Joint Statement

For Immediate Release
June 28, 2014
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Herrera, Campos confident in the face of legal challenges to tenant relocation assistance

Ordinance balances San Francisco's 'compelling public interest to protect renters from financial devastation' with the property rights of landlords, City Attorney contends

SAN FRANCISCO (July 28, 2014)—A recently enacted city ordinance to mitigate the potentially devastating financial impacts on tenants who are evicted under the state Ellis Act is well positioned to overcome a pair of legal challenges filed late last week, according to City Attorney Dennis Herrera and the measure's primary sponsor, Supervisor David Campos.

The ordinance provides that when landlords make use of the Ellis Act to withdraw their residential units from the rental market, they must compensate the renters they evict with the difference between the tenant's current rent and two years of rent at a comparable unit in San Francisco, as determined by the City Controller. If the difference is less than the per-tenant payment required under the city's prior tenant relocation assistance law, then the higher payment applies. The new ordinance additionally creates two administrative appeals processes to protect small property owners from undue burdens. One avenue of appeal would enable property owners using the Ellis Act to challenge the Controller's rent differential calculation; another would allow landlords to petition for relief from tenant relocation assistance payments when they can show evidence of financial hardship. Landlords are free to pursue both appeals.

"I'm confident that the arguments both legal attacks present are non-starters," Herrera said. "My office was already successful in defending tenant relocation assistance payments in the 2006 *Pieri* decision, and courts have previously recognized that the Ellis Act allows for local authority to mitigate harms caused by tenant evictions. Our amended ordinance balances San Francisco's compelling public interest to protect renters from financial devastation—including homelessness, in some cases—with the property rights of landlords. It creates administrative procedures that previously didn't exist to make sure small property owners are protected from undue economic burdens, and it is well within San Francisco's policy-making authority under existing law."

[MORE]

"My legislation was carefully crafted to address the reality that rents have recently skyrocketed in San Francisco. In early 2014, the median rental list price for a two-bedroom apartment in San Francisco was $4,150 a month," added Supervisor Campos. "Before passage of my ordinance, when a tenant was evicted under the Ellis Act, in the vast majority of cases, he or she was forced to leave the City. The average person and family in San Francisco cannot afford current market rates. The new relocation assistance amount gives tenants a fighting chance to continue living in the City so their children can continue learning in local schools and individuals can remain stable parts of their community. I am confident that legal precedent allowing legislators to mitigate adverse impacts of Ellis evictions include the right to craft legislation aimed at allowing tenants to continue living in the City they love."

On Thursday, July 24, lawyers from the Pacific Legal Foundation, an arch-conservative public advocacy firm, filed suit in United States District Court in San Francisco to invalidate the law, which they allege violates the U.S. Constitution's takings and due process clauses, and also violates the state Ellis Act itself. On the same day, veteran real estate litigator Andrew M. Zacks sued the city and six individual tenants in San Francisco Superior Court to strike down the law. Zacks's lawsuit on behalf of two individual landlords and the Small Property Owners of San Francisco Institute contends that the ordinance is preempted by the Ellis Act and doomed by procedural defects.

The Pacific Legal Foundation is a familiar legal foe to the San Francisco City Attorney's Office in terms of federal constitutional takings challenges to the city's affordable housing policies. PLF spent twelve years suing San Francisco over its Hotel Conversion Ordinance, a 1981 law that prohibits owners of single room occupancy hotels, or SROs, from converting residential units into lodging for tourists unless steps are taken to address diminished housing stock. Ameliorative steps required by the HCO include: replacing the converted units through construction of an equal number of units for residents; rehabilitating an equal number of residential hotel units; or making an "in lieu payment" to the city to cover some construction costs for new units to replace those being converted. San Francisco finally won the case in a unanimous U.S. Supreme Court decision involving PLF's bid to re-litigate in federal court issues it had already lost in California's state courts. The case, San Remo Hotel v. City and County of San Francisco, was decided on June 20, 2005.

The newly filed cases are: *Levin et al. v. City and County of San Francisco*, U.S. District Court for the Northern District of California, San Francisco Division, filed July 24, 2014, case no. 150085; and *Jacoby et al. v. City and County of San Francisco et al.*, San Francisco Superior Court, filed July 24, 2014, case no. CGC-14-540709. Additional information about the San Francisco City Attorney's Office is available at: http://www.sfcityattorney.org/.

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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

DANIEL LEVIN; MARIA LEVIN; PARK LANE ASSOCIATES, L.P.; THE SAN FRANCISCO APARTMENT ASSOCIATION; and THE COALITION FOR BETTER HOUSING, Plaintiffs, v. CITY AND COUNTY OF SAN FRANCISCO, Defendant.	No. _____ **COMPLAINT FOR VIOLATION OF FEDERAL CIVIL RIGHTS UNDER 42 U.S.C. § 1983 AND CALIFORNIA STATE LAW (Cal. Gov't Code § 7060-7060.7)** **DECLARATORY AND INJUNCTIVE RELIEF**

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INTRODUCTION

1. Daniel and Maria Levin (Levins), Park Lane Associates, L.P. (Park Lane), the San Francisco Apartment Association (SFAA), and the Coalition for Better Housing (CBH), bring this complaint for declaratory and injunctive relief against the City and County of San Francisco (City) due to its enactment of legislation that retroactively, illegally and unconstitutionally requires rental property owners to transfer massive sums of money (more than a million dollars for the individual plaintiffs) to tenants before they can take their property off the rental market.

2. California's Ellis Act (Ellis Act) prohibits local governments from taking action to prevent rental property owners, like Plaintiffs, from withdrawing units from the rental market. Yet, the City has recently enacted legislation (the "Ordinance") that punishes those who lawfully seek to withdraw units, by forcing them to give any displaced tenant enough money to make up the difference between the tenant's old rental rate and the amount it takes to rent, for two full years, a comparable unit at open market rates. Given San Francisco's market, this required payment can add up to a tremendous amount; the Ordinance entitles some individual tenants to receive a hundred thousand dollars or more from the property owner before the owner can recover the property.

3. Tenants entitled to a payment under the Ordinance are allowed to use it for any purpose; the Ordinance does not require them to use the money for rent or to relocate. Moreover, there is no income requirement to be eligible for a payment. Under the Ordinance, rich tenants as well as low-income ones, are entitled to an unrestricted cash payment before a property owner can take units off the rental market. The Ordinance thus effects a blatant transfer of wealth from some private citizens to others.

4. The Ordinance is retroactive, applying to owners, like the Levins and Park Lane, who lawfully withdrew units under the Ellis Act and the City's own procedures before enactment of the Ordinance, but those units remain physically occupied by the subject tenant. Due to its retroactive aspect, the Ordinance requires the Levins—who withdrew a unit in order to use their property for their own purposes—to pay approximately **$117,958.89** to a single tenant who has already received all notices and benefits sufficient to complete and legalize withdrawal of a unit

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under the pre-existing rent laws. Park Lane must now pay approximately **$1, 448, 023.98** to 15 tenants who also received all lawfully required process, notices and benefits sufficient to legalize withdrawal of approximately 15 units under pre-existing rental laws.

5. On its face, and as applied to the Levins and Park Lane, the tenant payments mandated by the Ordinance take property for a private purpose. To the extent they serve a public purpose, the payment provisions unconstitutionally take property, unconstitutionally function as a condition that is unrelated and disproportionate to any impact arising from the withdrawal of rental units, unreasonably seize property, and impose an impermissible burden on the plaintiffs' Ellis Act and common law property rights. Consequently, the Ordinance violates the Takings Clause, Fourth Amendment and Due Process Clause of the United States Constitution, the unconstitutional conditions doctrine, and the Ellis Act. The plaintiffs are therefore entitled to equitable relief under 42 U.S.C. § 1983, the Declaratory Judgment Act and California law, including a preliminary injunction.

THE PARTIES

6. Plaintiffs Daniel and Maria Levin are individual citizens of the United States. They are domiciled in, and reside in, San Francisco, California. They own a two-unit building located at 471-473 Lombard Street, San Francisco, California. The Levins' building is subject to the Ordinance.

7. Plaintiff Park Lane Associates is a Limited Partnership formed under the laws of California. Park Lane owns a 33-unit building located at 1100 Sacramento Street, San Francisco, California. Park Lane's building is subject to the Ordinance.

8. Plaintiff San Francisco Apartment Association was founded in 1917. It is a nonprofit trade association of persons and entities who own residential rental properties in San Francisco. SFAA is dedicated to educating, advocating for, and supporting the rental housing community, and preserving the property rights of all residential rental property providers in San Francisco. SFAA currently has more than 2,800 active members, many of which are subject to the Ordinance. Some members are subject to the retroactive application of the Ordinance based on acts they have taken to withdraw units under laws predating the Ordinance. Other members

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have considered withdrawing units, or may want to do so in the future, but are now inhibited from doing so by the Ordinance.

9. Plaintiff Coalition for Better Housing is a nonprofit trade organization representing the owners of over 10,000 residential rental units in San Francisco, many of whom are subject to the Ordinance. Organized in 1979, CBH works to bring a healthier real estate climate to the rental housing industry.

10. Defendant City and County of San Francisco is a political subdivision of the State of California, and the local governing authority in San Francisco. The City enacted the Ordinance challenged by this lawsuit. The City is entitled to sue and be sued, and is constrained by the laws of the United States and the State of California, including the United States Constitution, 42 U.S.C. § 1983, and the Ellis Act.

JURISDICTION AND VENUE

11. The claims in this action arise under the Fourth and Fifth Amendment to the United States Constitution, as incorporated against the states by the Fourteenth Amendment, and the Due Process Clause of the Fourteenth Amendment. The Court has jurisdiction under 42 U.S.C. § 1983 and 28 U.S.C. § 1331. A remedy is sought under the Declaratory Judgment Act, 28 U.S.C. § 2201.

12. Venue is proper in this Court because this action concerns private property located in San Francisco, California, and a legislative enactment of the City, all of which are within the jurisdiction of the Northern District of California.

FACTS

The Ellis Act Procedure

13. The California legislature enacted the Ellis Act in1984. It provides, in part, that no public entity may "compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease, except for [certain] guestrooms or efficiency units within a residential hotel . . . ." Cal. Gov't Code § 7060(a).

14. The Ellis Act further provides that "[n]otwithstanding Section 7060, nothing in this chapter . . . [d]iminishes or enhances any power in any public entity to mitigate any adverse

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impact on persons displaced by reason of the withdrawal from rent or lease of any accommodations." *Id.* § 7060.1.

15. Section 37.9(a)(13) of the City's Administrative Code (the Rent Code) establishes a procedure for property owners to utilize their rights to withdraw units under the Ellis Act. Before a property owner may evict a tenant and regain an apartment or other rental unit for non-rental uses, a property owner must provide tenants with a Notice of Termination of Tenancy (Notice of Termination). The Rent Code and Ellis Act also require that the owner file a Notice of Intent to Withdraw Residential Units from the Rental Market (Notice of Withdrawal) with the San Francisco Rent Stabilization Board (Rent Board).

16. Under the Rent Code, a duly filed Notice of Termination commits a property owner to the withdrawal of units.

17. Rental units are withdrawn from the rental market 120 days after the filing of the Notice of Withdrawal.

18. However, if a tenant is at least 62 years of age or "disabled" and has lived in the subject rental unit for a year or more, the tenant may postpone the withdrawal of the unit by one year by giving the owner notice of the tenant's claim to an extension. A tenant can claim to be disabled for purpose of the Code simply by making a claim to that effect.

19. A property owner who has filed a Notice of Withdrawal must file a Memorandum of Notice Regarding Withdrawal of Rental Unit From Rent or Lease with the County recorder to memorialize the withdrawal of rental units. The City will subsequently file a Notice of Constraints on the subject property. This process deed restricts the subject property, imposing substantial limits and penalties on the property owner if the owner tries to re-rent the property. Such restrictions apply to the property owner who filed the Notice of Withdrawal, and any successor in interest.

20. The restrictions include a requirement that if the owner tries to re-rent the unit within two years of the date of withdrawal "the owner shall be liable to any tenant or lessee who was displaced from the property for actual and exemplary damages." Additionally, the City may

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institute a civil proceeding against the owner who has again offered the unit for rent or lease, for exemplary damages for displacement of tenants or lessees."

21. If an owner tries to re-rent a withdrawn unit within five years of withdrawal, he must offer the unit at the rate in effect at the time of withdrawal. Further, if the owner tries to re-rent within ten years of withdrawal, he must take steps to offer the unit to the tenant at the rate in effect at the time of withdrawal and can be subject to punitive damages for failing to do so.

The 2005 Law

22. In February, 2005, the City enacted San Francisco Administrative Code, ch. 37, § 37.9A, subd. (e)(3) (the 2005 law). This law amended a prior City ordinance that required landlords to make minor "relocation payments" to low income, elderly and disabled tenants displaced by a property owner's withdrawal of rental units.

23. The 2005 law established a new tenant payment scheme for all tenants displaced by a property owner's filing of a Notice of Intent to Withdraw on or after February 20, 2005.

24. The 2005 law provided, in pertinent part, that "[w]here a landlord seeks eviction based upon [the Ellis Act procedure] and the notice of intent to withdraw rental units is filed with the Board on or after February 20, 2005, relocation payments shall be paid to the tenants as follows:

> (A) Subject to Subsections 37.9(e)(3)(B), (C), and (D) below, each tenant shall be entitled to receive $4,500.00, one-half of which shall be paid at the time of the service of the notice of termination of tenancy, and one-half of which shall be paid when the tenant vacates the unit;
>
> (B) In the event there are more than three tenants in a unit, the total relocation payment shall be $13,500.00, which shall be divided equally by the number of tenants in the unit; and
>
> (C) Notwithstanding Subsections 37.9A(e)(3)(A) and (B), any tenant who, at the time the notice of intent to withdraw rental units is filed with the Board, is 62 years of age or older, or who is disabled within the meaning of Section 12955.3 of the California Government Code, shall be entitled to receive an additional payment of $3,000.00, $1,500.00 of which shall be paid within fifteen (15) calendar days of the landlord's receipt of written notice from the tenant of entitlement to the relocation payment, and $1,500.00 of which shall be paid when the tenant vacates the unit.
>
> (D) Commencing March 1, 2005, the relocation payments specified in Subsections 37.9A(e)(3)(A) and (B) and (C) shall increase annually at the rate of increase in the "rent of primary residence" expenditure category of the Consumer

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> Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose Region for the preceding calendar year, as that data is made available by the United States Department of Labor and published by the Board.

