO tenants, a representative of those tenants is entitled to and properly should participate fully in this action. SAJE can more than adequately represent those tenants' interests, and it successfully intervened in two prior cases when landlords challenged the constitutionality of the City's pandemic-era rent freeze and emergency eviction protections. In both cases, Judge Dean Pregerson held that SAJE had a right to intervene to defend those provisions, and alternatively

[1] *See* Nick Graetz et al., "*The impacts of rent burden and eviction on mortality in the United States, 2000-2019*," 340 Soc. Sci. Med. 1 (2024), https://www.sciencedirect.com/science/article/pii/S0277953623007554?via%3Dihub; *see id*. at 6 ("In a study matching millions of housing court records to decennial census, survey, and administrative data, we found that rent burden and eviction events were significantly associated with higher mortality risk.").

granted SAJE permission to intervene. For all the reasons detailed below, SAJE respectfully requests that the Court enter a similar order in this action.

II. BACKGROUND

A. The Los Angeles Rent Stabilization Ordinance

1. LARSO Seeks To Keep Tenants In Their Existing Homes While Assuring Landlords A Just and Reasonable Return

LARSO was first adopted in 1979 as a response to the crisis for renters created by the City's acute housing shortage (which continues to this day). *See* L.A.M.C. § 151.01. As explained in LARSO's Declaration of Purpose, the City Council found that—absent regulation—tenants would face "widespread exorbitant rent increases." *Id*. Such increases, in turn, would have dire consequences for substantial numbers of tenants:

> Tenants displaced as a result of their inability to pay increased rents must relocate but as a result of such housing shortage are unable to find decent, safe and sanitary housing at affordable rent levels. Aware of the difficulty in finding decent housing, some tenants attempt to pay requested rent increases, but as a consequence must expend less on other necessities of life.

Id. Either of these outcomes would "especially creat[e] hardships on senior citizens, persons on fixed incomes and low and moderate income households." *Id*. The City Council therefore concluded that "it is necessary and reasonable to regulate rents so as to safeguard tenants from excessive rent increases, while at the same time providing landlords with just and reasonable returns from their rental units." *Id*.

LARSO generally applies only to those rental units that were built prior to its adoption. *See* L.A.M.C. § 151.02 (definition of "Rental Unit" at para. "6."). At the time of its adoption, the City Council wanted to minimize the risk that LARSO would discourage the construction of new units that could help to mitigate the housing shortage. In addition, since 1995 State law generally precludes the City

from extending LARSO to any building constructed subsequent to its adoption. *See* Cal. Civ. Code § 1954.52(a)(2).

2. LARSO's Provisions And Their Pre-Pandemic Impact

(a) LARSO's Pre-Pandemic Limits On Rent Increases Both Protected Existing Tenants And Allowed Landlords To Earn Far More Than A Just And Reasonable Return

Because LARSO seeks to safeguard tenants from excessive rent *increases*, and to keep them in their *existing* homes, it generally places *no* limit on the initial rent landlords may charge to a new tenant upon move-in.[2] LARSO instead defines and limits *when* and *by how much* landlords may raise existing tenants' rents.

Annual Rent Increases. LARSO permits landlords to raise the rent to existing tenants once every year. *See* L.A.M.C. § 151.06D. Prior to 1985, the amount of this permissible annual rent increase was capped at 7%.[3] This cap figure was significantly *less* than the prevailing general rate of inflation at the time LARSO was first adopted in 1979, at the time LARSO was extended for an additional year in 1980 and then again in 1981, and at the time LARSO was made "permanent" (i.e., not subject to a specified sunset date) in 1982.[4]

In 1985, at a time when general inflation had fallen significantly below 7%, LARSO was amended to provide a new formula for calculating the maximum allowable annual rent increase. In highly simplified terms, landlords generally are permitted to raise rents annually by the percentage change in CPI during the prior year—rounded to the nearest whole number—as calculated by the Los Angeles

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[2] In addition, since 1995 State law generally precludes the City from controlling the initial rental rate charged by landlords to new tenants. *See* Cal. Civ. Code § 1954.53(a).

[3] *See, e.g.*, L.A. Ord. No. 152,120 (1979 adoption of LARSO) at 14-15; L.A. Ord. No. 156,597 (1982 adoption of LARSO without specified sunset date) at 12.

[4] *See* Declaration of Michael Soloff ("Soloff Decl.") ¶ 7 & Ex. A (Consumer Price Index data for March 1979 through April 1982).

Housing Department ("LAHD"). However, landlords *always* may raise rents by at least 3% each year, even when the prior year change in CPI was *less* than 3% (as has often been the case). And annual rent increases are capped at 8% even if the prior year change in CPI is higher (which has never occurred since this formula was adopted). *See* L.A.M.C. §§ 151.06D, 151.07A.6.

