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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

PEYMAN PAKDEL and SIMA CHEGINI,

Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO et al,

Defendants.

Case No. 3:17-cv-03638-RS

UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Hon. Richard Seeborg

By this unopposed motion, proposed Amici respectfully move for leave to file an amicus curiae brief in the above-captioned action in support of Defendants' motion to dismiss. Proposed Amici are organizations dedicated to promoting just access to safe and affordable housing and protecting tenants from eviction. Many of them work directly with tenants in the Bay Area, helping them navigate evictions and other challenges with dignity.[1]

Counsel for the parties have been notified of this motion. Counsel for Peyman Pakdel and Sima Chegini indicated that they do not object to the filing of this brief. Counsel for the City and County of San Francisco, San Francisco Board of Supervisors, and San Francisco Department of Public Works consent to the filing of this brief.

IDENTITY AND INTERESTS OF AMICI

The Eviction Defense Collaborative (EDC) is the lead agency in San Francisco's tenant right to counsel program, and as such is the principal organization in San Francisco helping low-income tenants respond to eviction lawsuits. The EDC works to level the playing field between landlords and tenants by providing emergency legal assistance to low-income tenants. In addition, the EDC provides emergency rental assistance to help tenants struggling to make ends meet in San Francisco. The EDC is committed to preserving affordable housing, preventing homelessness, and protecting San Francisco's diversity so that hard working, low-income tenants can continue to have a place to call home. Each year EDC provides emergency legal services and rental assistance to over 5,000 tenants in San Francisco.

The Housing Rights Committee of San Francisco (HRC) has been fighting for tenants rights since 1979. The HRC provides free counseling to over 5,000 tenants in San Francisco per year on issues related to evictions, illegal rent increases, repair problems, security deposit returns, and more. It also organizes to fight against tenant displacement and evictions and advocates for better and more just housing laws in San Francisco. The issues raised in this case directly bear upon the interests and work of HRC.

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[1] Amici state that no counsel for any party authored the proposed brief in whole or in part, and no person or entity, other than Amici and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

The San Francisco Anti Displacement Coalition (SFADC) represents dozens of tenant-serving organizations in San Francisco, from legal services to tenant counseling. Formed in response to soaring evictions and rent increases displacing thousands of San Franciscans, SFADC believes that all tenants have a right to safe, secure and affordable places to live, and SFADC supports strong public policies that protect these rights. SFADC supports regulations that protect tenants and that combat the destabilization of neighborhoods that results from real estate speculation.

AIDS Legal Referral Panel (ALRP) helps people with HIV/AIDS maintain or improve their health by providing free and low-cost legal services to people with HIV/AIDS in the San Francisco Bay Area. ALRP is the only institution in the San Francisco Bay Area solely dedicated to providing free and low-cost legal assistance and education on virtually any civil matter to persons living with HIV/AIDS. Almost one-third of ALRP's clients face housing issues, including housing discrimination and eviction. Through the ALRP AIDS Housing Advocacy Project, ALRP helps people living with HIV/AIDS avoid unlawful evictions and navigate other housing-related legal issues.

Alliance for Justice (AFJ) is a national association of more than 130 organizations representing a broad array of groups committed to democratic values and the creation of an equitable, just, and free society. Since 1979, AFJ has fought for a fair justice system and a vibrant advocacy community that work to uphold and advance the rights of all. Our members champion numerous causes that intersect with tenants' rights, including preventing homelessness, as well as protecting the rights of children, immigrants, Native Americans, elders, people of color and minoritized populations, individuals experiencing poverty, LGBTQ+ individuals, and individuals living with HIV.

Western Center on Law and Poverty (Western Center) is the oldest and largest statewide support center for legal services advocates in California. Western Center represents California's poorest residents to advance access to housing, health, public benefits, jobs and justice. A key component of this work is ensuring that California's landlord-tenant and land use laws are properly enforced, and that policies and legislation that impact housing development and

housing stability are inclusive of low-income and marginalized tenant communities across the State of California.

The National Housing Law Project (NHLP) is a nonprofit organization that advances tenants' rights, increases housing opportunities for underserved communities, and preserves and expands the nation's supply of safe and affordable homes. Protecting tenants from eviction following condominium conversions helps ensure that individuals and families have access to decent and suitable housing.

The Appleseed Foundation is a 501(c)(3) nonprofit organization that fosters collaboration throughout the Appleseed Network, a partnership of 17 justice centers across the United States and Mexico. Appleseed centers unite research, organizing, policy advocacy, and litigation to build systemic solutions for our communities' most pressing problems – reducing poverty, combatting discrimination, and invigorating democracy. Access to affordable, safe housing is one of the most significant issues Appleseed centers and their communities are facing, made worse by the continuing economic and market havoc of the Covid pandemic. The ongoing housing crisis disproportionately harms families of color and other marginalized communities at the heart of Appleseed's mission. Appleseed centers across the country have developed rigorous in-depth research on the housing problems in their communities and the well-balanced regulatory tools that are necessary to reduce homelessness and promote safe and affordable housing, a basic human necessity. From that work with our communities, Appleseed has seen firsthand the devastation families too often face without appropriate regulatory protections.

The Appleseed Foundation is joined on the brief by Kansas Appleseed Center for Law and Justice, Inc., New Jersey Appleseed, Nebraska Appleseed, and Texas Appleseed (the Appleseed Centers). The Appleseed Centers are non-profit, nonpartisan advocacy organizations dedicated to helping vulnerable and excluded people. They educate and advocate for equitable and just access to safe and affordable housing, and speak out in defense of laws and regulations that protect tenants, including those most vulnerable, from eviction.