The 2014 Ordinance

25. On June 1, 2014, the City enacted the Ordinance challenged here. The Ordinance established new tenant payment obligations for property owners invoking the Ellis Act right to remove units from the rental market. The Ordinance is attached as **Exhibit A** and its provisions are incorporated herein.

26. The Ordinance provides that, as of June 1, 2014, each tenant to be displaced by an Ellis Act withdrawal of a rental unit shall be entitled to the "greater" of the payments required by the 2005 law or

> an amount equal to the difference between the unit's rental rate at the time the landlord files the notice of intent to withdraw rental units with the Board, and the market rental rate for a comparable unit in San Francisco as determined by the Controller's Office, multiplied to cover a two-year period, and divided equally by the number of tenants in the unit (the "Rental Payment Differential").

San Francisco Admin. Code § 37.9A(e)(3)(E)(ii).

27. The Ordinance requires a withdrawing property owner to "pay one-half of the Rental Payment Differential at the time of the service of the notice of termination of tenancy, and the remaining one-half when the tenant vacates the unit." *Id.*

28. The Ordinance requires the City Controller to establish a San Francisco Rental Payment Differential Schedule ("Schedule" to govern the calculation of the new tenant payments required by the Ordinance. The current Schedule is attached as **Exhibit B** and is hereby incorporated in this complaint.

29. The Ordinance provides that a displaced elderly or disabled person entitled to the new "Rental Payment Differential" payment is also entitled to receive an additional sum of $3,000 (as adjusted annually by the CPI inflation rate). *Id.* § 37.9A(e)(3)(C).

30. The Ordinance applies retroactively to "[a]ny tenant who has received a notice of termination of tenancy, but who has not yet vacated the unit by [June 1, 2014]." *Id.* § 37.9A(e)(3)(F). Such a tenant is entitled to the new payment, reduced by any payment the tenant received under the pre-existing 2005 law.

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31. The Ordinance allows a property owner subject to its new tenant payment obligations to apply to the Board for a reduction of his obligation based on"undue financial hardship." (Financial Hardship Reduction.) The sole criteria for a Financial Hardship Reduction is whether a rental property owner has or lacks sufficient economic assets to make the tenant payments.

32. A rental property owner subject to the Ordinance may seek a hearing "that the San Francisco Rental Payment Differential Schedule established in Subsection 37.9A(e)(3)(E)(ii) does not reasonably reflect the market rental rate for a comparable unit in San Francisco and would result in an overpayment by the landlord ('Rent Differential Recalculation Request')" if the owner believes that the Schedule is inaccurate. *Id.* § 37.9A(3)(3)(H).

33. Neither the Financial Hardship provision or provision for a Board hearing on the Payment Differential Schedule apply to the $4,500 (as adjusted annually by the CPI inflation rate) minimum (non-Rent Differential) payment required by the Ordinance. Thus, in all events, the Ordinance requires every property owner seeking to withdraw rental units to pay at least $4,500 per tenant, subject to the $3,000 (as adjusted annually by the CPI inflation rate) increase applicable to "disabled" and elderly tenants.

34. The Ordinance requires a property owner seeking to withdraw units to notify subject tenants of their right to receive a payment under the Ordinance.

35. The Ordinance places no constraints on tenants' use of money paid to them by property owners subject to the Ordinance and has no mechanism for accounting for the actual use of the money. Tenants who are paid under the Ordinance can put the money in savings, hire a lawyer to fight the withdraw of units from the rental market, put a down payment on a house or use the money to purchase a new car, among other things.

36. The Ordinance imposes no income limitations on a tenant's eligibility for a payment. High income, "penthouse" renters are just as eligible to receive a payment under the Ordinance as low-income persons.

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The Levins' Property

37. Daniel Levin is a third generation San Franciscan. Both his grandparents were in San Francisco predating the 1906 earthquake.

38. Daniel and Maria Levin own a small business in North Beach and have worked seven (7) days a week for the last twenty (20) years.

39. In 2008, the Levins purchased a two-unit (top/bottom) building located at 471-473 Lombard Street, San Francisco. The lower unit, 473 Lombard Street, was occupied by a rental tenant at the time. The Levins immediately informed that tenant that they hoped to remodel the building and use both units for themselves in the future. The Levins subsequently moved into the top unit.

40. The Levins do not want to be landlords. They desire to use the lower unit for their own residential purposes, including for having family and friends stay with them. Currently, there is not enough room in the upper unit for that purpose.

41. The tenant in the bottom unit is a single, non-elderly, working and economically self-sufficient tenant who moved into the unit in 1988. The tenant's current monthly rent is $2,479.67.

42. The Levins initially tried to do some remodeling of the building with the tenant in the lower unit, but the tenant protested, and appealed to the City Planning Department when the Levins sought permits to do some work. These efforts delayed the Levins' permits and forced the Levins to hire and pay attorneys.

43. The Levins eventually concluded they could remodel and use the building as their residence only by taking the lower unit off the market under the Ellis Act. They therefore served a Notice of Termination on the tenant and filed a Notice of Intent to Withdraw Units From the Rental Market with the Rent Board on December 16, 2013. At that time, the Levins paid the tenant the first half of the $4,500 (adjusted annually by the CPI inflation rate) payment required by the pre-existing 2005 law.

44. The Levins' tenant subsequently claimed "disability" for purposes of the Ordinance, and a one year extension on the withdrawal of the unit and termination of the tenancy. The Levins

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did not agree with this "disability" claim, but did not contest it because they calculated it would cost more to do so than to just pay the tenant the additional $3,000 disability payment (adjusted annually by the CPI inflation rate). So they made that payment, and extended the withdrawal date to December 16, 2014.

45. Under the 2005 tenant payment law in existence when the Levins filed their Notice of Withdrawal, the Levins were required to pay the tenant a maximum of **$5,210.91**, plus an additional **$3,473.93** for her disability claim, for a total amount of **$8,684.84**.

46. As of the date of filing of this complaint, the Levins' tenant has not vacated the unit.

47. The Ordinance retroactively applies to the Levins' situation and now obligates them to pay the tenant **$117,958.89** before they can regain exclusive use of their unit, calculated as follows:

$2,479.67 (rent) x 1.9821 (differential index) = $4,914.953

$4,914.953 x 24 months = $117,958.89.

48. The Levins do not contest the accuracy of the current Rent Differential Schedule governing the calculation of tenant payments under the Ordinance.

49. The City has recorded a Notice of Constraints on the Levins' property, based on their Notice of Withdrawal, which deed restricts the Levins' ability to re-rent its units, and punishes them if they try to do so. The Notice of Constraints is attached as **Exhibit C**.

50. Under the City Rent Code, and recorded Notice of Constraints, the Levins cannot rescind the Notice of Withdrawal and attempt to re-rent its units (in hopes of avoiding the Ordinance's tenant payment obligations) without (1) being forced to accept the unwanted physical occupation of its property and inability to use the property for its own purposes and (2) incurring severe restrictions on their ability to rent, and potential civil penalties and damages. S.F. Admin. Code § 37.9A(a)(1); *id.* § 37.9A(c), (d).

51. The Ordinance immediately obligates the Levins to pay the tenant **$117,958.89**, $4,342.43 of which has already been paid to the tenant under the 2005 law.

52. The Levins do not believe the City can or should require them to pay a tenant who received proper notice of the end of the tenancy before enactment of the Ordinance more than

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$100,000 dollars simply so they can regain the exclusive possession of their private property for their own personal uses.

53. On belief and knowledge, the Levins do not qualify for a Financial Hardship reduction.

The Park Lane Property

54. Park Lane owns a thirty-three (33) unit residential apartment building located at 1100 Sacramento Street, San Francisco, California. In the past, Park Lane has rented the units. However, at various times, it has struggled with vacancies.

55. Park Lane accordingly decided to convert the building to a fractional tenancy-in-common (TIC) ownership system, a common from of property ownership in San Francisco.

56. To complete this change, Park Lane had to first withdraw the subject apartment units from the rental market. Park Lane planned to do so under the Ellis Act procedure.

57. Before withdrawing units through the Ellis Act process, Park Lane invited most tenants in its building to purchase a TIC interest in the Property, with the exclusive right to occupy their unit at a below market price. Almost all the tenants declined the offer or failed to respond.

58. On October 22, 2013, Park Lane served a Notice of Termination of Tenancy on its tenants pursuant to the Ellis Act and Rent Code. At that time,15 units were vacant and 18 were tenant-occupied. The tenants of three of the occupied units subsequently purchased ownership rights to the units, leaving 15 units tenant occupied.

59. On October, 24, 2013, Park Lane filed a Notice of Withdrawal with the San Francisco Residential Rent Board. All tenants were served with a copy of the Notice of Withdrawal.

60. The 2005 law in place when Park Lane served the Notice of Termination required Park Lane to give each terminated tenant a $4,500 (as increased annually by the CPI inflation rate) payment, except for two units that had more than three tenants (in that case, the total payment was $13,500.00, divided equally by the tenants in the unit). The specific amount owed to each Park Lane tenant under the 2005 law was $5,210,91, half of which had to be paid at the time Park Lane

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filed the Notice of Termination. Park Lane therefore paid a total of **$88,585.55** to its tenants at the time of serving the Notice of Termination.

61. At least one tenant in thirteen of the fifteen remaining tenant-occupied units claimed the right to a one year extension due to age or disability, and the additional $3,000 payment (as adjusted annually by the CPI inflation rate), allowed under the 2005 law. Each claimant was specifically entitled to receive $3,473.93, half of which had to paid within 15 days of a tenant's extension claim. Park Lane timely paid a total additional amount of $39,950.31 within 15 days of its tenants' extension claims. It later paid an additional $3,473.93, for a total of **$43,424.65**.

62. As required by the City Rent Code, Park Lane duly notified the Rent Board of its tenants' one year extension claims.

63. Under the 2005 law in place when Park Lane filed its Notice of Termination and Notice of Withdrawal, the total amount due its tenants ("regular" payment plus disability/elderly bonuses) was **$264,020.40**.

64. The tenants of the subject units have not vacated the units. The Ordinance retroactively applies to this situation and now requires Park Lane to pay the tenants a total of **$1,448,023.98** before Park Lane can take its units off the market.

65. Park Lane does not contest the Rent Differential Schedule formula that calculates tenant payments for purposes of the Ordinance.

66. The Ordinance immediately obligates Park Lane to pay the tenants the total amount due (**$1,448,023.98**) because Park Lane has already filed its Notice of Withdrawal, but the tenants have not vacated the units.

67. The City has recorded a Notice of Constraints on Park Lane's property, based on Park Lane's Notice of Withdrawal, which restricts Park Lane's ability to continue renting its units, and punishes it if it tries to do so. The Notice of Constraints is attached as **Exhibit D**.

68. Under the City Rent Code, and recorded Notice of Constraints, Park Lane cannot rescind the Notice of Withdrawal so as to keep renting its units as in the past (in hopes of avoiding the Ordinance's tenant payment obligations) without (1) incurring severe restrictions on its ability to rent, and potential civil penalties and damages. S.F. Admin. Code § 37.9A(a)(a)(1); *id.*

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§ 37.9A(c), (d) and (2) being forced to accept the unwanted physical occupation of its property and inability to use the property for its own purposes.

69. Park Lane's economic assets disqualify it from seeking a Financial Hardship reduction to its payment obligation. Park Lane acknowledges it is not entitled to a reduction based on financial hardship.

70. Park Lane does not believe the City can or should require it to pay its well-off tenants, all of whom received proper notice of the end of the tenancy before enactment of the Ordinance, more than a $1,000,000 dollars simply so it can take its privately owned building off the rental market.

DECLARATORY RELIEF ALLEGATIONS

71. Under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution, Plaintiffs have a federal right to be free from a taking of their private property for a private purpose, and from laws that take or seize property for a public purpose, but on an unreasonable ground and without any mechanism for compensation. Under the Due Process Clause of the Fourteenth Amendment, Plaintiffs have a right to be free from an irrational and illegitimate deprivation of their property.

72. Under state common law and the Ellis Act, Plaintiffs have a right to withdraw their property from the rental market, and to be free of any law that unreasonably and impermissibly burdens that state law property right so as to effectively force them to remain landlords.

73. Defendant has enacted, and is charged with enforcing, an Ordinance that retroactively and immediately takes private property for a private purpose and without a rational or a reasonable basis. To the extent the Ordinance serves a public purpose, it takes private property without providing a mechanism for compensation.

74. There is a justiciable controversy in this case as to whether the Ordinance violates the Fourth, Fifth and Fourteenth Amendments, and the Ellis Act, on its face and as applied to Plaintiffs Levins and Park Lane.

75. A declaratory judgment as to whether the Ordinance unconstitutionally takes property, deprives individuals, including Plaintiffs, of their property, and/or violates the Ellis Act

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will clarify the legal relations between Plaintiffs and Defendant, with respect to enforcement of the Ordinance.

76. A declaratory judgment as to the constitutionality and legality of the Ordinance will give the parties relief from the uncertainty and insecurity giving rise to this controversy.

INJUNCTIVE RELIEF ALLEGATIONS

77. Plaintiffs have no adequate remedy at law to address the unlawful and unconstitutional taking and deprivation of their property effected by the Ordinance and under color of state law.

78. There is a substantial likelihood that Plaintiffs will succeed on the merits of their claims that the Ordinance unconstitutionally takes and seizes private property, unconstitutionally deprives Plaintiffs of their property, and violates the Ellis Act.

79. Plaintiffs Levins and Park Lane are immediately required to make the tenant payments required by the Ordinance, or suffer the forced occupation of their property. They cannot avoid those events without judicial relief, and will suffer irreparable injury absent a preliminary injunction restraining Defendant from enforcing the Ordinance.

80. All Plaintiffs will suffer irreparable injury absent a permanent injunction restraining Defendant from enforcing the Ordinance

81. Plaintiffs' injury—the immediate, unconstitutional, and illegal taking of property for the private use of tenants—outweighs any harm the injunction might cause Defendant.

82. An injunction restraining Defendant from enforcing the confiscatory, unconstitutional and illegal Ordinance on its face and as applied to Levins and Park Lane, will not impair, but rather enhance, the public interest.