This LARSO formula has allowed landlords to raise rents by *more* than the prior year increase in CPI during 27 out of the 35 years from its adoption through 2019 (the last pre-pandemic year).[5] Moreover, the particular CPI measure used in the LARSO formula *includes* the cost of obtaining housing (both ownership and rental housing)—a cost wholly unrelated to a landlord's operational costs. As a result, the high cost of obtaining housing due to the City's housing shortage has led to increases in that particular CPI measure, which in turn has led to higher permissible rent increases and so higher housing costs. Indeed, a September 2024 Economic Roundtable report commissioned by the City found that the cumulative increase in the particular CPI measure used in the LARSO rent increase formula was 62.3% from 2000 to 2020, while the cumulative increase in CPI *excluding* the cost of obtaining housing was only 41.6% over that same period.[6]

Additional Annual Increases For Landlords Providing Gas And/Or Electricity. LARSO also allows landlords to increase rents each year by an additional 1% if the landlords pay for gas, an additional 1% if the landlords pay for electricity, and an additional 2% if the landlords pay for both. *See* L.A.M.C § 151.06D. In both 2009 and 2024, studies by Economic Roundtable reported that

[5] *See* Soloff Decl. ¶¶ 7-9 & Exs. A-C.

[6] *See* Economic Roundtable, *Equitable Rent: Rent Stabilization Standards in the City of Los Angeles*, 136 (2024) ("2024 ER Report"), https://clkrep.lacity.org/onlinedocs/2023/23-1134_rpt_hci_11-1-24.pdf (attachment to 11/1/24 Report by Los Angeles Housing Department to City Council).

the size of these utility rent increases are disproportionately high relative to the actual costs incurred by landlords who provide gas and/or electricity.[7]

Additional Increases In Order To Recover Up To Half The Cost Of Capital Improvements. LARSO and its implementing regulations further permit landlords to apply for additional rent increases in connection with capital improvements. *See* L.A.M.C. § 151.07A.1.a. Eligible capital improvements include "the addition or replacement of the following improvements . . ., providing such new improvement has a useful life of five (5) years or more: roofing, carpeting, draperies, stuccoing the outside of a building, air conditioning, security gates, . . . fencing, garbage disposal, washing machine or clothes dryer, dishwasher, . . . the complete exterior painting of a building, and other similar improvements . . . ." L.A.M.C. §§ 151.02 (definition of "Capital Improvement"). Landlords making such improvements can apply for temporary rent increases to recover over five years up to 50% of the costs incurred, subject to a maximum increase of $55 per month per unit. *See* L.A. Rent Adjustment Commission ("RAC") Regs. 210 *et seq*.

Additional Increases As Needed To Assure A Landlord Is Earning A Just And Reasonable Return. LARSO's stated purpose includes permitting landlords to earn "just and reasonable returns". Landlords who believe they are not earning such a return can apply for an additional upward rent adjustment. *See* L.A.M.C. § 151.07B. For example, pursuant to LARSO's implementing regulations, such an application should be granted if the landlord shows it is earning less net operating income than the property earned just prior to LARSO's adoption (adjusted upward by the cumulative percentage of all prior inflation as calculated by the RAC). An application also should be granted if the landlord shows that in the current year it

[7] *See* 2024 ER Report at 154; Economic Roundtable, *Economic Study of the Rent Stabilization Ordinance and the Los Angeles Housing Market*, 259 (2009), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2772233.

has suffered a net operating loss. Service on debt put in place after LARSO's adoption is not considered in the calculation. *See* L.A. RAC Regs. § 240 *et seq*.

Reset Of Rent To Market When The Existing Tenant Vacates The Unit. Finally, except in unusual circumstances, when the existing tenant moves out the landlord can set the *initial* rent charged to the new incoming tenant at whatever level the market will bear at that time ("vacancy decontrol"). *See* L.A.M.C. § 151.06C.

* * *

Prior to the pandemic, the foregoing rent-increase regulations provided significant relief to existing tenants while also allowing landlords to earn far more than just and reasonable returns on their investments. For example, the 2024 Economic Roundtable study found that overall, the average rent for LARSO units is 21% lower than for uncontrolled units containing the same number of rooms, and 17% lower than for uncontrolled units containing the same number of bedrooms.[8] However, because of vacancy decontrol, the average rent charged long-term LARSO tenants is significantly lower than the average rent charged tenants who have only more recently moved into their homes.[9]

At the same time, landlords subject to LARSO continued to benefit from the City's housing shortage through both higher rents and rapid property appreciation. For example, the 2024 Economic Roundtable study found that the average sales price per unit of LARSO buildings containing five or more units *quadrupled* from 2000 through 2019. LARSO properties of three or four units on average appreciated at an even greater rate.[10]

[8] *See* 2024 ER Report at 42-44.

[9] *See id*. at 88 (Table 7).

[10] *See id*. at 121-22.

(b) LARSO's Pre-Pandemic Eviction Controls Provided Existing Tenants With Necessary Protections Against Exorbitant Rent Increases

Eviction controls are necessary to achieve LARSO's stated purpose of allowing tenants to avoid exorbitant rent increases and to remain secure in their homes. LARSO therefore precludes landlords from evicting tenants for failing to pay more than the LARSO regulated rents. *See* L.A.M.C. §§ 151.04A, 151.11A. LARSO also precludes landlords from evicting tenants simply because a fixed term lease has expired, or upon mere notice in the case of a month-to-month or similar tenancy. *See* L.A.M.C. §§ 151.09A.2, A.5. Absent these latter restrictions, tenants routinely would have to absorb large rent increases in order to induce their landlords to allow them to remain in their existing homes, or in order to initially rent a new home at the rapidly rising market rate. Tenants who could not afford to do either would end up homeless.