ARGUMENT

Although there is no rule that governs amicus participation in the district courts, "it is within the Court's inherent authority to allow" filings of amicus curiae briefs. *Cal. Ass'n of Sch. Psychologists v. Superintendent of Pub. Educ.*, No. C-93-2891 DLJ, 1994 WL 224433, at *4 (N.D. Cal. May 17, 1994). "While not a party to the litigation, the 'classic role of amicus curiae' is to 'assist in a case of general public interest, supplement the efforts of counsel, and draw the court's attention to law that escaped consideration.'" *Defs. of Wildlife v. U.S. Fish & Wildlife Serv.*, No. 21-CV-00344-JSW, 2021 WL 3744105, at *4 (N.D. Cal. June 21, 2021) (quoting *Miller-Wohl Co. v. Comm'r of Lab. & Indus. State of Mont.*, 694 F.2d 203, 204 (9th Cir. 2012) (alterations accepted)). To that end, "[t]here are no strict prerequisites that must be established prior to qualifying for amicus status; an individual seeking to appear as amicus must merely make a showing that his participation is useful to or otherwise desirable to the court." *Infineon Techs. N. Am. Corp. v. Mosaid Techs., Inc.*, No. C 02-5772 JFRS, 2006 WL 3050849, at *3 (N.D. Cal. Oct. 23, 2006) (quotation omitted).

The proposed amicus curiae brief will be helpful to the Court. Amici submit that, as organizations dedicated to promoting just access to safe and affordable housing, including those that work directly with tenants facing eviction in the Bay Area, they offer a perspective that can help the Court understand the function of regulations that affect the landlord-tenant relationship, particularly in highly expensive and highly regulated rental housing markets such as that in San Francisco. Amici also believe their proffered brief would be useful to the Court in parsing the legal landscape of takings challenges to regulations of the landlord-tenant relationship, both before and after *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021). As stated above, no party objects to the filing of this brief.

The proposed amicus curiae brief is also timely submitted. Although the Federal Rules of Appellate Procedure do not apply to this Court, Amici's submission conforms with the time limitation set forth therein because it is filed "7 days after the principal brief of the party being supported is filed." FRAP 29(a)(6). Amici's brief is filed in support of Defendants' motion to dismiss, which was filed on April 1, 2022. *See* ECF No. 52.

CONCLUSION

For the reasons stated above, Amici respectfully request this Court to grant their motion for leave to file an amicus curiae brief in support of Defendants' motion to dismiss.

DATED: April 8, 2022 SHUTE, MIHALY & WEINBERGER LLP

By: /s/Matthew D. Zinn
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DATED: April 8, 2022 DEMOCRACY FORWARD FOUNDATION

By: /s/ Rachel L. Fried
RACHEL L. FRIED

Attorneys for [Proposed] Amici Curiae Eviction Defense Collaborative et al.

I hereby attest that I have on file all holographic signatures corresponding to any signatures indicated by a conformed signature (/S/) within this e-filed document.

By: /s/Matthew D. Zinn
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UNITED STATES DISTRICT COURT

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PEYMAN PAKDEL and SIMA CHEGINI,

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Case No. 3:17-cv-03638-RS

BRIEF OF AMICI CURIAE IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Hon. Richard Seeborg

CORPORATE DISCLOSURE STATEMENTS

The Eviction Defense Collaborative (ECD) is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of EDC. Pursuant to Civil L.R. 3-15, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

The Housing Rights Committee of San Francisco (HRC) is an organization funded by the San Francisco Study Center, a non-profit organization. No publicly owned corporation owns 10% or more of the stocks of HRC. Pursuant to Civil L.R. 3-15, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

The San Francisco Anti Displacement Coalition (SFADC) is an organization funded by the San Francisco Study Center, a non-profit organization. No publicly owned corporation owns 10% or more of the stocks of SFADC. Pursuant to Civil L.R. 3-15, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

AIDS Legal Referral Panel (ALRP) is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of ALRP. Pursuant to Civil L.R. 3-15, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Alliance for Justice (AFJ) is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of AFJ. Pursuant to Civil L.R. 3-15, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Western Center on Law and Poverty (Western Center) is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of Western Center. Pursuant to Civil L.R. 3-15, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

National Housing Law Project (NHLP) is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of NHLP. Pursuant

to Civil L.R. 3-15, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

The Appleseed Foundation is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the Appleseed Foundation. Pursuant to Civil L.R. 3-15, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Kansas Appleseed is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of Kansas Appleseed. Pursuant to Civil L.R. 3-15, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Nebraska Appleseed is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of Nebraska Appleseed. Pursuant to Civil L.R. 3-15, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

New Jersey Appleseed is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of New Jersey Appleseed. Pursuant to Civil L.R. 3-15, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Texas Appleseed is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of Texas Appleseed. Pursuant to Civil L.R. 3-15, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

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INTRODUCTION

Amici are organizations dedicated to promoting just access to safe and affordable housing and protecting tenants from eviction. Amici agree with Defendants that Plaintiffs fail to state any claims for relief and that the operative complaint should be dismissed. *See* Defs.' Mot. Dismiss, ECF No. 52. Amici submit this brief to demonstrate that the standard set forth in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), governs challenges—like the one at issue here—to regulations of the landlord-tenant relationship. *Penn Central* has provided the appropriate standard long before the decision in *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021), and it remains the appropriate standard following *Cedar Point*.

Plaintiffs claim that the City and County of San Francisco's (the City) voluntary Expedited Conversion Program (ECP) is unconstitutional because it requires some owners of tenancies-in-common who wish to convert their properties to condominiums to offer existing tenants a lifetime lease. In particular, Plaintiffs contend that the ECP effects a *physical* taking of property, even though the ECP does not appropriate any portion of a landlord's property or deprive them of the right to exclude uninvited third parties from their property. Plaintiffs are wrong on two counts. First, regulations of the relationship between a landlord and the invited tenants to whom they have given the right of occupancy are not physical takings. As the Supreme Court reaffirmed in *Cedar Point*, a physical taking occurs where a government physically appropriates private property or deprives a property owner of the right to exclude uninvited third parties. Because Plaintiffs challenge instead a regulation that restricts their use of property, their takings claim is evaluated pursuant to the balancing test established in *Penn Central*. Second, the ECP—like virtually all other regulations of the landlord-tenant relationship—is not a compensable taking, but rather a necessary tool for regulating the local housing market and preventing tenant displacement.