LEGAL CLAIMS

FIRST CLAIM

**Taking of Private Property for a Private Purpose—
Facial Claim Under 42 U.S.C. § 1983, All Plaintiffs**

83. Plaintiffs hereby re-allege each and every allegation contained in Paragraphs 1 through 82 as though fully set forth herein.

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84. It is well established that, under the Public Use Clause of the Fifth Amendment to the Constitution, local governments may not take private property for a private purpose.

85. The Ordinance requires rental property owners such as Plaintiffs to transfer money to other private persons, namely, their tenants, when the owners exercise their right to withdraw units from the rental market under the Ellis Act.

86. The Ordinance does not place any limits or conditions on how the tenants may use the money that rental property owners such as Plaintiffs must transfer to the tenants under the Ordinance.

87. Tenants may use the money transferred to them by rental property owners for any private purpose whatsoever. There is no requirement that the tenants use the money for relocation or to pay rents.

88. The Ordinance benefits private persons, not the general public. The private benefit accruing to tenants from the Ordinance's tenant payment provisions far outweighs any conceivable incidental public benefit.

89. The Ordinance was intended to benefit private parties.

90. The Ordinance serves a private purpose and use and therefore violates the Public Use Clause of the Takings Clause of the Fifth Amendment.

91. The Public Use Clause violation arising from the Ordinance is occurring under color of state law and violates 42 U.S.C. § 1983.

92. It is not necessary for Plaintiffs to exhaust administrative remedies prior to bringing this facial Public Use claim.

93. This facial Public Use claim is ripe for resolution in federal court at this time.

SECOND CLAIM

Unconstitutional Exaction and Taking of Private Property—
Facial Claim Under 42 U.S.C. § 1983, All Parties

94. Plaintiffs hereby re-allege each and every allegation contained in Paragraphs 1 through 93 as though fully set forth herein.

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95. The Ordinance conditions the exercise of a state law and common law property right—a property owners' right to take property off the rental market and to regain possession of it for personal, nonrental uses—on the payment of money to tenants.

96. Money is constitutionally protected property.

97. If Defendant had simply demanded that Plaintiffs hand over their money to displaced tenants, it would be liable for a per se unconstitutional physical taking of property.

98. Under *Nollan v. California Coastal Commission* (*Nollan*), 483 U.S. 825 (1987), *Dolan v. City of Tigard* (*Dolan*), 512 U.S. 374 (1994), and *Koontz. v. St. Johns River Water Management District* (*Koontz*), 133 S. Ct. 2586 (2013), the government may constitutionally exact money from property owners, such as Plaintiffs, as a condition of allowing the owners to exercise a property right only if:

a. The exaction directly mitigates a public impact directly arising from the property owners' exercise of their property right;

b. The exaction is roughly proportionate in both nature and degree to the public impact arising from the property owners' exercise of the property right.

99. The tenant payment exaction imposed by the Ordinance on rental property owners withdrawing their units from the rental market, is not related to, and does not address, any impact arising from the property owners' exercise of their right to withdraw units from the rental market.

100. The monetary exaction imposed by the Ordinance, enabling tenants to rent an open market unit for two years, and for the unrestrained use of tenants, is not proportionate in either nature or degree to any impact arising from the property owners' exercise of their right to withdraw units from the rental market.

101. In requiring property owners such as Plaintiffs to pay unrestricted and exorbitant sums to tenants as a condition of exercising their state law property right to remove their units from the rental market, the Ordinance imposes an unconstitutional condition and unconstitutionally exacts and takes private property.

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102. The monetary exaction imposed by the Ordinance violates the constitutional principles articulated in *Nollan*, *Dolan*, and *Koontz*.

103. The unconstitutional monetary exaction arising from the Ordinance is imposed under color of state law and violates 42 U.S.C. § 1983.

104. This claim does not seek "just compensation," but only equitable relief sufficient to restrain the enforcement of the unconstitutional monetary exaction arising from the Ordinance.

105. Plaintiff need not exhaust administrative remedies prior to bringing this claim.

106. This facial unconstitutional conditions/takings claim is ripe for immediate resolution in federal court.

THIRD CLAIM

Violation of Due Process—Facial Claim Under 42 U.S.C. § 1983; All Parties

107. Plaintiffs hereby re-allege each and every allegation contained in Paragraphs 1 through 106 as though fully set forth herein.

108. Rental property owners have a statutory and common law property right to use and enjoy their property and to remove their property from the rental market when they desire.

109. The Ordinance requires that rental property owners pay tenants enough money to cover a tenant's rent for two full years before the owners are allowed to regain possession of their property under the Ellis Act, but puts no conditions on tenants' use of the payments. Tenants need not use their payment for relocation or for rent.

110. The Ordinance is retroactive, applying to property owners, like the Levins and Park Lane, that took all legally necessary steps, and acquired a vested right, to withdraw their rental units under laws predating the Ordinance.

111. The real purpose of the Ordinance is to penalize property owners for exercising their state law property right to remove their units from the rental market and to force them to keep such units on the market.

112. The Ordinance's tenant payment provisions do not rationally advance a legitimate governmental interest and are arbitrary.

113. The retroactive nature of the Ordinance is irrational, unfair, and illegitimate.

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114. The Ordinance arbitrarily, irrationally, and unfairly deprives rental property owners like Plaintiffs of their property rights.

115. The due process violation arising from the Ordinance is occurring under color of state law and violates 42 U.S.C. § 1983.

116. Plaintiff need not exhaust administrative remedies prior to bringing this claim

117. This facial due process claim is ripe for immediate resolution in federal court.

FOURTH CLAIM

Violation of Ellis Act
(California Government Code section 7060-7060.7)—Facial Claim; All Plaintiffs

118. Plaintiffs hereby re-allege each and every allegation contained in Paragraphs 1 through 117 as though fully set forth herein.

119. California Government Code Section 7060(a) and state common law prohibits local governments from acting or legislating to prevent a landlord/property owner from withdrawing rental units from the rental market.

120. Under California state law, a local government prevents a property owner from withdrawing rental units, in violation of the Ellis Act, when it burdens the right to withdraw with unreasonable and/or excessive conditions.

121. The Ordinance's tenant payment provisions constitute an unreasonable, excessive, and impermissible burden on a property owner's Ellis Act right to withdraw units from the rental market, and effectively prevents owners from withdrawing units, in violation of the Ellis Act.

122. The Ordinance is not in accordance with California statutory or common law.

FIFTH CLAIM

Unconstitutional Physical Taking of Private Property—
As Applied Claim Under 42 U.S.C. § 1983, Plaintiffs Levins and Park Lane

123. Plaintiffs hereby re-allege each and every allegation contained in Paragraphs 1 through 122 as though fully set forth herein.

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124. By filing its Notice of Withdrawal, and taking all other legally required steps to remove units under the legal regime existing prior to the Ordinance's enactment, the Levins and Park Lane have withdrawn their units from the rental market, as a matter of law.

125. The Rent Code does not appear to allow the Levins or Park Lane to return to the pre-withdrawal status quo.

126. Under the Rent Code, the Levins and Park Lane appear to be bound by their Notice of Withdrawal and the Notice of Constraints filed by the City to carry out the withdrawal of units.

127. The Ordinance's new tenant payment obligations are retroactive and apply to the Levins and Park Lane and its remaining tenants based on the withdrawal actions the Levins and Park Lane took prior to the enactment of the Ordinance.

128. Thus, as to Levins and Park Lane, the Ordinance's tenant payment provisions are not conditional on anything that they might do. Instead, they categorically apply to the Levins and Park Lane due to the withdrawal actions they took prior to the Ordinance's enactment.

129. The Ordinance functions as a straight-out governmental demand that the Levins and Park Lane give tens of thousands to hundreds of thousands of dollars to its tenants. Alternatively, it forces Park Lane and the Levins to choose between paying the money or submitting to the physical occupation of their property.

130. Therefore, to the extent the Ordinance serves a public purpose, it effects an unconstitutional physical taking of the Levins' and Park Lane's property.

131. "Just compensation" damages are not the proper remedy for a regulation that seeks to physically take money, an injunction halting the taking is. The Levins and Park Lane do not seek a damages remedy through this claim, but only declaratory and injunctive relief.

132. The Levins and Park Lane have no state compensation remedy for this physical taking claim, and need not pursue such a remedy before bringing this claim in federal court.

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SIXTH CLAIM

Unconstitutional Exaction/Condition and Taking of Private Property— As Applied Claim Under 42 U.S.C. § 1983, Plaintiffs Levins and Park Lane

133. Plaintiffs hereby re-allege each and every allegation contained in Paragraphs 1 through 132 as fully set forth herein.

134. The Levins and Park Lane properly filed and served a Notice of Withdrawal and Notice of Termination prior to enactment of the Ordinance.

135. The Ordinance obligates Park Lane to pay approximately **$1,448,023.98** to fifteen tenants because Park Lane seeks to take rental units off the market and recover possession of the units.

136. Under the Ordinance, six of Park Lane's tenants are due more than $100,000. One other tenant is due a payment of more than $200,000.

137. The Levins must pay their tenant **$117,958,89**.

138. The Ordinance allows the Levins' and Park Lane's tenants to use the payment owed to them under the Ordinance for any purpose.

139. The Levins' and Park Lane's financial assets disqualify them from seeking a Financial Hardship reduction from the mandated payments.

140. The Levins and Park Lane are not responsible for the housing shortage in San Francisco, and the high prices for housing; the City's policies are responsible.

141. The tenant payments mandated by the Ordinance, requiring the Levins and Park Lane to give its tenants enough money to be able to rent a unit on the open market, but allowing the tenants to use this sum for any purpose, do not address and are not related to the impact of the Levins' and Park Lane's decision to withdraw units from the rental market.

142. The individual tenant payments the Ordinance requires the Levins and Park Lane to make are not roughly proportionate in nature and degree to the impact of the Levins' and Park Lane's decision to withdraw the rental units from the rental market.

143. The total $1,448,023.98 payment the Ordinance requires Park Lane to make to its tenants in order to regain possession of its building for nonrental use is not roughly proportionate

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in nature and degree to the impact of Park Lane's decision to withdraw rental units from the rental market.

144. As to the Levins and Park Lane, the Ordinance's tenant payment requirements, and the sums they obligate Park Lane to pay, are final and due immediately because the Levins and Park Lane have already filed their Notice of Withdrawal, and the Ordinance retroactively applies to their situation.

145. To the extent the Ordinance's tenant payment requirements are a condition on the Levins' and Park Lane's exercise of a property right, including their right to remove units from the rental market, the Ordinance imposes an unconstitutional condition and unconstitutionally exacts and takes the Levins' and Park Lane's private property.

146. The monetary exaction(s) the Ordinance imposes on the Levins and Park Lane violate(s) *Nollan*, *Dolan*, and *Koontz*.

147. By this claim, the Levins and Park Lane do not seek "just compensation," but only equitable relief sufficient to halt the enforcement of the unconstitutional monetary exaction(s) imposed by the Ordinance.

148. The violation of the Levins' and Park Lane's constitutional rights effected by the Ordinance is occurring under color of state law and violates 42 U.S.C. § 1983.

149. The Levins and Park Lane need not exhaust administrative or state remedies prior to bringing this claim.

150. This unconstitutional conditions/takings claim is ripe for immediate resolution in federal court.

SEVENTH CLAIM

Unconstitutional Regulatory Taking—As Applied Claim Under 42 U.S.C. § 1983, Plaintiffs Levins and Park Lane

151. Plaintiffs hereby re-allege each and every allegation contained in Paragraphs 1 through 150 as though fully set forth herein.

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152. The Ordinance immediately obligates Park Lane to pay $1,448,023.98 to its remaining tenants because Park Lane has already filed a Notice of Withdrawal, and the Ordinance retroactively applies to this situation.

153. The Ordinance immediately obligates the Levins to pay $117,958,89 to its remaining tenant because the Levins have already filed a Notice of Withdrawal, and the Ordinance retroactively applies to this situation.

154. If the Ordinance does not amount to a physical taking or an unconstitutional exaction/condition as applied the Levins and Park Lane, it causes a regulatory taking as applied to those plaintiffs.

154 The Ordinance's demand that Park Lane pay $1,448,023.98 has a severe economic impact on Park Lane. The demand that the Levins pay $117,958,89 has a severe economic impact on the Levins.

155. The Ordinance interferes with the Levins' and Park Lane's distinct investment-backed expectations, including their reasonable expectation they would not be subject to tenant payment obligations not in effect either when they purchased their property or filed a Notice of Withdrawal.

156. The Ordinance requires the Levins and Park Lane to submit to either the confiscation of their money or the physical occupation of their property, and has the character of a taking as applied to the Levins and Park Lane.

157. The Ordinance causes a taking of the Levins' and Park Lane's property under *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 124 (1978).

158. The unconstitutional taking of the Levins and Park Lane's property arising from the Ordinance is occurring under color of state law and violates 42 U.S.C. § 1983.

EIGHTH CLAIM

Violation of Due Process—As Applied
Claim Under 42 U.S.C. § 1983, Levins and Park Lane

159. Plaintiffs hereby re-allege each and every allegation contained in Paragraphs 1 through 158 as though fully set forth herein.

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160. The Levins and Park Lane have a property right, under state law, to withdraw their rental units from the rental market and to use and enjoy their property.

161. The Levins and Park Lane took all legally required steps to withdraw rental units, and terminate the tenancies related to this units, under laws pre-dating enactment of the Ordinance.

162. The Levins and Park Lane have paid money to tenants under the tenant payment obligations existing under the law prior to the Ordnance.

163. The Levins and Park Lane have a vested property right to withdraw units under the law pre-dating the Ordinance, and to (at most) make only those tenant payments required by the laws in existence when they filed their Notice of Withdrawal.

164. The Ordinance retroactively and massively increases the Levins' and Park Lane's monetary liability to its tenants for actions it took prior to enactment of the Ordinance.

165. The Ordinance eviscerates the Levins' and Park Lane's vested right to take their units off the rental market, and to regain possession of the units, under the Ellis Act procedures that existed prior to the Ordinance's enactment.

166. The Ordinance arbitrarily, irrationally, and illegitimately deprives the Levins and Park Lane of a protected property right.

167. The violation of the Levins' and Park Lane's due process rights occurring under the Ordinance arises under color of state law and violates 42 U.S.C. § 1983.

NINTH CLAIM

Unreasonable Seizure in Violation of the Fourth Amendment—
As Applied Claim Under 42 U.S.C. § 1983, Levins and Park Lane

168. Plaintiffs hereby re-allege each and every allegation contained in Paragraphs 1 through 167 as though fully set forth herein.