LARSO also imposes guardrails around certain permissible grounds for eviction that do not involve any fault on the part of the tenant. For example, since at least 1986 landlords have had an obligation to pay relocation assistance when they seek to evict tenants on the basis of the landlord's asserted good faith intention to move a family member into their units (with a higher payment due to elderly tenants, disabled tenants, and tenants with minor children in the household).[11] These payments are intended to help defray the costs displaced tenants must incur to secure replacement housing. Over the ensuing decades, the size of these payments have increased, and additional anti-displacement protections have been provided to long-term elderly and disabled tenants. *See* L.A.M.C. §§ 151.09D, 151.30E. Other

[11] *See* L.A. Ord. 160,791. Landlords already had analogous monetary relocation assistance obligations in the event they displaced tenants in order to convert their rental units to condominiums, or in order to demolish their buildings. *See* L.A.M.C. §§ 47.06, 47.07; L.A. Ord. 155,397 (1981 amendment to Sections 47.06 & 47.07).

provisions have been adopted to protect LARSO's rent regulations by further minimizing the potential for landlords to use the family move-in ground as a tool to target for eviction those long-term tenants who are paying the lowest rents. *See, e.g.*, L.A.M.C. §§ 151.30B-C, D.2, F.

3. The City Adopted Temporary Additional Protections For LARSO Tenants During The Pandemic Emergency

During the pandemic, the City temporarily suspended certain LARSO provisions in order to better protect tenants and public health. During this period, landlords could not increase the rent charged to existing LARSO tenants (unless they demonstrated that it was necessary to obtain a just and reasonable return), could not evict LARSO tenants for COVID-related failures to pay their rent, and could not evict LARSO tenants on most "no fault" grounds. *See* L.A.M.C. §§ 49.99, 151.32.

Landlords filed two federal actions asserting that these temporary measures violated the Contracts Clause, the Due Process Clause, and/or the Takings Clause. SAJE successfully moved to intervene as a defendant in both of these actions and—together with the City and other interveners—has defeated all of these constitutional challenges to date. *See, e.g.*, *GHP Management Corp. v. City of Los Angeles*, 2024 WL 2795190 (9th Cir. 2024); *Apartment Ass'n of Los Angeles Cnty., Inc. v. City of Los Angeles*, 10 F.4th 905 (9th Cir. 2021), *cert. denied,* 142 S. Ct. 1699 (2022).

These temporary provisions began to sunset in early 2023, and then fully expired as of February 1, 2024 (one year after the end of the City's COVID emergency declaration). *See* L.A.M.C. §§ 49.99, 151.32. The 2024 Economic Roundtable study found that, notwithstanding these temporary provisions, the average sales price per unit of LARSO buildings containing five or more units *increased by another 15%* during the three years from 2020 through 2022 (and LARSO properties of three or four units on average appreciated at a greater rate).[12]

[12] *See* 2024 ER Report at 122.

4. The City Adopted One Temporary And One Permanent Additional Protection For LARSO Tenants Post-Pandemic

As the temporary pandemic measures came to an end, the City made two modifications to LARSO that are at issue in this action.

First, the City adopted a temporary measure that continued the suspension of LARSO's normal annual rent-increase mechanisms, and instead set the maximum annual increase landlords could impose during the period from February 1, 2024 (the end of the pandemic-era rent freeze) to June 30, 2024 at 4% (plus an additional 1%-2% if the landlord pays for gas and/or electricity). *See* L.A.M.C. § 151.34.

Under the normal LARSO formula, the rent increase limit set each year actually applies during the period from July 1 of that year until June 30 of the following year. It is calculated, however, by taking the average change in CPI over the twelve month period ending on September 30 of the prior year. *See* L.A.M.C. §§ 151.06D, 151.07A.6. This meant that, once the pandemic-era rent freeze ended, landlords would have been free under LARSO to raise the rent on virtually all LARSO tenants by at least 7% (i.e., by the average change in CPI for the period from October 1, 2021 through September 30, 2022) at any time from February 1 to June 30, 2024. But, just as LARSO originally had capped annual rent increases below contemporaneous general inflation as measured by CPI, *see supra* at p. 4, the City Council decided to cap the annual increase at only 4% during the February through June 2024 period. When doing so, the City Council expressly contemplated the realities (discussed above) that (1) the LARSO formula had routinely allowed landlords to impose annual rent increases *above* CPI during the prior 30 years, (2) the additional 1%-2% annual increases that LARSO allows landlords to impose if they pay for gas and/or electricity historically had *exceeded* actual increases in those costs, (3) tenants were particularly vulnerable as of February 2024, having absorbed the twin blows of the pandemic and high inflation, and (4) rising rents are a key

contributor to the homelessness crisis.[13] The City Council also knew that the change in CPI for the more recent historical period from October 1, 2022 through September 30, 2023—which under LARSO would dictate the maximum annual rent increase for the period July 1, 2024 through June 30, 2025—was just 4%.[14]

The temporary 4% rent-increase cap expired by its own terms on June 30, 2024, leaving LARSO's longstanding rent increase provisions to operate after that date just as they did before the pandemic. *See* L.A.M.C. § 151.34. Therefore, post-pandemic, all LARSO landlords (1) had the opportunity to raise rents by 4% (plus an additional 1%-2% if they pay for gas and/or electricity) during February through June of 2024, and (2) have had and/or will have the opportunity to raise rents *again* by the same percentage by no later than June 30, 2025.