ARGUMENT

I. Plaintiffs' takings claim is governed by *Penn Central*.

This case concerns the regulation of contracts between landlords and the tenants they voluntarily invite onto their properties. The regulation at issue requires landlords to offer their

tenants a lifetime lease only if they choose to apply to convert a tenancy in common ownership into a more lucrative condominium-style ownership. For decades, courts have consistently rejected landlords' arguments that regulations of the landlord-tenant relationship effect a physical, "per se" taking of property. *Cedar Point*, 141 S. Ct. 2063, which held that governments generally may not require property owners to suffer the intrusion onto their property of uninvited third parties without just compensation, does not upset—but instead reaffirms—the established case law subjecting regulations of the landlord-tenant relationship to a regulatory takings analysis under *Penn Central*.

A. Takings challenges to regulations of the landlord-tenant relationship are regulatory takings claims governed by *Penn Central*.

As laid out by a century of jurisprudence, compensable takings under the Takings Clause come in two main varieties: physical takings and regulatory takings. "The government effects a physical taking only where it *requires* the landowner to submit to the physical occupation of his land." *Yee v. City of Escondido*, 503 U.S. 519, 527 (1992); *see also Cedar Point*, 141 S. Ct. at 2072 (physical taking occurs when "the government has physically taken property for itself or someone else"). By contrast, the government effects a so-called regulatory taking when it "restrict[s] a property owner's ability to use his own property," *Cedar Point*, 141 S. Ct. at 2072, and that restriction "goes too far," *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).

Both physical takings and use restrictions "that completely deprive an owner of '*all* economically beneficial us[e]' of her property" require just compensation regardless of how beneficial the public use of the property may be. *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538 (2005) (quoting *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1019 (1992)). The doctrines governing physical takings and "total regulatory takings" under *Lucas*, *id.*, are designed to justly compensate property owners for the destruction of all three of their rights as owners to (1) possess, (2) use, and (3) dispose of their property. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982); *cf. Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 327 (2002) ("[W]here an owner possesses a full 'bundle' of property rights, the destruction of one 'strand' of the bundle is not a taking." (quotation omitted)).

Regulations that do not fall into the "relatively narrow categories" of physical takings and *Lucas* takings, *Lingle*, 544 U.S. at 538—the vast majority of regulations that affect private property—are governed by the "flexible test" set forth in *Penn Central*. *Cedar Point*, 141 S. Ct. at 2071–72. Under *Penn Central*, courts consider (1) "the economic impact of the regulation on the claimant," (2) "the extent to which the regulation has interfered with distinct investment-backed expectations," and (3) "the character of the governmental action." *Penn Central*, 438 U.S. at 124. The *Penn Central* factors "aim[] to identify regulatory actions that are functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain." *Lingle*, 544 U.S. at 539. *Penn Central* supplies the "default rule" for takings challenges. *Tahoe-Sierra*, 535 U.S. at 332. "This longstanding distinction between acquisitions of property for public use, on the one hand, and regulations prohibiting private uses, on the other, makes it inappropriate to treat cases involving physical takings as controlling precedents for the evaluation of a claim that there has been a 'regulatory taking,' and vice versa." *Id.* at 323.

Regulations affecting the landlord-tenant relationship that are challenged as violations of the Takings Clause are subject to *Penn Central*'s fact specific inquiry." Indeed, the Supreme Court "has consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails." *Loretto*, 458 U.S. at 440; *see also FCC v. Fla. Power Corp.*, 480 U.S. 245, 252 (1987) ("[S]tatutes regulating the economic relations of landlords and tenants are not *per se* [physical] takings.").

The reason for this is simple. Tenants are people whom property owners invite onto their properties. As the Supreme Court explained in *Yee*, landlords "voluntarily rent[] their land." 503 U.S. at 527. Because tenants are invitees of the landlord, they are not third-party intruders like the union organizers in *Cedar Point*, 141 S. Ct. at 2072, 2076, or the cable boxes in *Loretto*, 458

U.S. at 440.[1] In *Yee*, property owners argued that a rent control ordinance, in conjunction with a state law restricting their ability to evict mobile home park tenants, effected a physical taking by enabling mobile home park tenants to be "effectively . . . perpetual tenant[s]." 503 U.S. at 527. The Supreme Court rejected this argument. Because the tenants "were invited by petitioners, not forced upon them by the government," as a matter of fact "no government ha[d] required any physical invasion of petitioners' property." *Id.* at 528; *see also* Karl Manheim, *Tenant Eviction Protection and the Takings Clause*, 1989 Wis. L. Rev. 925, 996–97 (1989) ("Existing tenants . . . are not strangers. By renting to them initially, the landlord voluntarily yielded certain rights, notably those associated with possession . . . . [A] tenant's presence does not constitute 'occupation' of property because it is, or was, by invitation.").

This crucial distinction between regulation of the relationship between landlords and invited tenants, on the one hand, and regulation that permits "an interloper with a government license" to intrude upon property, on the other hand, has long determined whether the physical takings or regulatory takings doctrine applies. *Fla. Power*, 480 U.S. at 253. As the Ninth Circuit reaffirmed this year, "[w]hen a person voluntarily surrenders liberty or property, like when the [property owners] chose to rent their property causing them to [be subject to rental housing regulation], the State has not *deprived* the person of a constitutionally protected interest." *Ballinger v. City of Oakland*, 24 F.4th 1287, 1293 (9th Cir. 2022) (quotation omitted); *see also Better Hous. for Long Beach v. Newsom*, 452 F. Supp. 3d 921, 934 (C.D. Cal. 2020) ("[B]ecause they regulate the use of property, rent control provisions and restrictions on terminating tenancies are examined under *Penn Central*'s regulatory takings test." (citing *Yee*, 503 U.S. at 522–23, 528–30)). Accordingly, courts in the Ninth Circuit and across the country consistently reject property owners' arguments that tenant-protective regulations can constitute physical

[1] The fact that tenants are invited onto the property is key, but nothing in this brief should suggest that there are not other classes of individuals who may be invited onto property, or that in cases involving access to property of other classes of invitees there is a physical taking. *See also infra* note 8.