169. The Ordinance requires that the Levins and Park Lane pay their tenants enough money to cover their rent for two full years before it may regain possession of its property for its own, nonrental uses.

170. The Ordinance requires Park Lane to pay its tenants a total of $1,448,023.98.

171. The Ordinance requires the Levins to pay $117,958,89 to a single tenant.

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172. The Ordinance puts no conditions on the Levins' or Park Lane's tenants' use of the payments. Their tenants need not use their payment for relocation or for rent.

173. The Ordinance is retroactive, obligating Park Lane to make a $1,448,023.98 tenant payment, and the Levins to pay $117,958,89, based on acts they took before the law ever required such a payment.

174. The Levins and Park Lane cannot rescind their Notice of Withdrawal to avoid the Ordinance's retroactive tenant payment mandates without incurring severe property restrictions and potential damages and civil penalties imposed on them under the Rent Code and Notice of Constraints already recorded by the City.

175. The Fourth Amendment applies in the civil context.

176. Money is protected from unreasonable seizure by the Fourth Amendment.

177. The Ordinance meaningfully interferes with the Levins' and Park Lane's posessory interests in their property, including its money and real property.

178. The Ordinance's tenant payment provisions unreasonably seize the Levins' and Park Lane's property.

179. The unreasonable seizure arising from the Ordinance is occurring under color of state law and violates 42 U.S.C. § 1983.

180. Plaintiff need not exhaust administrative remedies prior to bringing this claim.

181. This Fourth Amendment claim is ripe for immediate resolution in federal court.

TENTH CLAIM

Violation of the Ellis Act (California Government Code § 7060-7060.7)—
As Applied to Plaintiffs Levins and Park Lane

182. Plaintiffs hereby re-allege each and every allegation contained in Paragraphs 1 through 181 as though fully set forth herein.

183. California Government Code Section 7060(a) prohibits local governments from acting or legislating to prevent a landlord/property owner from withdrawing rental units from the rental market.

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184. Under California state law, a local government prevents a property owner from withdrawing rental units, in violation of the Ellis Act, when it burdens the right to withdraw the unit with unreasonable and/or excessive conditions.

185. The Ordinance's tenant payment provisions constitute an unreasonable, excessive, and impermissible burden on the Levins' and Park Lane's Ellis Act right to withdraw units from the rental market, and effectively prevents them from withdrawing units, in violation of the Ellis Act.

186. The Ordinance is not in accordance with California law as applied to the Levins and Park Lane.

RELIEF SOUGHT

WHEREFORE, Plaintiffs pray for judgment from this Court as follows:

1. A declaratory judgment that the Ordinance violates the Public Use Clause of the Fifth Amendment on its face and is therefore invalid and unenforceable;

2. A declaratory judgment that the Ordinance violates the Takings Clause of the Fifth Amendment on its face and is therefore invalid and unenforceable;

3. A declaratory judgment that the Ordinance violates *Nollan*, *Dolan*, and *Koontz* and the Unconstitutional Conditions doctrine on its face, and is therefore invalid and unenforceable;

4. A declaratory judgment that the Ordinance violates the Due Process Clause of the Fourteenth Amendment on its face and is therefore invalid and unenforceable;

5. A declaratory judgment that the Ordinance violates the Ellis Act on its face and is therefore invalid and unenforceable;

6. A declaratory judgment that the Ordinance violates *Nollan*, *Dolan*, and *Koontz* and the Unconstitutional Conditions doctrine as applied to the Levins and Park Lane, and is therefore invalid and unenforceable against those Plaintiffs;

7. A declaratory judgment that the Ordinance violates the Takings Clause as applied to the Levins and Park Lane, and is therefore invalid and unenforceable against those Plaintiffs;

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8. A declaratory judgment that the Ordinance violates the Fourth Amendment as applied to the Levins and Park Lane, and is therefore invalid and unenforceable against those Plaintiffs;

9. A declaratory judgment that the Ordinance violates the Ellis Act as applied to the Levins and Park Lane, and is therefore invalid and unenforceable against those Plaintiffs;

10. A preliminary prohibitory injunction preventing Defendants from enforcing or taking further action to enforce the Ordinance on its face and as applied to the Levins and Park Lane;

11. A permanent prohibitory injunction preventing Defendant from enforcing or taking further action to enforce the Ordinance on its face and as applied to the Levins and Park Lane;

12. An award to Plaintiffs of reasonable attorneys' fees and expert fees for bringing and maintaining this action, including under 42 U.S.C. § 1988;

13. An award to Plaintiffs of costs of suit pursuant to Federal Rule of Civil Procedure 54(d); and

14. An award to Plaintiffs of any other and further relief that the Court deems just and proper under the circumstances of this case.

DATED: July 24, 2014.

Respectfully submitted,

J. DAVID BREEMER
JENNIFER F. THOMPSON

By /s/ J. David Breemer
J. DAVID BREEMER

Attorneys for Plaintiffs

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Attorneys for:
Plaintiffs and Petitioners
Jerrold Jacoby, Martin Coyne, Small Property Owners of San Francisco Institute, and Petitioner Golden Properties, LLC

ENDORSED
FILED
San Francisco County Superior Court
JUL 24 2014
CLERK OF THE COURT
BY: ELIAS BUTT Deputy Clerk

ZACKS & FREEDMAN, PC
235 MONTGOMERY STREET, SUITE 400
SAN FRANCISCO, CALIFORNIA 94104

SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION

JERROLD JACOBY, MARTIN J. COYNE, SMALL PROPERTY OWNERS OF SAN FRANCISCO INSTITUTE, a California non-profit corporation, Plaintiffs and Petitioners, GOLDEN PROPERTIES, LLC, a Delaware limited liability company, Petitioner, v. CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation, Defendant and Respondent, JUDITH BARRETT, CYRUS FRIEDLANDER, CHARLIE BARRETT, DIEGO DE LEO, KATHARINE BEALE, KARL BEALE, and DOES 1-25, Defendants.	CASE NO. CGC-14-540709 COMPLAINT FOR DECLARATORY RELIEF AND PETITION FOR WRIT OF MANDATE CCP § 1060 et seq. CCP § 1085

Plaintiffs-Petitioners Jerrold Jacoby ("Jacoby"), Martin Coyne ("Coyne"), Small Property Owners of San Francisco Institute ("SPOSFI" or the "Institute"), and petitioner Golden Properties, LLC ("Golden") allege as follows:

1. Plaintiff/Petitioner JACOBY is a natural person over age 18 who owns real property in San Francisco.

2. Plaintiff/Petitioner COYNE is a natural person over age 18. He co-owns real property in San Francisco and he is authorized to bring this action on his co-owners' behalf.

3. Plaintiff/Petitioner SPOSFI is a California nonprofit corporation. SPOSFI is an organization of small property owners that advocates for home ownership in San Francisco. SPOSFI includes members who have invoked the Ellis Act and who plan to do so in the future. SPOSFI actively supports the Ellis Act, and responds to state and local attempts to weaken the Act. SPOSFI's members range from young families to the elderly on fixed incomes, and its membership cuts across all racial, ethnic, and socio-economic strata. Thus, many of SPOSFI's members are, or will be, subject to the challenged ordinance in some way.

4. Petitioner GOLDEN, is a Delaware limited liability company in good standing in Delaware and is authorized to do business in California. It is authorized to participate in this action.

5. Defendant/Respondent CITY AND COUNTY OF SAN FRANCISCO ("the City") is a California municipal corporation organized under the Constitution and laws of the State of California.

6. Defendants JUDITH BARRETT ("Barrett"), CYRUS FRIEDLANDER ("Friedlander"), and CHARLIE BARRETT ("Charlie Barrett") are natural persons over the age of 18 who reside in California and claim rights to relocation assistance as a result of being evicted

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from a San Francisco rental property under the Ellis Act. Friedlander is Judith Barrett's adult son and Charlie Barrett is her adult daughter. All subsequent references to "Barrett" are to Judith unless Charlie is specified.

7. Defendant DIEGO DE LEO ("De Leo") is a natural person over the age of 18 who resides in San Francisco, CA.

8. Defendants KATHARINE BEALE and KARL BEALE (the "Beales" unless separately indicated) are natural persons over the age of 18 who reside in San Francisco, CA. The Beales have a minor child.

9. DOES 1-25 are persons, whether natural or otherwise, who may have material interests in the subject of this litigation.

10. Venue is proper in this Court because the legislation at issue was enacted by the the City, and affects persons and property in the City and County of San Francisco.

11. Certain codes discussed in this complaint/petition are:

A. Government Code § 7060 et seq. (The "Ellis Act" or the "Act")

B. San Francisco Administrative Code § 37.9 et seq. (The "Rent Ordinance")

C. Ordinance #21–05

D. Ordinance #54-14

12. In 1979, The City enacted the Rent Ordinance. The Rent Ordinance, where applicable, regulates both the amount of rent that may be charged and the bases for recovering possession from tenants.

JERROLD JACOBY

13. Jacoby owns residential real property in San Francisco located at 1359-1361 Filbert Street. (The "Jacoby Property") The legal description of the Jacoby Property is:

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Legal Description - Assessor's Block 0525, Lot 029

The real property located in the City of San Francisco, County of San Francisco, State of California, and is described as follows:

Beginning at a point on the Southerly line of Filbert street; distant thereon 237 feet and 6 inches Westerly from the Westerly line of Larkin Street; running thence Westerly along said Southerly line of Filbert Street 25 feet; thence at a right angle Southerly 134 feet; thence at a right angle Easterly 25 feet; thence at a right angle Northerly 134 feet to the point of beginning.

Being a portion of Western Addition Block No. 25.

14. Jacoby is nearly 80 and disabled. He relies primarily on social security and had relied on rental income from the Jacoby Property. Over the past several years, he has had two hip replacements, and suffered through minor other surgeries and infections requiring hospitalization.

15. The Jacoby Property is zoned for two units. In the early 1970s, the prior owner wanted to add the second unit. However, the original house is a pre-1906 cottage with historical value. In order to avoid damaging or significantly altering the cottage, the City agreed in 1975 to allow a separate, small house to be built at the back of the lot. Upon completion, the City considered the Jacoby Property to be a two-unit, owner-occupied property.

16. In 1985, when Jacoby purchased the Jacoby Property, the Assessor considered it to be two units on one lot. The San Francisco Rent Stabilization and Arbitration Board ("Rent Board"), an agency of the City, did not charge its Rent Board fee to the property as a result.

17. Barrett occupied the cottage at the Jacoby Property until July 11, 2014. She became a tenant of Jacoby, per written rental agreement, in 1989. Friedlander and Charlie Barrett also occupied the cottage, through Judith Barrett, without Jacoby's express consent from 2010 until July 11, 2014.

18. With the passage of Proposition I in 1994, the Jacoby Property fell under the Rent Ordinance. In 2000, Jacoby was charging $1,900/month and did not raise the rent at all from 2000

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to 2007. In fact, Jacoby lowered the rent to $1,750/month for two years when Barrett claimed to be suffering financial hardship. In exchange, Barrett also agreed to voluntarily vacate after two years. She did not vacate.

19. By March, 2013, Barrett's rent of $2,190/month for a two-bedroom, two-bath, Russian Hill, historic cottage was approximately $1,600 below monthly fair market value for the area.

20. As a result of his age and infirmities, in Fall, 2012, Jacoby desired to move his adult daughter and former wife (daughter's mother) into the cottage so that they could assist him as needed, particularly as he continues to age. Jacoby sought to effect an owner move-in eviction ("OMI") under Rent Ordinance § 37.9(a)(8).

21. An OMI eviction allows the owner or certain categories of relatives to recover possession of certain rental property from tenants.

22. Under Rent Ordinance § 37.9(a)(8), Tenants were entitled to 60 days notice of termination of tenancy and approximately $19,000 relocation assistance. Because Jacoby felt compassion towards Barrett, he offered six months notice, rent-free, and more than this amount.

23. In response, Barrett threatened Jacoby with a multi-million dollar lawsuit and accused him of being a slumlord (even though he also lived at the Jacoby Property and had no interest in allowing it become a slum). As a result of what Jacoby considered to be "tenant terrorism", Jacoby became depressed and ill, and required hospitalization. The allegations in this paragraph are simply background and pled to establish Jacoby's reasons for desiring to cease being a landlord.

24. Barrett petitioned the Rent Board which reduced the monthly rent to $1,660.72 and ordered Jacoby to repay $22,568.45.

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25. Jacoby abandoned his plan to perform an OMI eviction when he realized that Barrett would make him spend tens of thousands of dollars challenging his good faith and would insist on a jury trial.

26. Left with no recourse – he could not move his daughter and former wife into the cottage to assist him in his winter years – Jacoby invoked the Ellis Act on July 3, 2013 by serving a notice of termination of tenancy, followed by filing a Notice of Intent to Withdraw with the Rent Board on July 10, 2013. In doing so, he relied on the relocation assistance requirement then in effect which only required him to pay approximately $19,000.00 in total relocation assistance. Jacoby has complied with all Ellis Act-authorized requirements other than the payment of the second installment of relocation assistance.

27. When Jacoby invoked the Act, the amount of relocation assistance he owed to his tenants was approximately $19,000. By local ordinance, 1/2 was due upon invocation of the Act and the remaining 1/2 upon the tenants' vacating.

28. Jacoby's right to avoid being compelled to continue renting vested upon his compliance with authorized requirements to invoke the Act. He did properly invoke the Act; the only thing left to do was to wait for the tenant's extension to run and pay the second 1/2 of the then-existing relocation assistance amount which Jacoby was ready, willing, and able to do.

29. Jacoby made the first Ellis Act relocation assistance installment that was due at the time he invoked the Act. That amount was approximately $9,500.00.

30. Barrett ostensibly qualified for an extension of the termination of her tenancy under the Ellis Act to one year. That year ran on July 10, 2014.

31. Charlie Barrett vacated prior to July 10, 2014. Judith Barrett and Friedlander vacated timely. Jacoby paid them the remainder of what he owned them when he invoked the Act,

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but they demanded that he comply with the Ellis Act Tax – that he pay the balance of the $79,000.

32. Through no fault of his own, Jacoby now faces a potential $208,000 liability because of Rent Ordinance damages trebling, about $188,000 above what he would have owed had the Ellis Act Tax not been made to apply to invocations prior to its effective date.

