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10
 11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA

13
 14 APARTMENT ASSOCIATION OF
 LOS ANGELES COUNTY, INC., dba
 15 "APARTMENT ASSOCIATION OF
 GREATER LOS ANGELES,"

16 Plaintiff,

17 vs.

18 CITY OF LOS ANGELES; ERIC
 19 GARCETTI, in his official capacity as
 Mayor of Los Angeles; and CITY
 20 COUNCIL OF THE CITY OF LOS
 ANGELES, in its official capacity;
 21 DOES 1 through 25, inclusive,

22 Defendants.

Case No.

Judge:

**COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

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1 Plaintiff Apartment Association of Los Angeles County, Inc. dba the
2 “Apartment Association of Greater Los Angeles” (“Plaintiff” or “AAGLA”) alleges
3 as follows:

4 **INTRODUCTION**

5 1. In the wake of the novel coronavirus, Defendants City of Los Angeles,
6 City Council of the City of Los Angeles, and Mayor Eric Garcetti (collectively “City”
7 or “Defendants”) hastily instituted a series of ordinances which prohibit lessors and
8 landlords, such as Plaintiff’s members, from exercising their contractual remedies
9 where tenants refuse to pay rent on the asserted grounds that they were impacted by
10 the COVID-19 pandemic (“Pandemic”). While purportedly intended to provide relief
11 to tenants so impacted, the ordinances are not tailored to a tenant’s actual inability to
12 pay rent and significantly (and needlessly) infringe on the constitutional rights of all
13 lessors and landlords within the City.

14 2. This Action challenges the implementation of the City’s Eviction
15 Moratorium (Ordinance No. 186585) and Rent Freeze Ordinance (Ordinance
16 No. 186607) (collectively the “Ordinances”) adopted by the City Council on
17 March 27, 2020 and March 30, 2020, respectively.

18 3. Plaintiff’s members are sympathetic to tenants who have actually
19 suffered hardship due to the Pandemic. Plaintiff’s members have every incentive to
20 work with those tenants who do not have the financial means to pay all or some
21 portion of their rent. As set forth below, however, the Ordinances actively undermine
22 any such attempts at cooperation and allow tenants who actually have the ability to
23 pay all or some of their rent to ignore their contractual obligations for the foreseeable
24 future.

25 4. The Eviction Moratorium, among other things, contains provisions that
26 ***indefinitely*** prohibit landlords and property owners from initiating or continuing
27 residential eviction proceedings based upon non-payment of rent. Although it
28 ostensibly only applies if a tenant is unable to pay due to circumstances related to the

1 Pandemic, it does not require tenants to provide notice, let alone documentation, of
2 their inability to pay. While the Eviction Moratorium provides no relief for owners
3 and landlords and requires them to continue meeting their contractual and statutory
4 obligations as “lessors,” it completely abrogates the material obligations of lessees
5 and eliminates all of the contractual remedies lessors ordinarily have when tenants
6 breach their lease provisions. Lessors are forbidden not only from commencing
7 eviction proceedings for failure to pay rent, but from charging any late fees or interest
8 to which they are contractually entitled. Under the Eviction Moratorium, tenants may
9 continue to occupy their respective premises at no charge, utilizing the water, power,
10 trash, sewage, and other fees that the landlords must continue to pay without
11 reimbursement. By stripping all remedies away from owners – without requiring
12 tenants to demonstrate an inability to pay rent – the Eviction Moratorium discourages
13 tenants who can pay all or some of what they owe from doing so.

14 5. The Eviction Moratorium also gives tenants a full twelve months
15 following expiration of the “Local Emergency Period”—which seems likely to last
16 many months, at a minimum—to repay back rent, irrespective of the tenant’s ability
17 to pay some or all rent, the term of the lease, any agreed plan or schedule for
18 repayment, or any evidence demonstrating that the tenant will actually be capable of
19 paying back rent at the expiration of the one-year grace period. For many, if not most
20 “qualifying” tenants, the “rent deferral” provision will operate as rent forgiveness, as
21 it is unlikely that tenants who do not pay rent during the Local Emergency Period will
22 be in a position to pay back rent, in addition to their normal rent, at the conclusion of
23 the grace period (whenever that may be). The Eviction Moratorium also fails to
24 address how a landlord or property owner would actually be able to collect rent from
25 those tenants who take advantage of the Eviction Moratorium, but move to a different
26 location by the end of the one-year grace period. Indeed, the City has banned owners
27 from pursuing their primary remedy (eviction) needed to mitigate damages where the
28 tenant fails to pay rent. Every month a landlord is prevented from renting its unit to