Second, post-pandemic the City Council added a new permanent provision that precludes landlords from evicting tenants for nonpayment of rent when the amount owed does not exceed one month of the then current "fair market rent" for the equivalent sized unit in the Los Angeles metro area as determined by HUD annually.[15] *See* L.A.M.C. § 151.09A.1. Precluding the draconian sanction of eviction when the amount of rent owed is so small serves LARSO's stated purpose of avoiding tenant displacement, and the associated large increases in rent required to initially rent a new home at whatever the market will bear (or the associated homelessness for those unable to afford such large rent increases), while also fully

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[13] *See* 10/25/23 Motion of Councilmember Hugo Soto-Martinez, https://clkrep.lacity.org/onlinedocs/2020/20-0407-S1_misc_10-25-23.pdf (original motion that ultimately led to adoption of temporary 4% rent cap).

[14] *See* 11/1/23 Housing and Homelessness Committee Report, https://clkrep.lacity.org/onlinedocs/2020/20-0407-S1_rpt_HH_11-1-23.pdf.

[15] According to HUD, "[t]he FMR is the 40th percentile of gross rents for typical, non-substandard rental units occupied by recent movers in a local housing market." *See* HUD, *Fair Market Rents*, https://www.huduser.gov/periodicals/ushmc/winter98/summary-2.html#end3.

preserving landlords' right to earn just and reasonable returns. Indeed, landlords remain free to use other legal means to collect this small amount of overdue rent, such as bringing small claims cases against any delinquent tenants.

B. Plaintiffs' Claims In The Instant Lawsuit

Plaintiffs seek damages for three types of alleged constitutional violations. *First*, Plaintiffs allege that the City violated the Equal Protection Clause by applying *solely* to buildings constructed prior to LARSO's adoption (and *not* to subsequently constructed buildings) the temporary 4% cap on annual rent increases during the February through June of 2024 timeframe, *and* LARSO's normal 4% cap (calculated by the formula in place since 1985) during the period from July 2024 through June 2025. *See* Complaint (ECF 1) ¶¶ 7, 119-29.

Second, Plaintiffs allege that the City committed uncompensated *per se* physical takings in violation of the Takings Clause (1) by precluding Plaintiffs from evicting tenants who are unwilling to pay market rent, (2) by precluding Plaintiffs from evicting tenants who owe no more than one month of HUD's "fair market rent" for an equivalent unit, and (3) by imposing relocation assistance and other requirements that Plaintiffs must satisfy before evicting tenants based on Plaintiffs' desire to move family members into the units. Plaintiffs alternatively allege that by each of these same actions, the City committed uncompensated regulatory takings in violation of the Takings Clause. *See id*. ¶¶ 77-118, 130-41.

Third, Plaintiffs allege that the City violated the First Amendment by requiring them to post a form notice prescribed by LAHD advising tenants of the challenged rent limitations and eviction restrictions. *See id*. ¶¶ 142-50.

C. Proposed Intervener SAJE

Founded in 1996, SAJE is a 501(c)(3) non-profit organization that strives to bring economic justice to, and build community power in, South Los Angeles by advocating for tenants' rights, healthy housing, and equitable development. In 2024, SAJE had approximately 800 informal members, and in total served some 20,000

tenants. Most are low-income and very low-income members of multi-generational families or seniors living alone. Most of SAJE's staff, hundreds of its informal members, and thousands of other tenants it serves live in units subject to LARSO.[16]

SAJE also is a steering committee member of the Keep LA Housed Coalition ("KLAH"), a coalition of tenants, tenant rights advocates, public interest lawyers, and community based organizations advocating to strengthen tenant protections throughout Los Angeles County to keep people housed and prevent homelessness. KLAH, with active support from SAJE, played a central role in advocating for a prohibition on evictions when past due rent fell below a minimum threshold, and for relief from the 7%-9% rent increases that LARSO otherwise would have permitted from February 1 to June 30, 2024. Although KLAH's original proposals would have provided greater protections to tenants than the "fair market rent" threshold and the temporary 4% cap ultimately adopted by the City, KLAH and SAJE's advocacy was central to the adoption of those provisions. KLAH, again with active support from SAJE, currently is advocating for tenant-protective changes to the LARSO annual rent increase formula, and for elimination of the additional 1%-2% increase for landlords who pay for gas and/or electricity.[17]

III. ARGUMENT

A. SAJE Is Entitled To Intervene As Of Right

SAJE is entitled to intervene as of right in this action if it establishes each of the following four elements: (1) the motion is timely; (2) SAJE and the LARSO tenants SAJE represents claim a "significantly protectable interest" in the action; (3) SAJE and the LARSO tenants SAJE represents are so situated that the disposition of the action may as a practical matter impair or impede their ability to protect that interest; and (4) the interest of SAJE and the LARSO tenants SAJE represents may

[16] *See* Declaration of Cynthia Strathmann ("Strathmann Decl.") ¶¶ 2-6.