33. The amount Jacoby would owe under the Ellis Act Tax is a hardship for him.

MARTIN COYNE

34. Coyne is a co-owner of the real property located at 566-568 Chestnut Street (a.k.a 566-568A Chestnut Street) San Francisco, CA 94133, which comprises four units. The legal description is:

> Legal Description - Assessor's Block 0052, Lot 011
> The real property located in the City of San Francisco, County of San Francisco, State of California, and is described as follows:
>
> BEGINNING at a point on the northerly line of Chestnut Street, distant thereon 112 feet easterly from the easterly line of Mason Street, running thence easterly and along said northerly line of Chestnut Street 25 feet and 6 inches; thence at a right angle northerly 137 feet and 6 inches; thence at a right angle westerly 25 feet and 6 inches; thence at a right angle southerly 137 feet and 6 inches to the said northerly line of Chestnut Street and the point of beginning.
>
> BEING a portion of 50 Vara Lot Number 702.

35. Coyne, acting with the consent of his co-owners, invoked the Ellis Act on August 6, 2013 and has complied with all required acts in existence on that date, including tender of payment of then-statutorily-required relocation assistance in the approximate amounts of approximately $8,600.00 for De Leo and $10,400.00 for the Beales (combined). In invoking the Act, the owners relied on the relocation assistance formula then in existence.

36. Because of his age, De Leo was entitled to a one-year extension of the termination of his tenancy to August 8, 2014. Because Coyne had had good relations with the Beales, he

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voluntarily agreed to give them the same extension. Had he not done that, the Beales would have been required to vacate prior to the effective date of the Ellis Act Tax. Coyne relied on the existence relocation assistance formula when he extended their tenancy.

37. Coyne's right to avoid being compelled to continue renting vested upon his compliance with authorized requirements to invoke the Act. He did properly invoke the Act; the only thing left to do was to wait for the tenants' tenancies to run and pay the second 1/2 of the then-existing relocation assistance amount which Coyne was ready, willing, and able to do.

38. When he invoked the Act, neither Coyne, nor his co-owners, knew when De Leo's tenancy commenced; it pre-dated their acquisition of the building. However, at the time, that had no effect on the withdrawal.

39. After the Tax became effective, Coyne, through counsel, contacted the Rent Board regarding the De Leo situation. The Rent Board refused to get involved and stated that it has no way to determine what Coyne's obligation to De Leo under the Ellis Act Tax would be.

40. Under the Ellis Act Tax, Coyne would owe the Beales a total approximate amount of $39,000.00, approximately four times what was owed when the Act was enacted. Under the Tax Coyne now faces an unknown liability for De Leo, but most likely considerably greater than the new amount owed to the Beales. These are massive increases over what was in effect in August, 2013, is unfair, and constitutes an improper transfer of wealth to De Leo and the Beales.

GOLDEN

41. Golden owns, and has invoked the Ellis Act for, 19 units in San Francisco.

42. For three of the units, Golden invoked the Ellis Act on July 12, 2013, and as to the others it was invoked on December 27, 2013.

43. Golden's right to avoid being compelled to continue renting vested upon its

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compliance with authorized requirements to invoke the Act. It did properly invoke the Act; the only thing left to do was to wait for the tenants' extensions to run and pay the second 1/2 of the then-existing relocation assistance amount which Golden was ready, willing, and able to do.

44. Under the relocation assistance in effect when the Act was invoked on either date, the total amount owed, for all units, was approximately $300,000.00. However, under the new Tax, the total is approximately $780,000 – a nearly 160% increase. This is without Rent Ordinance trebling of damages.

45. These are massive increases over what was in effect in July and December, 2013, is unfair, and constitutes an improper transfer of wealth to the tenants.

THE DISPUTE

46. In 1986, the Legislature enacted the Ellis Act which survived several legal challenges to its constitutionality. Section 7060(a) states, as applicable here:

> No public entity . . . shall, by . . . ordinance, or regulation, or by administrative action implementing any statute, ordinance or regulation, compel the owner of any residential real property . . . to continue to offer, accommodations in the property for rent or lease. . . .

47. In 2005, the City enacted Ordinance #21–05 which extended relocation assistance for Ellis Act evictions to all tenants who had resided in their unit for at least 12 months prior to invocation of the Act, regardless of income. A true and correct copy of the schedule established by Ordinance No. 21–05 is attached hereto as Exh. A. Where a landlord seeks eviction based upon Section 37.9(a)(13), referring to the Ellis Act, and the notice of intent to withdraw rental units is filed with the Rent Board on or after February 20, 2005, relocation payments shall be paid to the tenants as follows:

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> (A) Subject to subsections 37.9A(e)(3)(B) (C) and (D) below, each tenant shall be entitled to receive $4,500.00. . .;
>
> (B) In the event there are more than three tenants in a unit, the total relocation payment shall be $13,500.00, which shall be divided equally by the number of tenants in the unit; and
>
> (C) Notwithstanding Subsections 37.9A(e)(3)(A) and (B), any tenant who, at the time the notice of intent to withdraw rental units is filed with the Board, is 62 years of age or older, or who is disabled . . . shall be entitled to receive an additional payment of $3,000.00. . . .
>
> (D) Commencing March 1, 2005, the relocation payments specified in Subsections 37.9A(e)(3)(A) and (B) and (C) shall increase annually [by a prescribed formula].

48. In 2005, certain persons challenged Ordinance No. 21–05 as preempted by the Ellis Act. The Court of Appeal reversed a trial court judgment for the plaintiffs. (Pieri v. City and County of San Francisco (2006) 137 Cal.App.4th 886) The Court of Appeal stated:

> We cannot conclude that the relocation ordinance on its face violates the Ellis Act. While the amount of the compensation is higher than that approved in [the cases] Kalaydjian, Briarwood Properties, and H & H Properties, it is not so disproportionately higher – especially in light of intervening inflation – that it is necessarily beyond that contemplated by the Legislature in enacting and amending section 7060.1, subdivision (c).

49. On November 6, 2006, by ballot initiative, the City enacted "Proposition H", the "Relocation Assistance for No Fault Tenant Removal" initiative. ("Proposition H")

50. The ballot digest for Proposition H, a true and correct copy of which is attached hereto as Exh. B, stated:

> Each eligible tenant would receive a $4,500 relocation payment, half of which would be paid at the time the tenant receives the eviction notice and the second half when the unit is vacated. The landlord would not be obligated to pay more than $13,500 in relocation payments to all eligible tenants in the same unit.

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> However, an additional payment of $3,000 would be made to each eligible tenant who is disabled, 60 years of age or older or who has a child under 18 years of age living in the same unit.
>
> The dollar amounts of relocation payments would be increased annually to account for inflation.

51. Proposition H was championed by seven members of the San Francisco Board of Supervisors, including Jake McGoldrick, who in 2002 sponsored an anti-Ellis Act ordinance that the Court of Appeal found to violate the California Constitution's right of privacy. (Tom v. City & County of San Francisco (2004) 120 Cal.App.4th 674.

Among the ballot arguments the seven Supervisors made in support of Proposition H, which are attached hereto in Exh. B, were:

> "Tenants displaced by these evictions must receive adequate compensation so that they can afford to stay in San Francisco",
>
> "The lack of adequate relocation money prevents families with children evicted for no-fault of their own from obtaining new housing in San Francisco. Passing Prop H helps stem the tide of families leaving the city",
>
> "Seniors, and those suffering from such disabilities as HIV/AIDS, cannot get by on the inadequate relocation payments under current law. Prop H will provide them the money they need to stay in San Francisco", and
>
> "Prop H . . . is a moderate measure that cushions the blow for people having to move through no fault of their own."

53. In rebuttal to the argument against Proposition H, then-Supervisor/now-Sheriff Mirkarimi stated:

> "Prop H is about fairness. Prop H is a reasonable response to an alarming trend of tenant dislocation. It says that while evictions of tenants can be unavoidable, tenants evicted for no fault of their own should receive adequate funds to cover moving costs and the payment of first month's rent, last month's rent, and a security deposit typically required to obtain a new apartment.

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> Prop. H helps protect our taxpayers from shouldering the added economic and social consequences of involuntary displacement. Providing adequate relocation payments to tenants evicted for no fault of their own is consistent with this spirit, thereby making San Francisco a national leader in protecting tenants."

54. Proposition H did not apply to evictions under Rent Ordinance § 37.9(a)(13) – the Ellis Act – because Ellis Act eviction relocation assistance had already been set at the same amounts as in Proposition H in 2005 by Ordinance No. 21–05. The slight difference in assistance owed prior to the Tax exists because the Ellis Act relocation payments began being adjusted for inflation a year earlier.

55. On May 2, 2014, the City's Board of Supervisors enacted Ordinance #54-14 (the "Ellis Act Tax") which became effective June 1, 2014. The Ellis Act Tax is a special, and cumbersome, relocation assistance scheme. A true and correct copy of the Rent Board's Tax schedule is attached hereto as Exh. C. The Ellis Act Tax is a massive increase in the relocation assistance from amounts that the City had previously, and publicly, stated constituted "adequate compensation" and was "a reasonable response" to no-fault evictions.

56. The City invoked the Ellis Act Tax for two primary reasons: 1) to inhibit and discourage the use of the Ellis Act in San Francisco; and 2) to provide a windfall/transfer of wealth to tenants evicted under the Ellis Act as compared to those evicted under OMI and other no-fault bases for recovery.

57. A tenant evicted under OMI and any other just cause basis faces the same housing market as a tenant evicted under the Ellis Act.

58. The City made the Ellis Act Tax applicable retroactively to all situations where the tenants were in possession on June 1, 2014. There were no exclusions for withdrawals that had been initiated prior to not only the enactment of the tax but prior to it even being raised before the

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Board of Supervisors. In other words, Jacoby, Coyne, and Golden Properties did not invoke the Act to avoid a known or pending increase in relocation assistance. SPOSFI also represents owners who invoked the Act before the Tax was considered by the City.

59. If the Ellis Act Tax is valid, Jacoby will owe approximately $79,000 in relocation assistance, Coyne will owe some unknown amount greater than $39,000, and Golden will owe approximately $780,000. Those are absurd amounts of money to pay for invoking the state law right not to be compelled by the City to continue to offer their properties for rent.

60. The City has no legitimate state interest in requiring more relocation assistance for Ellis Act evictions than for OMI, or other no-fault, evictions. There is no rational basis for distinguishing between them.

61. In light of Proposition H, the Ellis Act Tax it is so disproportionately higher than is allowed by law that it is necessarily beyond that contemplated by the Legislature in enacting and amending § 7060.1(c). The Legislature did not contemplate that owners invoking the Act would pay up to 10 times the amount of relocation assistance as required for locally-favored (or locally less-disfavored) bases for recovering possession where the effect on the evicted tenant is no different than under the Ellis Act.

62. Because the Barretts and Friedlander have vacated and stated that they will sue Jacoby under the Rent Ordinance, he faces damages at least treble the Ellis Act Tax plus attorney's fees solely because the City changed the rules long after he invoked his right not to be compelled to continue to offer the cottage for rent. Coyne and Golden face similar situations when their tenants are due to vacate.

63. Additionally, all Plaintiffs and Petitioners were denied the opportunity not to invoke the Ellis Act as a result of a determination that they would have to pay an excessive amount

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of relocation assistance from their point of view and consider alternatives, such as doing an OMI in Jacoby's case.

64. Furthermore, neither Jacoby, Coyne, Golden, nor any owner has a right to rescind an Ellis Act withdrawal – the Rent Ordinance vests complete discretion to allow or deny rescission with the Rent Board. In any event, those owners who invoked the Act in 2013 had no meaningful opportunity to apply for rescission should it be determined that they owed more relocation assistance than they could, or desired to, pay. Moreover, the position of all Defendants is that even if Jacoby, Coyne, and Golden were to allowed rescind their withdrawals, the tenants would be entitled to retain the first payment of relocation assistance.

65. Accordingly, the Ellis Act Tax is facially invalid.

66. In order to insulate the Ellis Act Tax from a facial challenge, and to provide the appearance of fairness, the City enacted a hardship determination provision. (The "Administrative Scheme" or "Scheme") Without the Administrative Scheme, the City would not have enacted the Ellis Act Tax.

67. The Administrative Scheme provision vests complete discretion in the Rent Board. Although the Administrative Scheme states that "the Board shall follow a process consistent with the existing Board hearing process under § 37.8" which pertains to petitions by landlords to increase rent beyond the authorized amounts, the two petitions are completely different. Thus, the Scheme contains no standards for making a determination.

68. As shown by the petition attached hereto as Exh. D., the Scheme forces the owner to go through the difficult and time-consuming task of gathering a diversity of financial information, particularly since there are no standards and the Rent Board has sole and unfettered discretion in determining whether the Ellis Act Tax is a hardship – and then how much the Tax

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should be reduced, or perhaps spread over some time period. Thus, the cost of resorting to, and exhausting, the Administrative Scheme is substantial and would itself be greater than the relocation assistance to which many tenants evicted under OMI would be entitled. It could potentially itself be a prohibitive price to withdrawal.

69. The Administrative Scheme itself violates the Ellis Act as an unauthorized procedure because a pre-withdrawal exhaustion of administrative remedies, including exhaustion of legal challenges under CCP § 1086 if necessary, violate the Ellis Act's command that public entities cannot compel owners of residential property to continue to offer accommodations in the property for rent or lease. The only delay the Act tolerates is the termination period set forth in Government Code § 7060.4(b).

70. Moreover, as Exh. C states, owners may only file hardship petitions after invoking the Act, which means the owner must pay 1/2 the Tax up front. The obvious intent is to discourage withdrawals. Regardless, that an owner could use the Administrative Scheme after invoking the Act substantially burdens the right to withdraw because it converts the Ellis Act's right not to be compelled to continue offering accommodations for rent into a crapshoot – whether the owner can afford to complete the withdrawal depends on the discretion of the Rent Board and then if the Owner decides that amount is too high, the owner throws the dice again in seeking permission to rescind. All of this costs substantial money.

71. Additionally, if, after the first 1/2 is paid, the Rent Board determines that the total payment is less than that first 1/2 payment, the owner must then take the tenant to court, at significant cost, and perhaps collect the overpayment, if the tenant has locatable assets.

72. The Scheme also forces owners to expose their financial information to public view. California has enacted strong, constitutional privacy rights. In particular, this includes the

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right to financial privacy. However, financial information submitted pursuant to the Scheme is not exempt from public disclosure, forcing an owner to waive their constitutional right of financial privacy if they wish to use the Scheme.