takings.[2] Based on these established principles, numerous courts have sustained local and state governments' eviction moratoriums during the ongoing COVID-19 pandemic.[3]

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[2] *See, e.g.*, *Ballinger*, 24 F.4th at 1293 (regulations such as rent control ordinances or relocation fees "'merely regulate[] [property owners'] *use* of their land by regulating the relationship between landlord and tenant,'" and are not physical takings (quoting *Yee*, 503 U.S. at 528)); *Rancho de Calistoga v. City of Calistoga*, 800 F.3d 1083, 1086–87 (9th Cir. 2015) (rejecting property owners' "novel legal theory" that rent control ordinance be governed by anything other than "established regulatory-takings jurisprudence"); *Better Hous. for Long Beach*, 452 F. Supp. 3d at 933 ("[T]he appropriate test" for challenge to law requiring payment of relocation assistance to tenant upon no-fault eviction "is a *Penn Central* regulatory takings analysis."); *Bldg. & Realty Inst. of Westchester & Putnam Ctys., Inc. v. State of New York*, No. 19-CV-11285 (KMK), 2021 WL 4198332, at *15–22 (S.D.N.Y. Sept. 14, 2021) (rejecting argument that condominium conversion regulation "compel[led] physical occupation" and noting that "when owners invite tenants to physically occupy their apartments, laws like the [the one at issue] simply govern the property owners' voluntary use of their property as rental housing"); *Cmty. Hous. Improvement Program v. City of New York*, 492 F. Supp. 3d 33, 44 (E.D.N.Y. 2020) (rejecting landlords' argument that regulations regarding rent control and tenant consent for condominium conversion should be analyzed as physical takings); *Rent Stabilization Ass'n of New York City, Inc. v. Higgins*, 83 N.Y.2d 156, 172 (N.Y. 1993) ("That a rent-regulated tenancy might itself be of indefinite duration—as has long been the case under rent control and rent stabilization—does not, without more, render it a permanent physical occupation of property.").

[3] *See, e.g.*, *Farhoud v. Brown*, No. 3:20-CV-2226-JR, 2022 WL 326092, at *10 (D. Or. Feb. 3, 2022) (property owners who challenged eviction moratorium had "voluntarily invited their tenants onto their property" and therefore "fail[ed] to allege a physical, or per se, taking"); *Jevons v. Inslee*, No. 1:20-CV-3182-SAB, 2021 WL 4443084, at *13 (E.D. Wash. Sept. 21, 2021) (Washington's eviction "moratorium does not constitute a *per se* taking because the moratorium did not require Plaintiffs to submit to physical occupation or invasion of their land and did not appropriate Plaintiffs' right to exclude."); *S. Cal. Rental Hous. Ass'n v. Cnty. of San Diego*, 550 F. Supp. 3d 853, 866 (S.D. Cal. 2021) ("[n]o 'physical invasion' occurred" from eviction moratorium where property owners "invited the renters to inhabit their rental units, make them their homes, and abide by the rental agreements"); *Elmsford Apartment Assocs., LLC v. Cuomo*, 469 F. Supp. 3d 148, 163 (S.D.N.Y. 2020), *appeal dismissed sub nom. 36 Apartment Assocs., LLC v. Cuomo*, 860 F. App'x 215 (2d Cir. 2021) ("The Supreme Court has ruled that a state does not commit a physical taking when it restricts the circumstances in which tenants may be evicted."); *but see Alabama Ass'n of Realtors v. HHS*, 141 S. Ct. 2485, 2489 (2021) (moratorium preventing landlords "from evicting tenants *who breach their leases* intrudes on one of the most fundamental elements of property ownership—the right to exclude" (emphasis added)).

These consistent cases control here. Landlords freely agree to place their unit onto the rental market and invite a tenant to take possession of it. Then they freely agree to apply to convert their form of ownership from a tenancy in common into a condominium, knowing that the conversion process would require them to offer any existing tenants a lifetime lease. Like other regulations of the relationship between landlords and their invited tenants, the ECP does not effect a physical intrusion onto property. Indeed, "in the context of conversion controls, prohibiting eviction for owner occupancy may be an essential device" to protect tenants. Manheim, at 969–70. Beyond that, the lease's lifetime duration is functionally no different from many other rent control systems which restrict landlords' ability to evict tenants. *See id.* at 990–91. For example, courts uniformly rejected takings challenges to 2019 amendments to New York's rent-stabilization laws, including provisions applicable to New York City that "increased the percentage of tenant consent needed to convert a building to cooperative or condominium use from at least 15% of tenants for approval to a threshold of 51%," *Bldg. & Realty Inst.*, 2021 WL 4198332, at *3, and that imposed increased rent control and restrictions on eviction and owner use. As one court concluded, "[t]he restrictions on [the property owners'] right to use the property as they see fit may be significant, but that is insufficient under the standards set forth by the Supreme Court and Second Circuit to make out a physical taking." *Cmty. Hous. Improvement Program*, 492 F. Supp. 3d at 43.[4] These are just the most recent in a long line of cases that not only applied a regulatory takings analysis to, but also upheld, regulations that imposed long-term or indefinite leases or placed restrictions on the condominium conversion process.[5]

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[4] *See also 335-7 LLC v. City of New York*, 524 F. Supp. 3d 316, 323 (S.D.N.Y. 2021) (rent control regulation "requir[ing] landlords to renew leases for rent-stabilized tenants and some successors" and restricting landlords' ability to evict tenants was neither physical nor regulatory taking); *Karpen v. Castro*, 114 N.Y.S.3d 840, 844 (N.Y. Civ. Ct. 2019) (that rent stabilization laws prohibited landlord from evicting tenants for his son's personal use of units did not effect a physical or regulatory taking).