[17] *See id.* ¶¶ 8-11.

be inadequately represented by the other parties. *See* Fed. R. Civ. P. 24(a)(2); *Allied Concrete and Supply Co. v. Baker*, 904 F.3d 1053, 1067-68 (9th Cir. 2018); *Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011) (en banc).

When evaluating whether SAJE has established each of these elements, the Court must take as true at this pre-discovery stage all well-pleaded non-conclusory allegations in the motion to intervene and the supporting declarations. *See Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818-19 (9th Cir. 2001). The Court also must "follow 'practical and equitable considerations' and construe the Rule 'broadly in favor of [the] proposed intervenor[].'" *Wilderness Soc'y*, 630 F.3d at 1179 (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002)). This is "because '[a] liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts.'" *Id.*, (quoting *City of Los Angeles*, 288 F.3d at 397-98).

Applying these standards, SAJE is entitled to intervention as of right.

1. The Motion To Intervene Is Timely

Plaintiffs filed this action on December 19, 2024, less than one week before Christmas and less than three weeks before the beginning of the Los Angeles wildfires. Even prior to the wildfires, Plaintiffs agreed to extend the deadline for the City to respond by 30 days to February 12, 2025. After the City advised that it would file a motion to dismiss on that date, Plaintiffs and the City agreed to a hearing date of May 19, 2025, and to a briefing schedule giving each party 30 days to prepare the Opposition and the Reply, respectively. The City then filed its motion to dismiss on February 12, and this Court accepted the parties' stipulated briefing schedule on February 21, 2025. Plaintiffs filed their Opposition on March 14. No other activity has occurred in this action to date. *See* ECF Nos. 1, 19, 21-23.

On February 23, less than two weeks after the City filed its motion to dismiss, SAJE advised the parties of its intention to file a motion to intervene as a defendant,

and requested Rule 7-3 meetings. At those meetings (held on February 26 and 27), SAJE advised that—upon being granted leave to intervene—it too would file a motion to dismiss to be heard on May 19, 2025, and that it would provide Plaintiffs with that motion at least 30 days before the due date for their Opposition. On March 5, Plaintiffs advised that they oppose intervention by SAJE (the City does not).[18]

SAJE then filed this motion on March 17 for hearing on April 14, 2025. April 14 is one week prior to the deadline for SAJE to file its motion to dismiss so as to have it heard on May 19, together with the City's motion to dismiss. *See* Local Rule 6-1. It also is two weeks prior to the date (April 28) that Plaintiffs' Opposition to SAJE's motion to dismiss would be due, based on a May 19 hearing date. *See* Local Rule 7-9. SAJE will provide proof with its Reply that it provided Plaintiffs with its motion to dismiss at least 30 days prior to their April 28 deadline to oppose.

Under these circumstances, there is absolutely no possible prejudice to the existing parties from the timing of this motion to intervene, and SAJE has met the timeliness requirement for intervention as of right. *See Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011) (finding motion to intervene timely under materially indistinguishable circumstances);[19] *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 474 (9th Cir. 1992) ("Courts, including

[18] *See* Soloff Decl. ¶¶ 2-6.

[19] As the Ninth Circuit stated in *Citizens for Balanced Use*:

> Applicants filed their motion to intervene in a timely manner, less than three months after the complaint was filed and less than two weeks after the Forest Service filed its answer to the complaint. The motion to intervene was made at an early stage of the proceedings, the parties would not have suffered prejudice from the grant of intervention at that early stage, and intervention would not cause disruption or delay in the proceedings. These are traditional features of a timely motion.

Id.

this one, have approved intervention motions without a pleading where the court was otherwise apprised of the grounds for the motion.").

2. SAJE And The LARSO Tenants SAJE Represents Claim A Significantly Protectable Interest In This Action

Each of the LARSO provisions challenged in this action currently governs the legal relationship between the LARSO tenants SAJE represents and their landlords. Each challenged provision provides those LARSO tenants with an economic benefit and/or a protection against potential loss of their homes through eviction. And, in the event of a breach by their landlords of the challenged provisions, the LARSO tenants SAJE represents have the legal right to enforce those provisions through an affirmative action and/or by asserting the breach(es) as an affirmative defense to an eviction action. *See* L.A.M.C. §§ 151.09E, 151.10A.

Ninth Circuit precedent establishes that these individual legal rights of the LARSO tenants SAJE represents, in and of themselves, constitute "significantly protectable interests" for purposes of intervention as of right. For example, in *Allied Concrete*, a group of ready-mix concrete suppliers brought an action alleging that the extension of California's prevailing wage law to the drivers delivering their products to public work sites was unconstitutional on federal preemption and equal protection grounds. 904 F.3d at 1057-58. A union whose members included ready-mix concrete drivers sought to intervene, but the district court denied intervention on the ground that the union's members had no significantly protectable interest in the action because they already received prevailing wages pursuant to collective bargaining agreements ("CBAs"). *Id*. at 1067.