73. Even if owners' financial information were not protected by the Constitution, the City does not have a valid interest in forcing owners to make such information susceptible to public viewing in order to simply petition for a reduction in the Tax.

74. Also, Jacoby, Coyne, Golden and other owners who are unable to comply with the Ellis Act Tax are also subject to misdemeanor prosecution under the Rent Ordinance.

75. No Plaintiff or Petitioner seeks any relief or remedies for which petitioning conduct under CCP § 425.16 is an element.

76. Plaintiffs/Petitioners incorporate each preceding paragraph into the causes of action below.

FIRST CAUSE OF ACTION
Declaratory Relief – CCP § 1060

(All Plaintiffs Against All Defendants)

77. A controversy has arisen among the parties to this action. Defendants take the position that the Ellis Act Tax does not violate the Ellis Act and is, in all regards, valid. Plaintiffs contend that it does violate the Ellis Act and that it may not be enforced because it is unlawful. In particular, but not exclusively, Plaintiffs contend that any relocation assistance requirement that exceeds the amount required for OMI, and other no-fault, evictions is a surcharge for invoking a politically-disfavored state right.

78. Plaintiffs separately contends that the Ellis Act Tax may not be applied to owners who invoked the Act before the Tax was introduced at the Board of Supervisors because doing so would deprive them of due process of law and deprive them of a vested right. Defendants contend

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that the City may increase relocation assistance payments at any time during the termination period no matter the effect on the owners.

79. Plaintiffs also contend that the Rent Board must allow owners to revoke an Ellis Act invocation if -- assuming the Ellis Act Tax is valid -- the amount ultimately determined to be paid for relocation assistance is greater than that set by Ordinance No. 21-05. Defendants contend that regardless of the amount of relocation assistance that is determined, the Rent Board retains discretion to approve or deny a rescission.

80. Defendants also contend that if an Ellis Act withdrawal is rescinded as a result of an unfavorable Administrative Scheme determination, the tenants are entitled to retain any relocation assistance payments that have already been made. Plaintiffs contend that if an Ellis Act withdrawal is rescinded, the owners are entitled to recover such payments.

81. Plaintiffs contend that the Scheme violates their constitutional right to financial privacy by forcing them to provide protected information which the public can obtain. Defendants contend that there is no violation, that it is de minimis, or that owners have the option of paying the full Tax and avoiding disclosure.

82. Plaintiffs Jacoby, Coyne, and SPOSFI's members, and all other similarly-situated owners are subject to potential criminal and civil liability under the San Francisco Rent Ordinance and California Business and Professions Code § 17200 et seq. for not complying with the Ellis Act Tax unless relief is granted.

83. Plaintiffs desire a judicial determination and declaration of the parties' respective rights and duties with respect to the validity and enforceability of the Ellis Act Tax and the Administrative Scheme. Such a declaration is necessary and proper at this time so that Plaintiffs may ascertain their rights and duties without being subject to liability.

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84. Plaintiffs seek a determination of the following questions:

A. Is the Ellis Act Tax preempted by the Ellis Act because the amount of relocation assistance it mandates is unreasonable?

B. Is the Ellis Act Tax preempted by the Ellis Act because the City has set lower relocation assistance amount for OMIs and other certain evictions?

C. May the Ellis Act Tax be applied to owners who invoked the Act prior to its enactment, particularly those who invoked it prior to the tax being raised at the Board of Supervisors initially?

D. Does the Administrative Scheme save the Ellis Act Tax from facial invalidity under the Ellis Act?

E. Does the Administrative Scheme violate the California Constitution's right of privacy?

F. Does the Administrative Scheme violate the Ellis Act.

SECOND CAUSE OF ACTION
Petition for Writ of Mandate – CCP § 1085

(All Petitioners Against Respondent City)

85. Petitioners have a beneficial interest in ensuring that the Ellis Act Tax is found to be invalid and void, and that the City is ordered to rescind it and bar its enforcement by private persons, so that Jacoby's and SPOSF's members' statutory rights are not infringed.

86. Petitioners do not have a plain, speedy, or adequate remedy in the ordinary course of law, and therefore writ relief is necessary.

PRAYER

WHEREFORE, Plaintiffs and Petitioners pray for relief as follows:

A. On their first cause of action for declaratory relief:

1. For a declaration that the Ellis Act Tax is facially invalid;

2. If the Ellis Act Tax is not facially invalid, for a declaration that it is invalid

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as to all those who invoked the Ellis Act prior to June 1, 2014 or any alternate date that the facts and law warrant;

3. For a declaration that the Administrative Scheme is invalid because it forces withdrawing owners to waive their constitutional right of privacy;

4. For a declaration that the Administrative Scheme violates the Ellis Act;

5. For a stay of the Ellis Act Tax and Administrative Scheme pending a determination on the merits.

B. On their second cause of action for writ of mandate:

1. For a writ of mandate or other appropriate relief, including a mandatory injunction, directing and commanding the City not to enforce the Ellis Act Tax, to rescind the Tax, and to refrain from taking any action against anyone who fails to comply with it;

2. For a writ of mandate commanding the City not to allow anyone else, natural person or otherwise, to enforce the Ellis Act Tax;

3. For an alternative writ against the City;

4. For a stay of the Tax and the Scheme pending determination of the merits.

C. On both causes of action:

1. For costs of suit and attorney's fees pursuant to Code of Civil Procedure § 1021.5;

2. For a judgment that restricts Ellis Act relocation assistance payments to those specified in Ordinance #21-05.

3. For such further and other relief as the law and facts justify.

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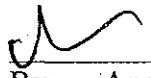
Date: July 24, 2014

ZACKS & FREEDMAN, P.C.



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VERIFICATION

I, Andrew M. Zacks, am lead counsel for all Plaintiffs and Petitioners. My office prepared, and I reviewed, all of the Ellis Act withdrawals referred to by Jacoby, Coyne, and Golden. I am also personally familiar with the history of the relocation assistance provisions referenced in this action, particularly having been lead counsel in the Pieri case. Additionally, I am a former board member of petitioner SPOSFI, and have represented it, and its related organization, Small Property Owners of San Francisco ("SPOSF"), in litigating Ellis Act-related ordinances. On this basis, I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Date: July 21, 2014

Andrew M. Zacks

EXHIBIT A

(3) On or After February 20, 2005. Where a landlord seeks eviction based upon Section 37.9(a)(13), and the notice of intent to withdraw rental units is filed with the Board on or after February 20, 2005, relocation payments shall be paid to the tenants as follows:

(A) Subject to subsections 37.9A(e)(3)(B) (C) and (D) below, each tenant shall be entitled to receive $4,500.00, one-half of which shall be paid at the time of the service of the notice of termination of tenancy, and one-half of which shall be paid when the tenant vacates the unit;

(B) In the event there are more than three tenants in a unit, the total relocation payment shall be $13,500.00, which shall be divided equally by the number of tenants in the unit; and

(C) Notwithstanding Subsections 37.9A(e)(3)(A) and (B), any tenant who, at the time the notice of intent to withdraw rental units is filed with the Board, is 62 years of age or older, or who is disabled within the meaning of Section 12955.3 of the California Government Code, shall be entitled to receive an additional payment of $3,000.00, $1,500.00 of which shall be paid within fifteen (15) calendar days of the landlord's receipt of written notice from the tenant of entitlement to the relocation payment, and $1,500.00 of which shall be paid when the tenant vacates the unit.

(D) Commencing March 1, 2005, the relocation payments specified in Subsections 37.9A(e)(3)(A) and (B) and (C) shall increase annually at the rate of increase in the "rent of primary residence" expenditure category of the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose Region for the preceding calendar year, as that data is made available by the United States Department of Labor and published by the Board.

EXHIBIT B

Relocation Assistance for No Fault Tenant Removal

PROPOSITION H

Shall landlords be required to provide relocation payments to eligible residential tenants who are evicted through no fault of their own?

YES
NO

Digest

by the Ballot Simplification Committee

THE WAY IT IS NOW: City law requires a landlord to provide relocation assistance to tenants who are evicted when the landlord is going to:

- use the property for at least three continuous years as the landlord's principal residence or as the principal residence of the landlord's spouse, domestic partner, grandparents, grandchildren, parents, children, brother, sister, or the spouse or domestic partner of these persons;
- demolish a building that may not be safe in an earthquake;
- temporarily regain possession of the unit to make improvements;
- temporarily regain possession of the unit to remove lead; or
- convert a unit into a condominium.

THE PROPOSAL: Proposition H is an ordinance that would require landlords to provide additional relocation payments to tenants who have resided in a unit for twelve or more months when the landlord evicts tenants, through no fault of their own, in order to:

- use the property for at least three continuous years as the landlord's principal residence or as the principal residence of the landlord's spouse, domestic partner, grandparents, grandchildren, parents, children, brother, sister, or the spouse or domestic partner of these persons;
- demolish the rental unit;
- permanently remove the rental unit from use as housing;
- temporarily regain possession of the unit to make improvements; or
- substantially rehabilitate the building.

A landlord must provide the tenant with an eviction notice which states the tenant's right to receive relocation payments.

Each eligible tenant would receive a $4,500 relocation payment, half of which would be paid at the time the tenant receives the eviction notice and the second half when the unit is vacated. The landlord would not be obligated to pay more than $13,500 in relocation payments to all eligible tenants in the same unit.

However, an additional payment of $3,000 would be made to each eligible tenant who is disabled, 60 years of age or older or who has a child under 18 years of age living in the same unit.

The dollar amounts of relocation payments would be increased annually to account for inflation.

This ordinance would apply to all eligible tenants who receive an eviction notice on or after August 10, 2006.

A "YES" VOTE MEANS: If you vote "yes," you want to expand the reasons landlords must provide relocation payments to eligible tenants who are evicted through no fault of their own.

A "NO" VOTE MEANS: If you vote "no," you do not want to expand the reasons landlords must provide relocation payments to eligible tenants who are evicted through no fault of their own.

Controller's Statement on "H"

City Controller Edward Harrington has issued the following statement on the fiscal impact of Proposition H:

Should the proposed ordinance be approved by the voters, in my opinion, it would have a minimal impact on the cost of government.

This estimate does not address the potential impact of increased relocation payments on renters, landlords or the local economy.

How "H" Got on the Ballot

On August 9, 2006 the Department of Elections received a proposed ordinance with supporting signatures from Supervisors Ammiano, Daly, McGoldrick and Mirkarimi.

The City Elections Code allows four or more Supervisors to place an ordinance on the ballot in this manner.

THIS MEASURE REQUIRES 50%+1 AFFIRMATIVE VOTES TO PASS.

ARGUMENTS FOR AND AGAINST THIS MEASURE IMMEDIATELY FOLLOW THIS PAGE. THE FULL TEXT BEGINS ON PAGE 164.
SOME OF THE WORDS USED IN THE BALLOT DIGEST ARE EXPLAINED ON PAGE 62.

H Relocation Assistance for No Fault Tenant Removal

PROPONENT'S ARGUMENT IN FAVOR OF PROPOSITION H

San Francisco is losing its diversity because low and moderate income tenants, when evicted, can't afford to remain in the city. Landlords evicting tenants for no-fault reasons can give tenants as little as 30 days notice. This makes finding a new apartment in San Francisco nearly impossible, particularly when move-in costs to a new apartment can exceed $5,000.

San Francisco has tried to maintain its economic diversity. We have enacted a local minimum wage, universal health care access, and strong laws protecting tenants against eviction. But some evictions that are no fault of the tenants do occur. Tenants displaced by these evictions must receive adequate compensation so that they can afford to stay in San Francisco.

Currently, many tenants evicted for no-fault reasons get no relocation payments. The few who do get amounts set between 9 and 20 years ago, even though rents have since doubled or tripled. San Francisco needs to update its relocation payments for the 21st century. The minimum wage must increase to keep up with inflation, and so must tenant relocation payments.

The lack of adequate relocation money prevents families with children evicted for no-fault of their own from obtaining new housing in San Francisco. Passing Prop H helps stem the tide of families leaving the city.

Seniors, and those suffering from such disabilities as HIV/AIDS, cannot get by on the inadequate relocation payments under current law. Prop H will provide them the money they need to stay in San Francisco.

Prop H will not solve San Francisco's affordable housing crisis. Rather, it is a moderate measure that cushions the blow for people having to move through no fault of their own.

Vote Yes on H.

Sup. Ross Mirkarimi
Sup. Tom Ammiano
Sup. Chris Daly
Sup. Bevan Dufty
Sup. Jake McGoldrick
Sup. Aaron Peskin
Sup. Gerardo Sandoval

REBUTTAL TO PROPONENT'S ARGUMENT IN FAVOR OF PROPOSITION H

Proposition H Hurts Renters

San Francisco already has generous relocation benefits available to all renters who experience no-fault evictions. Prop H would raise the bar for relocating tenants to a cost equal to one year's rent in many cases, and to apply this penalty even when a renter is asked to vacate to make repairs and improvements to the building! This will result in fewer improvements and unhappy tenants – is this what the Supervisors had in mind?

We agree that San Francisco is losing its diversity – families are leaving in record numbers because owning a home has become financially impossible, but Prop H will only make it worse. Mandatory tenant payments of up to $22,500 for each unit will raise the cost of property by creating a new de facto tax on tenants trying to become homeowners.

Extracting $22,500 from a small landlord who may be a senior on a fixed income could prove to be the final straw for property owners considering getting out of the rental business through the Ellis Act. The fix is short term – the harm done is long term.

San Francisco has already lost 10,000 – 20,000 units of rental housing because City Hall has passed so many laws to punish landlords. Prop H is merely the latest wrong-headed attempt to pander to San Francisco's tenant majority by vote-hungry Supervisors.

Vote NO on H.

San Francisco Taxpayers Union
www.sftaxpayersunion.org

San Francisco Republican Party
Mike DeNunzio, Chairman

Arguments printed on this page are the opinion of the authors and have not been checked for accuracy by any official agency.

Relocation Assistance for No Fault Tenant Removal

OPPONENT'S ARGUMENT AGAINST PROPOSITION H

NO ON PROPOSITION H

San Francisco's housing market is already over-regulated and over-priced. Don't exacerbate a growing problem.

Proposition H is simply another unreasonable attack on San Francisco's housing providers and people who would like to become homeowners in the City.