[5] *See, e.g.*, *Higgins*, 83 N.Y.2d at 171–75 (regulation providing eviction protection to tenants was neither a physical nor regulatory taking); *Eamiello v. Liberty Mobile Homes Sales, Inc.*, 546

(footnote continued on next page)

The established case law requiring a multi-factor test for regulations of the rental housing market, rather than the per se test under the physical takings doctrine, reflects the significant public policy interests underlying such regulations. Local governments have a profound interest in ensuring housing stability, which is crucial to the health and welfare not only of individual tenants but local economies. *See Fisher v. City of Berkeley*, 37 Cal. 3d 644, 652 (Cal. 1984), *aff'd sub nom. Fisher v. City of Berkeley, Cal.*, 475 U.S. 260 (1986); Manheim, at 943–44. Regulations of the landlord-tenant relationship intend to avoid these disruptions, and are such a core and historically recognized power of local governments that they typically cannot be viewed as takings without the individualized analysis required by *Penn Central*. *See Loretto*, 458 U.S. at 440; *see also Connolly v. Pension Benefit Guar. Corp.*, 475 U.S. 211, 223 (1986).

The ECP's lifetime lease requirement illustrates these important social benefits by ensuring housing stability in one of the most expensive rental housing markets in the country. *See* Melanie Woodrow, *3 Bay Area cities make top 10 list for most expensive 1 and 2 bedroom rentals*, ABC7News (Feb. 16, 2022), https://abc7ne.ws/3qnfNfp. Converting tenancies in common into condominiums in San Francisco is financially attractive to property owners because condominiums are relatively higher in value and have fewer rent control restrictions. *See* S.F., Cal., Ordinance No. 117-13 (2013) at 3, https://bit.ly/36ImEcu; *see also* Defs.' Mot. Dismiss at 6, 11. The conversion of rental properties to condominiums fuels tenant

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A.2d 805, 815, 817–20 (Conn. 1988) (regulation that restricted property owners' ability to evict mobile home owners or choose subsequent tenants was neither physical nor regulatory taking); *Troy Ltd. v. Renna*, 727 F.2d 287, 291, 300–03 (3d Cir. 1984) (concluding that regulation granting protection from eviction to vulnerable tenants "for forty years after the date of conversion" to condominiums was not a regulatory taking); *Loeterman v. Town of Brookline*, 524 F. Supp. 1325, 1329 (D. Mass. 1981), *vacated & remanded*, 709 F.2d 116 (1st Cir. 1982) (for reconsideration in light of *Loretto*, 458 U.S. 419), *on remand*, No. 80-670-MC (D. Mass. Dec. 1, 1982) (upholding eviction ban on remand), *appeal dismissed*, 709 F.2d 116 (1st Cir. 1983) (eviction restriction was not a compensable taking despite fact that the "regulation has the potential for effecting a prohibition against occupancy by owners for the lifetime of the current tenant, a lifetime which in some instances may extend beyond that of the owners"); *see also Fresh Pond Shopping Ctr., Inc. v. Callahan*, 464 U.S. 875 (1983) (dismissing for lack of substantial federal question appeal of regulation requiring property owners to obtain permission from rent control board before removing property from rental housing market)

displacement. Manheim at 951. Low-income tenants have long borne the brunt of displacement due to condominium conversions. Increasingly, however, condominium conversions in cities with high costs of living displace moderate- and high-income tenants as well. *See, e.g.*, Katheleen Conti, *These tenants pay $3,000 rents, but are still being displaced*, Boston Globe (Mar. 30, 2018), https://bit.ly/36nkVt8. Regulations such as rent control, restrictions on eviction, and encumbrances on the condominium conversion process have long been crucial tools for cities to effectively maintain a supply of affordable housing and protect tenants from displacement. Manheim, at 954–55.

The City has long incorporated those tools into its procedures permitting property owners to convert their form of ownership into condominiums, *see* S.F. Subdiv. Code §1391(c), and continued to do so in the Expedited Conversion Program it enacted via ordinance in 2013. As a result of the ECP, a significantly higher than usual number of units of rental housing might convert to condominiums during a relatively short period of time. The City estimated that, should it permit all owners of tenancies in common who desired to convert their properties to condominiums to do so, the tenants of the converted properties "would likely spend between $0.8 and $1.1 million annually on higher rent alone due to displacement and/or rent decontrol." ECF No. 14, Ex. A at 8; Defs.' Mot. Dismiss at 7. For that reason, the ECP requires owners of some properties seeking the benefit of condominium conversion to offer any tenants living in their units a lifetime lease, protected with rent control provisions and restrictions on eviction. The ECP "balances this impact on existing tenants and the effects of tenant displacement on the City in general by requiring that applicants for the Expedited Conversion program offer existing tenants a lifetime lease." ECF No. 14, Ex. A at 8. Of course, owners of tenancies in common who rent their units are not required to convert their buildings to condominiums or to take advantage of the ECP, and property owners who do not seek this benefit are generally not required to enter into leases of any length.

San Francisco is not unique in desiring to prevent displacement of tenants following condominium conversion. *See, e.g.*, *Bldg. & Realty Inst.*, 2021 WL 4198332, at *24; *Cmty. Hous. Improvement Program*, 492 F. Supp. 3d at 44. For decades, "just cause eviction laws

[have been] employed to discourage or prevent removal of rental units and their conversion to another use, such as owner-occupied housing" through "[c]onversion of apartments into condominiums." Manheim at 1001 & n.450. The ECP, like most other regulations of the landlord-tenant relationship, has the effect of "transfer[ring] wealth from landlords to tenants." *Yee*, 503 U.S. at 529. "[T]he existence of the transfer in itself does not convert regulation into physical invasion." *Id.* at 529–30. Were courts to consider regulations that protect tenants from displacement to be physical, per se takings, therefore demanding just compensation without applying the *Penn Central* factors, local governments' ability to effectively protect tenants from displacement might be severely and impracticably curtailed.