The Ninth Circuit reversed the district court, and confirmed that the union members' statutory right in and of itself was a "significantly protectable interest" for purposes of intervention as of right, irrespective of whether or not the union members had a current need to assert that right:

> [W]e are not convinced that the distinction between *receiving* a prevailing wage pursuant to statute and maintaining the statutory *right* to receive a wage is a meaningful one for purposes of assessing standing to intervene. . . . [R]eceiving a prevailing wage in the absence of a CBA might technically be different than receiving it pursuant to a contract, but for the purposes of a significantly protectable interest, we think they are indistinguishable. Even if all of [the union]'s members are subject to CBAs that pay them the prevailing wage, a statutory right to that wage is still important and not at all speculative. CBAs are not permanent, and re-negotiating about wages from a statutory floor is certainly a much better bargaining position than starting from scratch. Maintaining the statutory floor is a significant, protectable interest for [the union].

Id. at 1067-68 (emphases in original) (footnote omitted).

The LARSO provisions Plaintiffs challenge in this action (capping annual rent increases, precluding eviction for past due rent of no more than one month of HUD's "fair market rent" figure, requiring relocation assistance in the event of a "no-fault" family move-in eviction, and requiring the posting of the LAHD's form notice of tenants' rights), likewise are all important to SAJE (which was involved in the enactment of two of them) and to the LARSO tenants its represents, and those rights are not at all speculative. Moreover, if the challenged LARSO provisions are rendered inoperable, at least some of the LARSO tenants SAJE represents would in fact have their rent increased further and/or lose their homes to eviction (two indisputable property interests).[20] Accordingly, SAJE has met the significantly protectable interest requirement for intervention as of right. *See Apartment Ass'n of Greater Los Angeles Cnty., Inc. v. City of Los Angeles*, 2020 WL 4501792 (C.D.

[20] *See* Strathmann Decl. ¶¶ 12-19.

Cal. Aug. 8, 2020) ("*AAGLA*") at *2 (in an action asserting that the City's pandemic-era rent freeze and emergency eviction protections were unconstitutional on their face, SAJE entitled to intervene as of right because tenants had a significantly protectable interest both in the legal rights created, and in remaining in possession of their homes); *GHP Management Corp. v. City of Los Angeles*, 339 F.R.D. 621, 623-24 (C.D. Cal. 2021) ("*GHP*") (following *AAGLA* and holding SAJE had right to intervene in action asserting that, as applied to the plaintiff landlords, the City's pandemic-era emergency eviction protections effected an uncompensated taking in violation of the Takings Clause[21]); *see generally Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 837-38 (9th Cir. 1996) (recognizing that groups directly involved in enactment of laws have significantly protectable interest, for purposes of intervention as of right, in defending those laws) (collecting cases).

3. A Judgment For Plaintiffs May Practically Impair The Significantly Protectable Interests Of SAJE And The LARSO Tenants SAJE Represents

With respect to the third required element for intervention as of right, "the relevant inquiry is whether the [potential judgment] 'may' impair rights 'as a practical matter' rather than whether [it] will 'necessarily' impair them." *City of Los Angeles*, 288 F.3d at 401 (citation omitted). That test is easily met here.

As an initial matter, a final determination that the challenged LARSO provisions violate the Takings Clause, Equal Protection Clause and First Amendment may well lead to rescission of those provisions by the City's elected leaders, all of whom swore an oath to bear true faith and allegiance to the United

[21] Although not separately discussed, SAJE's purported lack of a significantly protectable interest is one of the arguments made by the plaintiff landlords in *GHP*, and referenced in the *GHP* opinion as "also raised, and rejected, in *AAGLA*". *GHP*, 339 F.R.D. at 624; *see* Plaintiffs' Opposition to Motion to Intervene, *GHP*, 339 F.R.D. 621 (No. 21-06311), 2021 WL 12282048 (asserting, *inter alia*, the lack of a significantly protectable interest).

States Constitution.[22] This is particularly true because the failure to rescind provisions found unconstitutional in this action could at least threaten the City with substantial potential liability to other landlords,[23] and the City already is facing serious budget shortfalls.[24] *See GHP*, 339 F.R.D. at 624 (holding SAJE adequately established potential impairment of its interests in an as-applied takings action because the size of potential liability exposure to City, both in the action itself and in

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[22] *See* Cal. Const. art. XX, § 3 (setting forth required oath for all offices, including city offices).

[23] There are more than 650,000 LARSO units on more than 150,000 separate properties. *See* Declaration of Dr. Kyle Nelson ("Nelson Decl.") ¶ 4. Plaintiffs' claims that the cap on annual rent increases constitutes a *per se* physical taking and/or violates the Equal Protection Clause in theory could apply—if found valid—to every one of those LARSO units, and could at least threaten the City with liability for the difference between regulated and market rents. Plaintiffs' claims that the "fair market rate" eviction limitation constitutes a *per se* physical taking in theory also could apply—if found valid—to every LARSO unit, and could at least threaten the City with liability for the difference between the regulated and the market rate for units occupied by tenants who otherwise would have been evicted (which is likely a sufficiently large number to at least threaten the City with substantial liability, *see* Nelson Dec. ¶ 10 (during two years from February 2023 to February 2025, more than 30,000 eviction notices on their face demanded less rent than one month of the relevant HUD "fair market rent")). Plaintiffs' further claims that the relocation payment requirements for family move-in evictions constitute *per se* physical takings, and that the requirement to post the LAHD form notice of tenant rights violates the First Amendment, in theory could apply—if found valid—to every one of the more than 150,000 LARSO properties, and could at least threaten the City with substantial liability.