The City already requires that landlords provide generous relocation benefits to tenants for No-fault evictions. This measure would treble those benefits, so that a landlord might have to pay up to $13,500 if three tenants occupy a unit, or even more if one or more of the tenants is a senior, disabled, or under the age of 18.

At that expense, there is no incentive for landlords to provide needed capital improvements, and the quality of the City's housing stock will deteriorate. Additionally, landlords may be forced to pull their rental property out of the market because they can't afford to remain in business, and the resulting shortage of rental stock will increase the rents of the remaining units.

Proposition H discourages homeownership by increasing the cost of San Francisco's already overpriced homes, especially to first-time buyers and forces families to leave town. When families are forced to leave the City, there are fewer children in the public schools leading to more school closings and less funding from the State.

VOTE NO ON PROPOSITION H.

For more information, go to our website at sfgop.org or call us at (415) 359-9125.

San Francisco Republican Party
Mike DeNunzio, Chairman

REBUTTAL TO OPPONENT'S ARGUMENT AGAINST PROPOSITION H

The Republican Party's opposition to Prop H is no surprise. After all, President Bush and the Republican-controlled Congress have increased social and economic inequality and shown little concern for the poor, working, and middle-classes, in New Orleans or elsewhere. The Republicans describe as "generous" a relocation payment that has not been raised since 1987; this mirrors the Party's refusal to raise the $5.15 per hour federal minimum wage.

Prop H is about fairness. Prop H is a reasonable response to an alarming trend of tenant dislocation. It says that while evictions of tenants can be unavoidable, tenants evicted for no fault of their own should receive adequate funds to cover moving costs and the payment of first month's rent, last month's rent, and a security deposit typically required to obtain a new apartment. The Republicans bizarrely argue that providing adequate relocation payments will force families with children from the city; to the contrary, the lack of such adequate payments has contributed to this exodus.

While the Republican Party and their allies support national policies that wrongfully siphon away precious resources from municipalities like San Francisco, we must manage the added burden of making our City livable; Prop. H helps protect our taxpayers from shouldering the added economic and social consequences of involuntary displacement. Providing adequate relocation payments to tenants evicted for no fault of their own is consistent with this spirit, thereby making San Francisco a national leader in protecting tenants.

Vote Yes on H

Ross Mirkarimi
Sponsor, Yes on H

Arguments printed on this page are the opinion of the authors and have not been checked for accuracy by any official agency.

EXHIBIT C

Relocation Payments for Tenants Evicted Under the Ellis Act

Effective June 1, 2014, Rent Ordinance Section 37.9A was amended to require a landlord to pay the greater of the relocation payment amount specified in Subsection 37.9A(e)(3)(A) – (D) or the "Rental Payment Differential" defined as "an amount equal to the difference between the unit's rental rate at the time the landlord files the notice of intent to withdraw rental units with the Board, and the market rental rate for a comparable unit in San Francisco as determined by the Controller's Office, multiplied to cover a two-year period, and divided equally by the number of tenants in the unit." The Controller has established a Rental Payment Differential Schedule in accordance with Subsection 37.9A(e)(3)(E)(ii). (See page 2).

USE THE GREATER OF:

Minimum Required Relocation Payment			
Date of Service of Notice of Termination of Tenancy ("Eviction Notice")	Base Relocation Amount Due Per Tenant:	Base Relocation Amount Due Per Unit Not to Exceed:	PLUS Additional Amount Due to Each Elderly (62 years or older) or Disabled Tenant
3/01/12 – 2/28/13	$5,157.27	$15,471.78	$3,438.17
3/01/13 – 2/28/14	$5,210.91	$15,632.69	$3,473.93
3/01/14 – 2/28/15	$5,265.10	$15,795.27	$3,510.06

OR

Rental Payment Differential Using the Controller's Schedule		
A.	Year In Which the Unit's Base Rent was Established (if before 1979, use 1979)[1] :	
B.	Total Monthly Rent at time of filing of Notice of Intent to Withdraw Units:	$
C.	Rental Payment Differential Multiplier (from page 2)[2] :	
D.	Monthly Rental Payment Differential Amount (B **x** C):	$
E.	Total Relocation Payment Amount using Controller's Schedule (D **x** 24 mos.):	$
F.	Relocation Payment Amount Per Tenant (E ÷ number of tenants in unit):	$
G.	Plus Additional Amount Due to Elderly or Disabled Tenant (if applicable)[3] :	$
H.	Total Relocation Payment Due to Tenant (F + G):	$

[1] If the base rent was increased pursuant to the Costa-Hawkins Rental Housing Act or Rules and Regulations Section 1.21, 6.11 or 6.14, use the year of such increase for purposes of this calculation.

[2] Locate the year in which the base rent for the unit was established on the Controller's Rental Payment Differential Schedule (page 2) and find the corresponding multiplier. Enter it on Line C.

[3] Use the "Additional Amount Due to Each Elderly (62 years or older) or Disabled Tenant" from the Minimum Required Relocation Payment table above.

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San Francisco, CA 94102-6033

Phone 415.252.4602
FAX 415.252.4699

Relocation Payments for Tenants Evicted Under the Ellis Act (cont.)

- After determining the appropriate relocation payment (see page 1), the landlord must pay one-half of the Ellis Relocation Payment at the time of service of the Ellis eviction notice and the other half when the tenants vacate the unit.
- Any tenant who received an Ellis Act eviction notice under Rent Ordinance Section 37.9(a)(13), but who had not yet vacated the unit by June 1, 2014, shall be entitled to the total relocation payment amount using the Controller's Schedule upon vacating the unit, reduced by any payment the tenant had received under Subsections 37.9A(e)(3)(A) – (D).
- After a Notice of Intent to Withdraw Residential Units from the Rental Market is filed at the Rent Board, the landlord may file a written request for a hearing, on a form provided by the Rent Board, to obtain a revised relocation payment obligation based on (1) undue financial hardship, and/or (2) the market rental rate for a comparable unit, as follows:

  (1) **Landlord Hardship Adjustment Request** (Form 545) – The landlord may request a hearing on whether payment of the Rental Payment Differential constitutes an undue financial hardship for the landlord in light of all the resources available to the landlord, with the exception of retirement accounts and non-liquid personal property such as clothing, cars, jewelry and art. The burden of proof is on the landlord. After a hardship hearing, the Rent Board's Administrative Law Judge may order a payment plan or a reduction of the relocation payment amount or any other relief that is justified based on the evidence.

  (2) **Rent Differential Recalculation Request** (Form 544) – The landlord may request a hearing on whether the Controller's Rental Payment Differential Schedule does not reasonably reflect the market rent for a comparable unit in the City. The burden of proof is on the landlord. Based on the evidence at a hearing, the Rent Board's Administrative Law Judge may affirm the Controller's Schedule as reasonable or order a downward adjustment of the relocation payment amount due.

Controller's Rental Payment Differential Schedule

(Effective 6/1/14 – 2/28/15)

Year In Which Unit's Base Rent Was Established	Multiplier	Year In Which Unit's Base Rent Was Established	Multiplier	Year In Which Unit's Base Rent Was Established	Multiplier
2013-2014	0.0000	2001	0.7909	1989	1.9103
2012	0.0710	2000	0.8566	1988	1.9821
2011	0.1594	1999	0.9227	1987	2.0557
2010	0.2714	1998	1.0147	1986	2.1311
2009	0.2595	1997	1.1008	1985	2.2084
2008	0.1772	1996	1.1992	1984	2.2876
2007	0.2565	1995	1.3204	1983	2.3687
2006	0.3752	1994	1.4458	1982	2.4518
2005	0.4636	1993	1.5730	1981	2.4378
2004	0.5412	1992	1.6908	1980	2.5740
2003	0.6326	1991	1.7718	1979	2.7155
2002	0.7260	1990	1.8402	Pre-1979	2.7155

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Phone 415.252.4602
FAX 415.252.4699

EXHIBIT D

San Francisco Residential Rent Stabilization and Arbitration Board

NOTE: This form cannot be filed prior to the filing of the Notice of Intent to Withdraw Residential Units from the Rental Market. Please complete a separate Hardship Application form (page 3) for each owner of the subject property.

Rent Board Date Stamp

LANDLORD'S HARDSHIP ADJUSTMENT REQUEST FOR ELLIS ACT RELOCATION PAYMENTS

[Rent Ordinance Section 37.9A(e)(3)(G)]

Property Information

Full Property Address _____ San Francisco, CA 941_____ Zip Code

Date Building Constructed | # of Units in Building | # of Units for which relief is sought | Case Number of Notice of Intent to Withdraw Residential Units from the Rental Market (Ellis Act Filing)

Owner Information

1.

First Name | Middle Initial | Last Name

Mailing Address: Street Number | Street Name | Unit Number | City | State | Zip Code

Primary Phone Number | Other Phone Number

Owner Information

2.

First Name | Middle Initial | Last Name

Mailing Address: Street Number | Street Name | Unit Number | City | State | Zip Code

Primary Phone Number | Other Phone Number

If someone other than the owner is authorized to represent the owner's interests in this petition, please fill out the applicable information below. Non-attorney representatives must attach written authorization to represent the owner.

Landlord Representative Information (if applicable) ☐ **Attorney** ☐ **Non-attorney Representative**

First Name | Middle Initial | Last Name

Mailing Address: Street Number | Street Name | Unit Number | City | State | Zip Code

Primary Phone Number | Other Phone Number

Landlord's Statement

☐ I request a hearing regarding an adjustment of the relocation payments due to the tenant(s) being evicted under the Ellis Act, because payment of the Rental Payment Differential calculated pursuant to Rent Ordinance §37.9A(e)(3)(E)(ii) would constitute an undue financial hardship in light of all of the resources available to me.

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www.sfrb.org
Phone 415.252.4602
FAX 415.252.4699

LANDLORD'S HARDSHIP ADJUSTMENT REQUEST FOR ELLIS ACT RELOCATION PAYMENTS

List every tenant who may be affected by this Hardship Adjustment Request. If more than 3 tenants, attach additional page with contact information for all other tenants. Also list any attorney or representative of such tenant(s).

Tenant Information

1.

First Name | Middle Initial | Last Name

Mailing Address: Street Number | Street Name | Unit Number | City | State | Zip Code
if different from unit address)

Primary Phone Number | Other Phone Number

Tenant Information

2.

First Name | Middle Initial | Last Name

Mailing Address: Street Number | Street Name | Unit Number | City | State | Zip Code
if different from unit address)

Primary Phone Number | Other Phone Number

Tenant Information

3.

First Name | Middle Initial | Last Name

Mailing Address: Street Number | Street Name | Unit Number | City | State | Zip Code
if different from unit address)

Primary Phone Number | Other Phone Number

Tenant Representative Information (if applicable) ☐ **Attorney** ☐ **Non-attorney Representative**

First Name | Middle Initial | Last Name

Mailing Address: Street Number | Street Name | Unit Number | City | State | Zip Code

Primary Phone Number | Other Phone Number

Relocation Payments

Unit Number	Total Amount of Rental Payment Differential Per Unit	Amount Paid to Tenant(s) to Date	Date Paid to Tenant(s)

LANDLORD'S HARDSHIP APPLICATION
FOR ADJUSTMENTOF ELLIS ACT RELOCATION PAYMENTS

Every owner of the property must complete a separate Hardship Application.

(The Rent Board will be looking at your total financial picture, not just the income and expenses for the building at issue in this case. Please submit documentation proving the veracity of the income, expenses, assets and liabilities that you claim below.)

▶There must be an entry for every line on this page, even if the amount entered is zero (0).◀

⬇Income/Expense Summary for Current Year⬇

Monthly Income		Monthly Expenses (total for all properties you own)	
Salary (gross)	_____	Debt Service (Mortgage)	_____
Annual Bonus	_____	Property Taxes	_____
Interest Income	_____	Utilities	_____
Social Security	_____	Repairs/Maintenance	_____
Rental Income	_____	Business License/Fees	_____
Pension Payments	_____	Fire/Theft Insurance	_____
Alimony/Child Support	_____	Transportation	_____
Dividends	_____	Alimony/Child Support	_____
Unemployment Comp.	_____	Medical Insurance	_____
Worker's Compensation	_____	Medical Bills	_____
Other Income: _____	_____	Entertainment	_____
Total Income:	$ _____	Food	_____
		Automobile Loan/Insurance	_____
Total Gross Income in Prior Two Calendar Years:		Loan Payments (specify)	_____
201___: $_____ 201___: $_____		**Total Expenses:**	$ _____

⬇Current Assets and Liabilities⬇

Assets	State Value Below	Debts and Liabilities	
Checking	_____	Short Term Debt (outstanding balance):	
Savings	_____	Credit Cards	_____
Time Deposits	_____	Credit Lines	_____
Stocks Total	_____	Personal Loans	_____
Bonds Total	_____	Long Term Debt (outstanding balance):	
Real Property (list address)		Mortgages	_____
1. _____	_____	Car Loans	_____
2. _____	_____	Student Loans	_____
3. _____	_____	Medical Bills	_____
Total All Assets:	$ _____	**Total All Debts:**	$ _____

⬇Hardship Information⬇

_____ Number and Age(s) of Dependents

_____ Average # of Hours Worked/Week

_____ Briefly state the reason for hardship (e.g. fixed income, illness, inability to work, large medical bills, etc.)

_____ Briefly state the type of relief sought (e.g. repayment plan, reduction of payment, other)

⬇Declaration of Landlord Petitioner⬇

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THIS INFORMATION AND EVERY ATTACHED DOCUMENT, STATEMENT AND FORM IS TRUE AND CORRECT.

_____ (Print Name) _____ (Signature of Owner or Authorized Representative) (circle one) _____ (Date)

545 LL Ellis Hardship Adjustment Request 05/30/14

[Administrative Code - Tenant Relocation Assistance Payment]

Ordinance amending the Administrative Code to mitigate adverse impacts of tenant evictions to provide that when residential units are withdrawn from the rental market under the Ellis Act, each relocated tenant is entitled to the greater of the existing rent relocation payment or the difference between the tenant's current rent and the prevailing rent for a comparable apartment in San Francisco over a two year period; and allowing a landlord, through a hearing process, to obtain a revised relocation payment obligation based on an undue financial hardship adjustment or recalculated rent differential amount.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Administrative Code is hereby amended by revising Section 37.9A to read as follows:

SEC. 37.9A. TENANT RIGHTS IN CERTAIN DISPLACEMENTS UNDER SECTION 37.9(a)(13).