1 a paying tenant is a month for which the landlord cannot mitigate any damages. The
2 Eviction Moratorium would force owners to allow tenants who have stopped paying
3 – and may never pay again – to continue to occupy their units for many months and
4 likely well into 2021. While owners can theoretically eventually sue such tenants for
5 back rent (but not for any interest or late fees), their likelihood of ever actually
6 collecting on a judgment for many months of back rent is minimal, at best. As for
7 those tenants who move prior to the time owners may sue to recover back rent, there
8 is simply no chance to recover such rent and, even if there was, the owner would incur
9 a tremendous (and likely unrecoverable) litigation expense just to get that to which
10 the owner is entitled.

11 6. The Eviction Moratorium further prohibits all evictions based on the
12 presence of unauthorized occupants or pets, as well as for undefined “nuisance[s]
13 related to COVID-19.” Incredibly, the Eviction Moratorium creates a private right of
14 action in favor of *only* tenants whereby tenants are allowed to sue for alleged
15 violations of the moratorium, subjecting landlords to civil penalties of up to **\$15,000**
16 **per violation**. Thus, while the Eviction Moratorium bars lessors and landlords, like
17 Plaintiff’s members, from utilizing their primary contractual remedy to secure
18 payment of rent, it provides a new weapon for tenants to use against landlords and
19 lessors who seek only that to which they are entitled under their existing leases.

20 7. The Rent Freeze Ordinance prohibits property owners from raising rent
21 on any property subject to the City’s Rent Stabilization Ordinance for a period of one
22 year following the end of the “Local Emergency” as declared by the Mayor, thus
23 preventing property owners from implementing even the modest increases ordinarily
24 allowed on properties pursuant to their respective lease agreements. The Rent Freeze
25 Ordinance was adopted without any mechanism to determine whether rent increases
26 are necessary for landlords to obtain a fair return, as required under the U.S. and
27 California Constitutions. The impact of the two Ordinances together is thus
28 particularly devastating, as property owners are not only forced to forbear collecting

1 rent and effectively give interest-free loans to tenants who assert any Pandemic-
2 related inability to pay, but are also prohibited from making normal rent adjustments
3 with respect to tenants that do not claim any financial hardship. The Ordinances also
4 require property owners to financially support their tenants during the Local
5 Emergency by subsidizing tenants' rent, utilities and other charges without any
6 support to the property owner or landlord. The City notably has refused to provide
7 any financial relief to landlords and property owners, despite the hardship they have
8 and are suffering.

9 8. As set forth below, this action seeks to nullify the Ordinances as violative
10 of the United States and California Constitutions, on the grounds that they improperly
11 interfere with Plaintiff's members' contracts and due process rights and constitute an
12 improper uncompensated taking of the fundamental property rights of Plaintiff's
13 members. The Ordinances are further preempted by California law and the unlawful
14 detainer statutes, which are intended to fully occupy the field of eviction procedures.

15 9. If allowed to stand, the Ordinances will not only continue to violate
16 Plaintiff's members' rights under both the California and United States Constitutions,
17 but will continue to inflict massive and widespread economic damage on property
18 owners and landlords throughout the City, while unconstitutionally placing the entire
19 economic burden of the Pandemic on the backs of property owners and landlords,
20 including Plaintiff's members, who have already been financially crippled by the
21 Pandemic. Many of Plaintiff's members have mortgages on their properties that they
22 are unable to pay without a steady stream of rental income. Plaintiff's members
23 similarly rely on rental income to maintain and secure their properties and pay
24 employees, among other operating and personal expenses, including payment for food
25 and housing for their own families. Plaintiff's members are also required to pay the
26 substantial property taxes, utility fees and other assessments on their respective
27 properties, which taxes, fees and assessments cannot be paid in the absence of rental
28 income. Most of Plaintiff's members cannot financially survive if a significant

1 number of their tenants do not pay rent for a prolonged period of time. The effect of
2 the Ordinances will thus be to put many of Plaintiff's members out of the rental
3 business, either through foreclosure and/or bankruptcy, ultimately reducing the badly
4 needed supply of rental housing within the City and further driving up the cost of
5 housing. The City was fully aware of this when enacting the Eviction Moratorium,
6 with some officials openly hoping to convert private distressed properties to public
7 housing. The stakes for immediate relief from this Court could not be higher.