To be sure, there are limited situations in which a rental housing regulation may go beyond regulating voluntarily entered landlord-tenant relationships and effect a physical taking. Consistent with the principles set forth in *Yee* and related precedent, the case law reflects that a regulation affecting the landlord-tenant relationship might constitute a physical taking where it requires a property owner to rent their property in the first instance—thereby imposing a new use of the property[6]—or where it deprives the owner of their reversionary interest.[7] The ECP does neither of these things. The ECP moreover preserves landlords' ability to evict tenants for default. *See* S.F., Cal., Ordinance No. 117-13 (2013) at 14–15, https://bit.ly/36ImEcu. And of course, landlords still have the right after converting to a condominium under the ECP to collect valuable rent from their tenants or to sell their condominiums—in Plaintiffs' case, at a

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[6] *See, e.g.*, *Higgins*, 83 N.Y.2d at 172 (distinguishing between regulation of "owner's voluntary acquiescence in the use of its property for rental housing" and forcing owners to "subject their properties to a use which they neither planned nor desired" and "accept a purported stranger as a tenant"); *Loretto*, 458 U.S. at 436.

[7] *See Yee*, 503 U.S. at 528 (distinguishing between regulation restricting a property owner's ability to evict tenants and compelling owner "to refrain in perpetuity from terminating a tenancy"); c*f. 335-7 LLC*, 524 F. Supp. 3d at 330 ("[G]iven the right to evict . . . , 'the tenancies are not perpetual' and 'the owners are not deprived of their reversionary interest.'" (quoting *Higgins*, 83 83 N.Y.2d at 171–73)); Manheim at 991 (lifetime leases or leases of indefinite duration are not permanent, physical occupations because "possession will revert to the landlord when the tenant vacates, voluntarily or pursuant to just cause eviction").

significant gain over the purchase price. *See* Defs.' Mot. Dismiss at 11. "[W]here the owner still controls use and succession, still derives value, and still has some reversionary rights, the analogy to appropriation of title fails." Manheim at 995–96. Plaintiffs' claim is therefore appropriately considered a regulatory takings claim because the requirement they challenge—a lifetime lease offer—was not only part of an entirely voluntary program, but also regulates landlords' relationships with their invited tenants and preserves landlords' rights of reversion.

The question whether a regulation of the landlord-tenant relationship amounts to a taking that requires just compensation is therefore answered by applying the *Penn Central* factors, not by reflexively dubbing any restrictions on a landlord's ability to evict a tenant a per se taking that must be compensated. The Takings Clause is intended to justly compensate property owners for costs "which, in all fairness and justice, should be borne by the public as a whole," *Tahoe-Sierra*, 535 U.S. at 321 (quotation omitted), not to insulate landlords from a tradition of regulation that predates the Constitution, *see Munn v. Illinois*, 94 U.S. 113, 125–26 (1876). This Court should reject Plaintiffs' attempt to use physical takings doctrine "as an end-run around established regulatory-takings jurisprudence." *See Rancho de Calistoga*, 800 F.3d at 1087. Any takings challenge to the ECP sounds in the regulatory takings doctrine and Plaintiffs' physical takings theory should be rejected.

B. *Cedar Point* reaffirmed, without expanding, longstanding physical takings doctrine.

The Supreme Court's recent *Cedar Point* decision reaffirms that this case does not involve a physical taking. The Court took the opportunity in *Cedar Point* to clarify two points. First, when "the government has physically taken property for itself or someone else," it has effected a "physical appropriation of property," and "a *per se* taking has occurred," regardless whether the government's action is garbed as a regulation. 141 S. Ct. at 2072. Second, as the Court had already made clear in previous cases, the government's physical appropriation of property need not be continuous to be a per se physical taking. *Id.* at 2075. The Court did not redefine physical takings doctrine in *Cedar Point*; rather, it summarized the existing takings case law to elucidate the line between physical and regulatory takings. The Court reiterated that

takings challenges to governmental restrictions on the use of property are regulatory takings claims and are subject to the *Penn Central* balancing test. *Id.* at 2072.

Most relevant to the issues here, the Court specified in *Cedar Point* that a regulation effects a physical taking where it "appropriates for the enjoyment of *third parties* the owners' right to exclude." *Id.* (emphasis added); *see also id.* at 2071 ("When the government, rather than appropriating private property for itself or a *third party*, instead imposes regulations that restrict an owner's ability to use his own property, [the *Penn Central*] standard applies." (emphasis added)). As discussed above, the Supreme Court has stated on multiple occasions that tenants are invitees of the property owners and *not* uninvited strangers. *See Loretto*, 458 U.S. at 440 (distinguishing cases affirming states' "broad power to regulate . . . the landlord-tenant relationship" from government authorization of "the permanent occupation of the landlord's property by a third party"). *Cedar Point* does not purport to displace, expressly or impliedly, the established case law distinguishing between regulations permitting the intrusion of third parties onto private property and those that regulate an existing use of property or the relationship between property owners and their invitees. *Cedar Point* is thus consistent with *Yee* and other cases that analyze takings challenges to regulations of the landlord-tenant relationship, which distinguish between uninvited third parties and invited tenants.[8]

The post-*Cedar Point* case law is consistent with this analysis. Courts agree that *Cedar Point* did not expand the physical takings doctrine, but instead "reiterated *Tahoe-Sierra's* distinction between physical appropriations and use restrictions." *301, 712, 2103 & 3151 LLC v. City of Minneapolis*, 27 F.4th 1377, 1381 (8th Cir. 2022). Beyond that, many courts that have interpreted the *Cedar Point* decision have highlighted that its holding addressed a

[8] Governments may also protect the rights of uninvited visitors to access private property without compensating the owners in a variety of circumstances, including numerous "background restrictions on property rights" and "health and safety inspection regimes." *Cedar Point*, 141 S. Ct. at 2079. Nor do property owners have a right to compensation for instances of trespass. *Id.* at 2078–79. Property owners do not have a constitutional right to compensation for access by trespassers, or other visitors such as certain service providers or housing inspectors, for example.

"unique, narrow question." *Hardy v. United States*, 156 Fed. Cl. 340, 344–45 (2021); *see also Blevins v. United States*, No. 18-CV-4371, 2022 WL 509696, at *9 (Fed. Cl. Feb. 18, 2022) (same, quoting *Hardy*); *Munzel v. Hillsborough Cnty.*, No. 8:21-CV-2185-WFJ-AAS, 2022 WL 671578, at *4 (M.D. Fla. Mar. 7, 2022) (observing that *Cedar Point* is consistent with previous takings precedents and declining to consider governmental action a physical taking where it "does not involve an agricultural access regulation given to labor organizations to enter property to solicit support for unionization").