This Section 37.9A applies to certain tenant displacements under Section 37.9(a)(13), as specified.

* * * *

(e) Relocation Payments to Tenants.

* * * *

(3) On or After ~~*(Effective Date of Ordinance Amendments)*~~ ***February 20, 2005***. Where a landlord seeks eviction based upon Section 37.9(a)(13), and the notice of intent to withdraw rental units is filed with the Board on or after ~~*(effective date of ordinance amendments)*~~*February 20, 2005*, relocation payments shall be paid to the tenants as follows:

(A) Subject to Subsections 37.9(e)(3)(B)(C) and (D) below, each tenant shall be entitled to receive $4,500, one-half of which shall be paid at the time of the service of the notice of termination of tenancy, and one-half of which shall be paid when the tenant vacates the unit;

(B) In the event there are more than three tenants in a unit, the total relocation payment shall be $13,500.00, which shall be divided equally by the number of tenants in the unit; and

(C) Notwithstanding Subsections 37.9A(e) (3)(A) and (B), any tenant who, at the time the notice of intent to withdraw rental units is filed with the Board, is 62 years of age or older, or who is disabled within the meaning of Section 12955.3 of the California Government Code, shall be entitled to receive an additional payment of $3,000.00, $1,500.00 of which shall be paid within fifteen (15) calendar days of the landlord's receipt of written notice from the tenant of entitlement to the relocation payment, and $1,500.00 of which shall be paid when the tenant vacates the unit.

(D) Commencing March 1, 2005, the relocation payments specified in *Subsections* 37.9A(e)(3)(A) and (B) and (C) shall increase annually at the rate of increase in the "rent of primary residence" expenditure category of the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose Region for the preceding calendar

year, as that data is made available by the United States Department of Labor and published by the Board.

(E) Notwithstanding Subsections 37.9A(e)(3)(A) – (D), as of ~~90 days after~~ *the effective date of the ordinance creating this subsection (E) (Ordinance No. __), each tenant shall be entitled to the greater of:*

(i) the payment specified in Subsections 37.9A(e)(3)(A) – (D); or

(ii) an amount equal to the difference between the unit's rental rate at the time the landlord files the notice of intent to withdraw rental units with the Board, and the market rental rate for a comparable unit in San Francisco as determined by the Controller's Office, multiplied to cover a two-year period, and divided equally by the number of tenants in the unit (the "Rental Payment Differential"). The landlord shall pay one-half of the Rental Payment Differential at the time of the service of the notice of termination of tenancy, and the remaining one-half when the tenant vacates the unit. The Controller shall establish a San Francisco Rental Payment Differential Schedule within ~~90~~ 5 *days of the effective date of the ordinance creating this subsection (E) (Ordinance No. ____), and thereafter by March 1 of each calendar year. The Controller shall provide such Schedule to the Rent Board, which shall make the Schedule publicly available on the Rent Board's website and at the Rent Board office. In addition to receiving the Rental Payment Differential, any tenant who qualifies for payment under Subsections 37.9A(e)(3)(C) as adjusted by (D) shall also receive that payment.* In determining annual changes in the rental market, the Controller shall rely on market data that reasonably reflects a representative sample of rental apartments in San Francisco.

(F) Any tenant who has received a notice of termination of tenancy, but who has not yet vacated the unit by the operative date of the ordinance creating subsection (E) and this subsection (F) (Ordinance No. ____), shall be entitled to the Rental Payment Differential, reduced by any payment the tenant has received under Subsections 37.9A(e)(3)(C) as adjusted by (D), upon vacating the unit.

(G) (i) If payment of the Rental Payment Differential under Subsection 37.9A(e)(3)(E)(ii) would constitute an undue financial hardship for a landlord in light of all of the resources available to the landlord, the landlord may file a written request, on a form provided by the Rent Board, for a hearing for a hardship adjustment ("Hardship Adjustment Request") with the Rent Board, with supporting evidence. The Board, or its designated Administrative Law Judges, may order a reduction, payment plan, or any other relief they determine is justified following a hearing on the request.

(ii) At a hearing for hardship adjustment under Subsection (i), the Board, or its designated Administrative Law Judges, shall consider all relevant factors, including the number of units in the building and any evidence submitted regarding the landlord's age, length of ownership of the building, ownership of any other buildings, income, expenses, other assets, debt, health, and health care costs, except as provided in Subsection (iii).

(iii) At a hearing for hardship adjustment under Subsection (i), the Board, or its designated Administrative Law Judges, shall not consider any of the following types of assets owned by the landlord:

a. Assets held in retirement accounts; and

b. Non-liquid personal property.

~~The Board, or its designated Administrative Law Judges, may order a reduction, payment plan, or any other relief they determine is justified following a hearing on the request.~~

(H) Without limiting or otherwise affecting the landlord's right to obtain a hardship adjustment under Subsection 37.9A(e)(3)(G), the landlord may file a written request, on a form provided by the Rent Board, for a hearing with the Rent Board claiming that the San Francisco Rental Payment Differential Schedule established in Subsection 37.9A(e)(3)(E)(ii) does not reasonably reflect the market rental rate for a comparable unit in San Francisco and would result in an overpayment by the landlord ("Rent Differential Recalculation Request").

The landlord shall include evidence in support of the request. If the Board, or its designated Administrative Law Judges, grant(s) the request in whole or part, they shall order an appropriate adjustment of the payment due from the landlord.

(I) For purposes of considering Hardship Adjustment and Rent Differential Recalculation Requests under Subsections 37.9(e)(3)(G) and (H), the Board shall follow a process consistent with the existing Board hearing process under Section 37.8. If a landlord submits both types of hearing requests, the Board may consolidate its hearing of the two requests.

(4) Any notice to quit pursuant to Section 37.9(a)(13) shall notify the tenant or tenants concerned of the right to receive payment under Subsections 37.9A(e)(1) or (2) or (3) and the amount of payment which the landlord believes to be due.

(f) Notice to Rent Board; Recordation of Notice; Effective Date of Withdrawal.

(1) Any owner who intends to withdraw from rent or lease any rental unit shall notify the Rent Board in writing of said intention. Said notice shall contain statements, under penalty of perjury, providing information on the number of residential units, the address or location of those units, the name or names of the tenants or lessees of the units, and the rent applicable to each residential rental unit. Said notice shall be signed by all owners of record of the property under penalty of perjury and shall include a certification that actions have been initiated as required by law to terminate existing tenancies through service of a notice of termination of tenancy. The notice must be served by certified mail or any other manner authorized by law prior to delivery to the Rent Board of the notice of intent to withdraw the rental units. Information respecting the name or names of the tenants, the rent applicable to any unit, or the total number of units, is confidential and shall be treated as confidential information by the City for purposes of the Information Practices Act of 1977, as contained in Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil

Code. The City shall, to the extent required by the preceding sentence, be considered an "agency," as defined by Subdivision (b) of Section 1798.3 of the Civil Code.

(2) Prior to the effective date of withdrawal of rental units under this Section, the owner shall cause to be recorded with the County Recorder a memorandum of the notice required by Subsection (f)(1) summarizing its provisions, other than the confidential provisions, in substantially the following form:

Memorandum of Notice

Regarding Withdrawal of

Rental Unit From Rent or Lease

This memorandum evidences that the undersigned, as the owner(s) of the property described in Exhibit A attached, has filed a notice, whose contents are certified under penalty of perjury, stating the intent to withdraw from rent or lease all units at said property, pursuant to San Francisco Administrative Code Section 37.9A and the Ellis Act (California Government Code Sections 7060 et seq.).

_____

(Signature)

(3) For a notice of intent to withdraw rental units filled with the Rent Board on or before December 31, 1999, the date on which the units are withdrawn from rent or lease for purposes of this Chapter and the Ellis Act is 60 days from the delivery in person or by first-class mail of the Subsection (f)(1) notice of intent to the Rent Board.

(4) For a notice of intent to withdraw rental units filed with the Rent Board on or after January 1, 2000, the date on which the units are withdrawn from rent or lease for purposes of this Chapter and the Ellis Act is 120 days from the delivery in person or by first-class mail of the Subsection (f)(1) notice of intent to the Rent Board. Except that, if the tenant or lessee is at least 62 years of age or disabled as defined in Government Code § 12955.3,

and has lived in his or her unit for at least one year prior to the date of delivery to the Rent Board of the Subsection (f)(1) notice of intent to withdraw, then the date of withdrawal of the unit of that tenant or lessee shall be extended to one year after the date of delivery of that notice to the Rent Board, provided that the tenant or lessee gives written notice of his or her entitlement to an extension of the date of withdrawal to the owner within 60 days of the date of delivery to the Rent Board of the Subsection (f)(1) notice of intent to withdraw. In that situation, the following provisions shall apply:

(A) The tenancy shall be continued on the same terms and conditions as existed on the date of delivery to the Rent Board of the notice of intent to withdraw, subject to any adjustments otherwise available under Administrative Code Chapter 37.

(B) No party shall be relieved of the duty to perform any obligation under the lease or rental agreement.

(C) The owner may elect to extend the date of withdrawal on any other units up to one year after date of delivery to the Rent Board of the Subsection (f)(1) notice of intent to withdraw, subject to Subsections (f)(4)(A) and (B).

(D) Within 30 days of the notification by the tenant or lessee to the owner of his or her entitlement to an extension of the date of withdrawal, the owner shall give written notice to the Rent Board of the claim that the tenant or lessee is entitled to stay in their unit for one year after the date of delivery to the Rent Board of the Subsection (f)(1) notice of intent to withdraw.

(E) Within 90 days of the date of delivery to the Rent Board of the notice of intent to withdraw, the owner shall give written notice to the Rent Board and the affected tenant or lessee of the following:

(i) Whether or not the owner disputes the tenant's claim of extension;

(ii) The new date of withdrawal under Section 37.9A(f)(4)(C), if the owner does not dispute the tenant's claim of extension; and,

(iii) Whether or not the owner elects to extend the date of withdrawal to other units on the property.

(5) Within 15 days of delivery of a Subsection (f)(1) notice of intent to the Rent Board, the owner shall provide notice to any tenant or lessee to be displaced of the following:

(A) That the Rent Board has been notified pursuant to Subsection (f)(1);

(B) That the notice to the Rent Board specified the name and the amount of rent paid by the tenant or lessee as an occupant of the rental unit;

(C) The amount of rent the owner specified in the notice to the Rent Board;

(D) The tenant's or lessee's rights to reoccupancy and to relocation assistance under Subsections 37.9A(c) and (e); and

(E) The rights of qualified elderly or disabled tenants as described under Subsection (f)(4), to extend their tenancy to one year after the date of delivery to the Rent Board of the Subsection (f)(1) notice of intent to withdraw.

(6) Within 30 days after the effective date of withdrawal of rental units under this Section 37.9A, the Rent Board shall record a notice of constraints with the County Recorder which describes the property and the dates of applicable restrictions on the property under this Section.

* * * *

(i) This Section 37.9A is enacted principally to exercise specific authority provided for by Chapter 12.75 of Division 7 of Title 1 of the California Government Code, originally

enacted by Stats. 1985, Ch. 1509, Section 1 (the Ellis Act, California Government Code Sections 7060 et seq.). In the case of any amendment to Chapter 12.75 or any other provision of State law which amendment is inconsistent with this Section, this Section shall be deemed to be amended to be consistent with State law, and to the extent it cannot be so amended shall be interpreted to be effective as previously adopted to the maximum extent possible.

Section 2. Effective Date~~ and Operative Date~~.

~~(a)~~ This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

~~(b) As stated in Administrative Code Section 37.9A(e)(3)(E), this ordinance shall become operative 90 days after its effective date.~~

Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
ADINE K. VARAH
Deputy City Attorney

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City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 140096 **Date Passed:** April 22, 2014

Ordinance amending the Administrative Code to mitigate adverse impacts of tenant evictions to provide that when residential units are withdrawn from the rental market under the Ellis Act, each relocated tenant is entitled to the greater of the existing rent relocation payment, or the difference between the tenant's current rent and the prevailing rent for a comparable apartment in San Francisco over a two year period; and allowing a landlord, through a hearing process, to obtain a revised relocation payment obligation based on an undue financial hardship adjustment or recalculated rent differential amount.

March 17, 2014 Land Use and Economic Development Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

March 17, 2014 Land Use and Economic Development Committee - CONTINUED AS AMENDED

March 24, 2014 Land Use and Economic Development Committee - RECOMMENDED

April 01, 2014 Board of Supervisors - CONTINUED ON FIRST READING

Ayes: 10 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Tang, Wiener and Yee
Excused: 1 - Mar

April 08, 2014 Board of Supervisors - NOT AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

Ayes: 4 - Breed, Farrell, Tang and Wiener
Noes: 7 - Avalos, Campos, Chiu, Cohen, Kim, Mar and Yee

April 08, 2014 Board of Supervisors - AMENDED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

April 08, 2014 Board of Supervisors - NOT AMENDED

Ayes: 5 - Breed, Cohen, Farrell, Tang and Wiener
Noes: 6 - Avalos, Campos, Chiu, Kim, Mar and Yee

April 08, 2014 Board of Supervisors - AMENDED

Ayes: 6 - Breed, Cohen, Farrell, Tang, Wiener and Yee
Noes: 5 - Avalos, Campos, Chiu, Kim and Mar

April 08, 2014 Board of Supervisors - PASSED ON FIRST READING AS AMENDED

Ayes: 9 - Avalos, Breed, Campos, Chiu, Cohen, Kim, Mar, Wiener and Yee
Noes: 2 - Farrell and Tang

April 15, 2014 Board of Supervisors - AMENDED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

April 15, 2014 Board of Supervisors - PASSED ON FIRST READING AS AMENDED

Ayes: 9 - Avalos, Breed, Campos, Chiu, Cohen, Kim, Mar, Wiener and Yee

Noes: 2 - Farrell and Tang

April 22, 2014 Board of Supervisors - FINALLY PASSED

Ayes: 9 - Avalos, Breed, Campos, Chiu, Cohen, Kim, Mar, Wiener and Yee

Noes: 2 - Farrell and Tang

File No. 140096

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 4/22/2014 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

UNSIGNED

Mayor

May 2, 2014

Date Approved

I hereby certify that the foregoing resolution, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, or time waived pursuant to Board Rule 2.14.2, became effective without his approval in accordance with the provision of said Section 3.103 of the Charter or Board Rule 2.14.2.

Angela Calvillo
Clerk of the Board