8 10. Accordingly, Plaintiff brings this action challenging the constitutionality
9 of the Ordinances, which have deprived Plaintiff's members of their fundamental
10 rights and liberties embodied in both the California and United States Constitutions.
11 In doing so, Plaintiff seeks the following remedies:

- 12 a. Equitable and injunctive relief to enjoin the City's enforcement of
13 the Ordinances;
- 14 b. Declaratory relief from this Court that the Ordinances violate
15 Plaintiff's members' civil rights under 42 U.S.C. § 1983 of the
16 Federal Civil Rights Act ("Section 1983"), the Contract Clauses
17 of the California and United States Constitutions, the Takings
18 Clauses of the California and United States Constitutions, and the
19 Fourteenth Amendment for violation of Plaintiff's due process
20 rights. Additionally, Plaintiff seeks a declaration that the City's
21 Ordinances are fully preempted by California's unlawful detainer
22 statutes and California's litigation privilege set forth in California
23 Civil Code § 47;
- 24 c. Attorney's fees and costs for the work performed by Plaintiff's
25 counsel in this lawsuit in an amount according to proof; and
- 26 d. For such other and further relief as this Court deems just and
27 appropriate.
28

JURISDICTION AND VENUE

1
2 11. This action arises under 42 U.S.C. § 1983 in relation to Defendants’
3 deprivation of Plaintiff’s members’ constitutional rights to due process under the Fifth
4 and Fourteenth Amendments to the United States Constitution, as well as their
5 constitutional rights pursuant to Article I, Section 9 of the California Constitution and
6 Article I, Section 10 (collectively “Contracts Clauses”) of the United States
7 Constitution. Accordingly, this Court has federal question jurisdiction pursuant to
8 28 U.S.C. §§ 1331 and 1343. This Court has jurisdiction over the claims asserting
9 violations of the California Constitution through supplemental jurisdiction pursuant
10 to 28 U.S.C. § 1367(a). This Court has authority to award the requested declaratory
11 relief pursuant to 28 U.S.C. § 2201; the requested injunctive relief pursuant to
12 28 U.S.C. § 1343(a); and attorney’s fees and costs pursuant to 42 U.S.C. § 1988.

13 12. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(1) and
14 (2), because Defendant City of Los Angeles is located within this district and a
15 substantial part of the events giving rise to Plaintiff’s claims occurred in this district.

PARTIES

16
17 13. Plaintiff Apartment Association of Los Angeles County, Inc., doing
18 business as “Apartment Association of Greater Los Angeles” (“Plaintiff” or
19 “AAGLA”) at all relevant times, is and was a California mutual benefit Corporation
20 organized and authorized to do business and doing business in the State of California.
21 Founded in 1917, AAGLA is comprised of over 10,000 members that own or manage
22 over 150,000 rental housing units throughout the counties of Los Angeles, Ventura,
23 and San Bernardino. For over 100 years, AAGLA has served as an advocate for rental
24 housing providers at the local, county, state, and federal levels of government.

25 14. Defendant City of Los Angeles (“City” or “Defendant”) is a municipal
26 corporation, organized under its Charter and the laws of the State of California.

27 15. Defendant Eric Garcetti (“Garcetti” or “Mayor”) is made a party to this
28 Action in his official capacity as the Mayor of Los Angeles in the State of California.

1 Garcetti is sued herein in his official capacity under the rule of *Ex Parte Young* to
2 enjoin the enforcement of the City’s Eviction Moratorium and Rent Freeze Ordinance.
3 *Ex Parte Young*, 209 U.S. 123, 152-154 (1908).

4 16. Defendant City Council of the City of Los Angeles (“City Council”) is
5 made a party to this Action in its official capacity as City Council of the City of Los
6 Angeles for the State of California.

7 17. Plaintiff is ignorant of the true names and capacities of Defendants sued
8 herein as DOES 1 through 25 and therefore sues Defendants by such fictitious names.
9 Plaintiff is informed and believes, and thereon alleges, that each of the fictitiously-
10 named Defendants is in some manner responsible or liable for the events and
11 happenings referred to herein, and that each such fictitiously named Defendant caused
12 injury and damage to Plaintiff’s members as alleged in this Complaint. Plaintiff will
13 seek leave of court to amend this Complaint to allege the true names and capacities
14 of such fictitiously-named Defendants when the same are ascertained.