Even more to the point, courts have consistently rejected property owners' attempts to use the *Cedar Point* opinion to expand the physical takings doctrine by treating regulations of the landlord-tenant relationship like requirements that property owners admit uninvited third parties. In *Farhoud v. Brown*, for example, the landlord plaintiffs argued that a COVID-19-related eviction moratorium effected a per se taking. No. 3:20-cv-2226-JR, 2022 WL 326092, at *9 (Feb. 3, 2022). The court held that *Yee*, not *Cedar Point*, governed the landlords' takings claim, because the eviction moratorium granted "no right to third parties to access Plaintiffs' properties. Instead, only those tenants to whom Plaintiffs ha[d] already granted possession [could] remain on Plaintiffs' property." *Id.* at *10.[9] Because the ECP "did not require that [landlords] allow third parties to enter and take access to their property," it is a restriction on the use of the property of certain landlords who voluntarily apply to convert tenancies in common into condominiums, not a physical taking. *Gonzales v. Inslee*, 504 P.3d 890, 904 (Wash. Ct. App. 2022). Even outside of the landlord-tenant context, courts have also consistently rejected property owners' arguments that *Cedar Point* expanded the physical takings doctrine.[10] *Cedar Point*, in short, has no bearing on Plaintiffs' takings claim.

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[9] *See also DiVittorio v. Cnty. of Santa Clara*, No. 21-CV-03501-BLF, 2022 WL 409699 (N.D. Cal. Feb. 10, 2022); *Jevons*, 2021 WL 4443084; *Bldg. & Realty Inst.*, 2021 WL 4198332; *S. Cal. Rental Hous. Ass'n*, 550 F. Supp. 3d 853; *Gonzales*, 504 P.3d 890.

[10] *See, e.g.*, *Golf Vill. N., LLC v. City of Powell, Ohio*, 14 F.4th 611 (6th Cir. 2021); *Blevins*, 2022 WL 509696; *Hinkle Fam. Fun Ctr., LLC v. Grisham*, No. 20-CV-01025-MV-KK, 2022 WL 486942 (D.N.M. Feb. 17, 2022); *Hardy*, 156 Fed. Cl. 340; *KI Fla. Properties, Inc. v.*

(footnote continued on next page)

II. The ECP is not an unconstitutional regulatory taking under *Penn Central*.

Applying the framework articulated in *Penn Central*, this Court should conclude that the ECP does not violate the Takings Clause. Under *Penn Central*, courts analyzing a regulatory takings claim should consider (1) "the economic impact of the regulation on the claimant," (2) "the extent to which the regulation has interfered with distinct investment-backed expectations," and (3) "the character of the governmental action." *Penn Central*, 438 U.S. at 124. The goal is to determine whether the challenged governmental action is "so onerous that its effect is tantamount to a direct appropriation or ouster." *Lingle*, 544 U.S. at 537. In weighing the *Penn Central* factors, courts "must remain cognizant that government regulation—by definition—involves the adjustment of rights for the public good, and that Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law." *Id.* at 538 (internal quotations omitted).

The first factor—the economic impact of the ECP on Plaintiffs—favors the City. As an initial matter, the parties disagree whether the ECP would cause a reduction in the market value of Plaintiffs' unit. Plaintiffs allege the ECP has caused their property to lose $500,000 in value. Am. Compl. ¶ 26. The City, on the other hand, states that the unit has appreciated in value following condominium conversion, and points to Plaintiffs' agreement with that statement in the application papers they submitted pursuant to the ECP. Defs.' Mot. Dismiss at 11–12.

Even were the Court not to take judicial notice of Plaintiffs' ECP application and accept the allegation that their property's value diminished by $500,000 as true, the alleged diminution in value of the property alone does not effect a taking. "Supreme Court cases 'have long established that mere diminution in the value of property, however serious, is insufficient to demonstrate a taking.'" *Rancho de Calistoga*, 800 F.3d at 1090 (quoting *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal.*, 508 U.S. 602, 645 (1993)).

Walton Cty., No. 3:20CV5358-RH-HTC, 2021 WL 5456668, at *4 (N.D. Fla. Oct. 15, 2021); *Skatemore, Inc. v. Whitmer*, No. 1:21-CV-66, 2021 WL 3930808 (W.D. Mich. Sept. 2, 2021); *Valancourt Books, LLC v. Perlmutter*, No. 18-1922 (ABJ), 2021 WL 3129089 (D.D.C. July 23, 2021).

The Ninth Circuit has held that an 81% diminution in value "would not have been sufficient economic loss . . . to constitute a taking." *MHC Fin. Ltd. P'ship v. City of San Rafael*, 714 F.3d 1118, 1127 (9th Cir. 2013); *see also William C. Haas & Co. v. City & Cnty. of San Francisco, Cal.*, 605 F.2d 1117, 1120 (9th Cir. 1979) (diminution in value from $2,000,000 to $100,000 caused by zoning regulation insufficient to constitute a taking). Notably, Plaintiffs do not allege the ECP has deprived them of all beneficial economic use of their property. *See Lucas*, 505 U.S. at 1019. They still have the right to receive rent from their tenant and to evict their tenant for failure to pay them rent. Defs.' Mot. Dismiss at 8, 16. Nor do Plaintiffs allege their unit is no longer "sufficiently desirable" as a rental property "to permit [them] to sell the property to someone for that use." *Park Ave. Tower Assocs. v. City of New York*, 746 F.2d 135, 139 (2d Cir. 1984) (internal quotation omitted).