SAJE believes all of Plaintiffs' claims are invalid, and is taking no position on what damages they or other landlords properly could recover if their claims were valid. SAJE is only pointing to the risks the City could face should Plaintiffs prevail.

[24] *See* Alex Bentz, *January 2025 Los Angeles Wildfires Impact on Local Property Tax Revenues*, Legislative Analyst's Office (Feb. 10, 2025), https://lao.ca.gov/LAOEconTax/Article/Detail/819; Frank Stoltze, *LA has overspent by $300 million so far, cuts to city services likely*, LAist (Dec. 11, 2024, 5:00 AM), https://laist.com/news/politics/la-city-budget-overspends.

takings cases by other landlords, showed that the action could affect the continued viability of the City's pandemic-era emergency eviction protections).

Moreover, a final determination in this action that the LARSO cap on annual rent increases violates the Equal Protection Clause, and/or that the City's notice of rights requirement violates the First Amendment, may practically impair the ability of the LARSO tenants SAJE represents to assert those provisions as a defense to any eviction action, *even if the City does not rescind those provisions*. An adverse federal court determination would bind the California courts if the United States Supreme Court ultimately rules in this case, a possibility the Complaint appears to contemplate.[25] More fundamentally, even adverse determinations by this Court and the Ninth Circuit could have "persuasive *stare decisis* effect" on the California courts, and thereby practically impair the ability of SAJE and the LARSO tenants SAJE represents to assert these provisions as defenses to an eviction action. *Cf. United States v. Oregon*, 839 F.2d 635, 638 (9th Cir. 1988) ("persuasive *stare decisis* effect" of rulings in government action against operator of facility on parallel or subsequent litigation by residents of facility against the operator constitutes "an important consideration in determining the extent to which [the residents'] interest may be impaired"). Indeed, such adverse determinations in this action could lead at least some of the LARSO tenants SAJE represents to quit their homes rather than attempt to use these provisions (even if left in place) to defend an eviction action and thereby risk an eviction judgment (which in turn could impair their ability to obtain replacement housing).[26]

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[25] *See* Complaint (ECF 1) ¶ 16 ("Indeed, if these draconian [challenged] provisions survive [*Penn Central*'s] ad hoc balancing test, it would mean that the time has come for the Supreme Court to overrule it."); *id*. ¶ 102 ("If the FMR Eviction Restriction somehow passes muster under the *Penn Central* test, however, the Supreme Court would have no choice but to revisit that test").

[26] *See* Soloff Decl. ¶ 10.

Furthermore, given its *stare decisis* effect, a final determination in this action that the challenged rent increase cap, "fair market rent" eviction limitation, and the owner family move-in relocation fee requirement violate the Takings Clause may well lead the City to refuse to adopt any currently pending or future recommendations from KLAH, SAJE or LAHD for additional rent regulations or eviction limitations. That too is a potential practical impairment of the ability of the SAJE and the LARSO tenants SAJE represents to protect their interests, including their existing property interests in their money and in the possession of their homes. *See WildEarth Guardians v. Nat'l Park Service*, 604 F.3d 1192, 1201 (10th Cir. 2010) (recognizing that, given the *stare decisis* effect, a potential practical impairment from a judgment declaring culling impermissible at one national park is "preventing or, at the very least, significantly discouraging the [National Park Service] from utilizing culling . . . at other national parks").

Accordingly, SAJE has established the requisite practical impairment for purposes of intervention as of right.

4. The City May Not Adequately Represent SAJE And The LARSO Tenants SAJE Represents

The LARSO tenants SAJE represents have a parochial interest in retaining for themselves the legal rights granted by the challenged LARSO provisions, and the resultant direct benefits to their pocketbooks and to their secure possession of their homes. The City, by contrast, represents the broader interests of all of Los Angeles' citizens and stakeholders, including—as LARSO recognizes—landlords.

Ninth Circuit precedent demonstrates that this alone is sufficient to establish the requisite inadequacy of representation for intervention as of right. For example, in *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184 (9th Cir. 1998) ("*Mendonca*"), various contractors of transportation services for public work projects brought an action against the relevant California agencies and officials for a determination that California's prevailing wage law was

preempted by a recently passed federal statute. The district court allowed a union to intervene as of right to defend the law. *Id*. at 1186.

Applying *de novo* review, the Ninth Circuit affirmed that the union had established all the elements required for intervention as of right. With respect to the "significantly protectable" interest requirement, the Ninth Circuit reasoned that "[the union's] members had a 'significant interest' in receiving the prevailing wage for their services as opposed to a substandard wage." *Id.* at 1189-90 (citation omitted). And with respect to the inadequate representation requirement, the Ninth Circuit reasoned that "because the employment interests of [the union]'s members were potentially more narrow and parochial than the interests of the public at large, [the union] demonstrated that the representation of its interests by the named [governmental] defendants-appellees may have been inadequate." *Id.* at 1190.