15 18. Plaintiff is informed and believes, and thereon alleges, that at all relevant
16 times hereto, each of the Defendants was the agent of each of the remaining
17 Defendants and, in doing the things hereinafter alleged, was acting within the course
18 and scope of such agency or employment.

19 **STANDING**

20 19. As stated above, Plaintiff’s members own and manage rental properties
21 throughout the greater Los Angeles area, including numerous properties within the
22 City of Los Angeles. Thousands of Plaintiff’s members are “Owners,” or “Property
23 Owners” as those terms are used in the City’s Eviction Moratorium and Rent Freeze
24 Ordinance, whose contractual and ownership rights in their respective properties are
25 directly impacted by the City’s Ordinances, and who would thus have standing to
26 challenge such Ordinances in their own right. *See Hunt v. Wash. State Apple Adver.*
27 *Comm’n*, 432 U.S. 333, 343 (1977).

28 20. Plaintiff has standing to bring its claims since it is an aggrieved

1 association that is the subject of enforcement of the City’s overboard and
2 unconstitutional Ordinances, which have the effect of forcing Plaintiff’s members to
3 alone bear a public burden by entirely eviscerating Plaintiff’s members’ ability to
4 contractually collect rent and/or otherwise use their properties as they rightfully so
5 choose.

6 **FACTUAL ALLEGATIONS**

7 **A. The Outbreak of COVID-19**

8 21. The global COVID-19 pandemic (“Pandemic”) brought on by the
9 Wuhan Coronavirus has caused catastrophic and unprecedented economic damage
10 across the globe, and with it, significant loss of life and fundamental changes to both
11 world and national economies. The Coronavirus outbreak has turned the world
12 upside-down, causing profound damage to the lives of all Americans and to the
13 national economy. To be sure, State and U.S. officials have faced tremendous
14 adversity in planning, coordinating, and at times, executing effective nationwide and
15 statewide policies to protect the general public’s health, safety and welfare during this
16 time of crisis. However, the Ordinances, as well-intentioned as they may be, have
17 had an unlawful and disparate impact on landlords and property owners to the point
18 of jeopardizing Plaintiff’s members’ businesses and livelihoods.

19 22. In response to the outbreak in the State of California, on March 4, 2020,
20 Governor Newsom issued a “State of Emergency” Order to address the threat of the
21 spread of the Pandemic throughout California’s communities. Governor Newsom
22 subsequently issued Executive Order No. N-33-20 on March 19, 2020, which, among
23 other things, mandated that “all individuals living in the State of California” were to
24 “stay home or at their place of residence except as needed to maintain the continuity
25 of operations of the federal critical infrastructure sectors as outlined at
26 <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>.”

27 23. On March 13, 2020, President Donald J. Trump proclaimed a National
28 State of Emergency as a result of the threat of the Pandemic.

1 24. On March 15, 2020, Garcetti issued a Public Order under the City of Los
2 Angeles’s Emergency Authority entitled “New City Measures to Address COVID-
3 19.” Among other things, the Mayor’s Order mandated that “no landlord shall evict
4 a residential tenant in the City of Los Angeles during this local emergency period if
5 the tenant is able to show an inability to pay rent due to circumstances related to the
6 COVID-19 pandemic.” The Mayor’s Order additionally provided that such
7 circumstances include “loss of income due to a COVID-19 related workplace closure,
8 child care expenditures due to school closures, health care expenses related to being
9 ill with COVID-19 or caring for a member of the tenant’s household who is ill with
10 COVID-19, or reasonable expenditures that stem from government-ordered
11 emergency measures.” Of note, there were no provisions mandating any sort of
12 documentation be retained by tenants who claim an inability to pay rent due to
13 COVID-19. Nor were there any protections provided for landlords or property owners
14 rightfully attempting to continue collecting rent.

15 **B. The Governor’s Eviction-Related Executive Orders**

16 25. On March 16, 2020, Governor Newsom issued Executive Order
17 No. N-28-20. In relevant part, the Order suspended provisions of state law that would
18 “preempt or otherwise restrict a local government’s exercise of its police power to
19 impose substantive limits on residential or commercial evictions,” but only to the
20 extent that “[t]he basis for the eviction is nonpayment of rent . . . arising out of a
21 substantial decrease in household or business income” caused by the Pandemic or the
22 government response thereto. The order also required that the decrease in income be
23 “documented.” While the Order provided that such protections would only be in
24 effect through May 31, 2020, Executive Order No. N-66-20, issued on May 29, 2020,
25 extended the protections for an additional 60 days from the date of such order.