The second *Penn Central* factor—the ECP's impact on Plaintiffs' investment-backed expectations—also weighs in the City's favor. These expectations are measured according to "reasonable probability, like expecting rent to be paid." *Rancho de Calistoga*, 800 F.3d at 1090. As discussed above, the ECP has not deprived Plaintiffs of the right to receive rent from their tenant, and Plaintiffs do not allege that the amount of rent is unreasonably low. *See Bldg. & Realty Inst.*, 2021 WL 4198332, at *24 (restrictions on condominium conversion did not interfere with property owners' investment-backed expectations where owners "fail[ed] to allege that the[] changes made their properties entirely unprofitable"). When Plaintiffs decided to put their San Francisco apartment on the rental market, they "knowingly entered a highly regulated industry." *335-7 LLC*, 524 F. Supp. 3d at 333. "Simply put, when buying a piece of property, one cannot reasonably expect that property to be free of government regulation such as zoning, tax assessments, [rent control]," or condominium conversion procedures. *See Rancho de Calistoga*, 800 F.3d at 1091.

Plaintiffs do not allege they would lose money on the sale of their unit, or that they would not have purchased the unit, or would not have agreed to pay the purchase price they did, had they known the ECP would issue four years later. Notable in this regard, Plaintiffs do not allege that they were unaware of the lifetime lease condition when they nevertheless decided to apply

for a condominium conversion. Nor, it may be added, did they choose to move into their unit prior to applying for condominium conversion. In any event, property owners "have no constitutional right to what [they] could have received in an unregulated market." *335-7 LLC*, 524 F. Supp. 3d at 333 (internal quotation omitted). "[D]isappointed expectations in that regard cannot be turned into a taking, nor can [property owners] transform a regulation into a taking by recharacterizing the diminution of the value of [their] property as an inability to obtain a favorable return on [their] investment." *William C. Haas & Co.*, 605 F.2d at 1121. The ECP has therefore not interfered with any investment-backed expectations Plaintiffs reasonably held at the time they put their property on the rental market.

Third, the character of the City's action weighs against finding that it unconstitutionally took Plaintiffs' property. As a threshold matter, the ECP is a voluntary process. Plaintiffs chose to submit a condominium conversion application pursuant to the ECP. If the ECP rendered condominium conversion no longer attractive to them, financially or otherwise, they need not have commenced the condominium conversion process. Property owners have no constitutional right to convert a tenancy in common into a condominium-style form of ownership. *Hock Inv. Co. v. City & Cnty. of San Francisco*, 215 Cal. App. 3d 438, 446 (Cal. Ct. App. 1989), *reh'g denied and opinion modified* (Nov. 2, 1989). And it is well settled that a City may condition the receipt of a benefit—here, permitting the conversion of an interest in a tenancy in common into a condominium-style ownership interest—"upon the acceptance of certain conditions, so long as those conditions are reasonably related to the burden" on the owner. *Griswold v. City of Carlsbad*, 402 F. App'x 310, 311 (9th Cir. 2010).

As discussed in Section I.A. above, local governments have a significant and longstanding interest in regulating the terms of agreements between landlords and tenants because of the tremendous societal damage that can result when renters lose their homes, particularly in large numbers. Considering the *Penn Central* factors together, the ECP does not amount to the "functional[] equivalent to the classic taking." *Lingle*, 544 U.S. at 539. It "instead merely affects property interests through some public program adjusting the benefits and burdens of economic life to promote the common good." *Id.* (internal quotation omitted).

III. The ECP is not an unconstitutional exaction.

Because the ECP does not constitute a taking, Plaintiffs' claim that it places an unconstitutional condition (also called an exaction) on the ability to convert a tenancy in common into a condominium-style form of ownership must necessarily fail. Pursuant to the unconstitutional conditions line of cases, "a unit of government may not condition the approval of a land-use permit on the owner's relinquishment of a portion of his property unless there is a 'nexus' and 'rough proportionality' between the government's demand and the effects of the proposed land use." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 599 (2013). The doctrine developed to protect individual property owners from local governments' "extortionate demands" that go beyond "internaliz[ing] the negative externalities of their conduct." *Id.* at 605.

The Court should reject Plaintiffs' exaction claim for the same reason it should reject their takings claim: because the condition that property owners applying to convert a tenancy in common into a condominium-style ownership offer a lifetime lease to tenants is not an unconstitutional taking. "A predicate for any unconstitutional conditions claim is that the government could not have constitutionally ordered the person asserting the claim to do what it attempted to pressure that person into doing." *Koontz*, 570 U.S. at 612; *see also Cedar Point*, 141 S. Ct. at 2079 (reaffirming that "the government may require property owners to cede a right of access as a condition of receiving certain benefits, without causing a taking"). The ECP's requirement of a lifetime lease offer is not an unconstitutional taking. *See supra* Sections I and II. Plaintiffs' exaction claim therefore fails at the outset. *See Ballinger*, 24 F.4th at 1300 (affirming dismissal of exaction claim where alleged exaction—payment of a relocation fee to tenants—was not a compensable taking).

Plaintiffs' exactions claim fails for the additional reason that the ECP "represents the [City's] reasonable exercise of its police power." *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 861 (1987). As discussed above, cities have a significant interest in ensuring a stable supply of affordable housing and avoiding mass displacement of tenants. Especially where landlords are aware of the lifetime lease requirement and decide nonetheless to obtain the benefits of

condominium conversion, the ECP "can hardly be called a taking." *Id.* at 859 (quoting *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1007 (1984)).

CONCLUSION

For the reasons stated above and in Defendants' filings, Amici urge this Court to grant Defendants' motion to dismiss.

DATED: April 8, 2022 SHUTE, MIHALY & WEINBERGER LLP

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DATED: April 8, 2022 DEMOCRACY FORWARD FOUNDATION

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I hereby attest that I have on file all holographic signatures corresponding to any signatures indicated by a conformed signature (/S/) within this e-filed document.

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

PEYMAN PAKDEL and SIMA CHEGINI,

Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO et al,

Defendants.

Case No. 3:17-cv-03638-RS

[PROPOSED] ORDER GRANTING MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Hon. Richard Seeborg

Upon consideration of the Unopposed Motion for Leave to File Brief as Amici Curiae in Support of Defendants' Motion to Dismiss, and the entire record herein, it is hereby:

ORDERED that the Motion is GRANTED, and it is

FURTHER ORDERED that the brief is deemed to have been filed and served via ECF on the date of this Order.

DATED: _____, 2022

The Honorable Richard Seeborg
United States District Judge