In *Allied Concrete*, the Ninth Circuit again applied the *Mendonca* reasoning to reverse the district court's denial of intervention as of right by a union into an action challenging a recent expansion of the workers covered by California's prevailing wage law. As discussed in Part III.A.2 above, the Ninth Circuit found that union members' legal right to receive the prevailing wage constituted the requisite "significantly protectable" interest. And the Ninth Circuit found the requisite inadequacy of representation by reasoning, once again, that "[the union]'s interests are potentially more narrow than the public's at large, and the State's representation of those interests '*may have been* inadequate.'" *Allied Concrete*, 904 F.3d at 1068 (*quoting Mendonca*) (emphasis in original).

Finally, in *Arakaki v. Cayetano*, 324 F.3d 1078 (9th Cir. 2003), the Ninth Circuit affirmed on *de novo* review the district court's denial of intervention as of right by certain native Hawaiians into a suit challenging on equal protection grounds the provision of specified benefits only to Hawaiians and native Hawaiians. While the Ninth Circuit held that the proposed interveners had a "protectable interest in the continued receipt of benefits," it concluded that their interests were adequately

represented by the existing parties in that case. *Id*. at 1084, 1086. However, in reaching that conclusion regarding adequate representation, the Ninth Circuit expressly distinguished the case before it from *Mendonca* on the grounds that (1) a "similarly situated" native Hawaiian group *already* had intervened in the action, and (2) both the federal statute admitting Hawaii into the Union and the Hawaii Constitution imposed a specific obligation on the State to provide the benefits to native Hawaiians and to "protect native Hawaiians' interest". *Id*. at 1087. Neither of those peculiar circumstances is present in Plaintiffs' action.

In short, Ninth Circuit authority confirms that the narrower parochial interest of the LARSO tenants SAJE represents in retaining for themselves the legal rights granted by the challenged LARSO provisions, and the resultant direct benefit to their pocketbooks and to their secure possession of their homes, is sufficient by itself to establish the requisite inadequacy of representation for intervention here.

Even if the foregoing were not sufficient by itself (but it is), SAJE still has established the requisite inadequacy of representation. SAJE's very reason for existence is that the City to date has not secured economic or social justice, including housing stability, for the low- and very low-income tenants SAJE represents.[27] In addition, both during the pandemic-era, and in its aftermath, SAJE and allied organizations have advocated for even stronger tenant protections than those adopted by the City (including the 4% rent cap, and the one month HUD "fair market rent" eviction threshold).[28] Further, SAJE has access to lower income tenants (including in the same neighborhoods as Plaintiffs' properties), and therefore access to information regarding the real world impact of the LAHD form notice of rights that is potentially relevant to Plaintiffs' First Amendment challenge to the requirement to post those notices (assuming the claim is not dismissed on the

[27] *See* Strathmann Decl. ¶¶ 2-3.

[28] *See id*. ¶¶ 8-11.

pleadings).[29] Under these circumstances, SAJE has again established the requisite inadequacy of representation for intervention as of right. *Cf. GHP*, 339 F.R.D. at 624 (finding requisite inadequacy of representation by City in as-applied takings challenge to emergency eviction protections); *AAGLA*, 2020 WL 4501792, at *3 (finding requisite inadequacy of representation by City in facial challenge to COVID rent freeze and emergency eviction protections under Contracts Clause, Due Process Clause and Taking Clause).

* * *

For all of the foregoing reasons, the Court should grant leave for SAJE to intervene as of right in this action.

B. Permissive Intervention Also Is Proper For SAJE

The Court also should grant SAJE permission to intervene, as an alternative holding.

"An applicant who seeks permissive intervention [under Rule 24(b)] must prove that it meets three threshold requirements: (1) it shares a common question of law or fact with the main action; (2) its motion is timely; and (3) the court has an independent basis for jurisdiction over the applicant's claims." *Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998). Once this is done, the district court must determine whether to exercise its discretion to permit the intervention. When doing so, "the district court must consider whether intervention will unduly delay the main action or will unfairly prejudice the existing parties." *Id*. The district court may consider other relevant factors as well. *See id*., *citing Spangler v. Pasadena City Board of Educ.*, 552 F.2d 1326, 1329 (9th Cir.1977) (identifying nonexclusive discretionary factors that the district court may consider when deciding whether to grant permissive intervention).

Under these standards, permission for SAJE to intervene is warranted.

[29] *See* Strathmann Decl. ¶¶ 3-5, 17.

First, SAJE has made the required threshold showings. For the reasons discussed above, SAJE plainly has established its motion is timely and there are common questions of fact and law. *See* Parts III.A.1-3. And, because SAJE seeks to do nothing more than intervene as a defendant to defend the federal question claims asserted by Plaintiffs, the independent jurisdictional grounds requirement does not apply. *See GHP*, 339 F.R.D. at 625 n.2. (citing *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 844 (9th Cir. 2011).

Second, the Court should exercise its discretion in favor of permissive intervention by SAJE. SAJE's intervention will not delay this action, and will not prejudice the existing parties in any way. By contrast, to deny permissive intervention to SAJE would improperly risk "marginalizing those . . . who have some of the strongest interests in the outcome"—the low-and very low-income LARSO tenants SAJE represents. *City of Los Angeles*, 288 F.3d at 404.

IV. CONCLUSION

For all of the foregoing reasons, the Court should grant leave for SAJE to intervene as a defendant in this action.

DATED: March 17, 2025 MUNGER, TOLLES & OLSON LLP

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Proposed 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: March 17, 2025 MUNGER, TOLLES & OLSON LLP

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