26 26. On March 27, 2020, Governor Newsom issued Executive Order
27 No. N-37-20, restricting evictions, though May 31, 2020, if certain conditions are
28 met, including that the tenant has notified the landlord in writing of their “inability to

1 pay the full amount due to reasons related to COVID-19,” within 7 days of the date
2 the rent is due. The Order also requires that tenants retain “verifiable documentation”
3 explaining their changed financial circumstances, as an affirmative defense to an
4 unlawful detainer action.

5 **C. The City’s Eviction Moratorium**

6 27. On March 27, 2020, the City Council for Defendant City of Los Angeles
7 enacted Ordinance No. 186585 (“Eviction Moratorium”) mandating a “temporary”¹
8 moratorium on evictions for non-payment of rent for tenants who are unable to pay
9 rent due to circumstances related to the COVID-19 pandemic. The Eviction
10 Moratorium was signed by the Mayor on March 31, 2020, but retroactively applied to
11 “non-payment eviction notices, no-fault eviction notices, and unlawful detainer
12 actions based on such notices, served or filed on or after March 4, 2020.” The
13 Eviction Moratorium applies to both commercial real property and residential real
14 property, both of which are broadly defined in the ordinance. The Eviction
15 Moratorium is not set to expire until “the end of the Local Emergency period.” The
16 Local Emergency period is defined as the period of March 4, 2020 to the end of the
17 local emergency as declared by the Mayor. Over three months into the Local
18 Emergency, the Mayor and City Council have given no indication that the emergency
19 period will end in the foreseeable future. To the contrary, it seems exceedingly likely
20 based on statements from Los Angeles officials that the declared emergency will
21 extend well into 2021.

22 28. The City’s Eviction Moratorium prohibits landlords from terminating
23 tenancies based on (1) non-payment of rent due to COVID-19 related inability to pay
24 (without requiring documentation of such inability); (2) any “no fault” reason for
25 termination; (3) certain lease violations related to unauthorized occupants,
26

27 _____
28 ¹ The word “temporary” is somewhat misleading, as the Eviction Moratorium has no
specified end date, and extends certain protections an additional 12-months beyond
the “end of the Local Emergency.”

1 unauthorized pets, and nuisance; and (4) the Ellis Act². The ordinance also allows for
2 an extended repayment schedule – allowing tenants up to 12-months after the end of
3 the Local Emergency to repay the delayed rent, without any interest or late penalties
4 having accrued.³ Further, while it provides that tenants “may” agree to a repayment
5 plan, they are not required to do so. Thus, a tenant who fails to pay rent during the
6 emergency period can refuse to pay *any* of that back rent for another full year after
7 the emergency order is lifted, before the landlord has any recourse. Nevertheless, the
8 Eviction Moratorium purports to compel landlords and property owners to continue
9 paying for the tenants’ utilities, and to continue maintaining secure and habitable
10 living units pursuant to the terms of the leases. The Eviction Moratorium fails to
11 provide any protection for the property owners who are unable to pay their mortgages,
12 utilities and operating expenses needed to continue providing habitable units to their
13 tenants.

14 29. While the Eviction Moratorium ostensibly protects tenants who are
15 unable to pay rent due to circumstances related to the COVID-19 pandemic, it
16 arbitrarily shifts the financial burden onto property owners, many of whom were
17 already suffering financial hardship as a result of the Pandemic and have no equivalent
18 remedy at law.

19 30. Notably, the Eviction Moratorium *does not require* tenants to provide
20 notice of COVID-19-related inability to pay to the landlord or to provide
21 documentation to the landlord, in contrast to the requirements of Newsom’s Executive
22 Orders. While the City provides an *optional* form tenants can use to notify their
23 landlords of a COVID-19-related inability to pay, the form is not mandatory. The
24 Eviction Moratorium nonetheless prohibits owners from endeavoring to evict any
25 tenant with such an inability, in addition to providing that qualifying inability to pay

26 _____
27 ² Landlords are prohibited from removing any occupied units from the rental market
as would otherwise be allowed by the Ellis Act until 60 days after the end of the Local
Emergency period.

28 ³ The ordinance prohibits an owner from charging interest or a late fee on rent not
paid under its provisions.

1 serves as an affirmative defense to eviction for non-payment.

2 31. The Eviction Moratorium fails to provide any tribunal or mechanism by
3 which property owners and landlords may challenge a tenant’s claimed “inability to
4 pay,” effectively forcing property owners to accept such claims without question.
5 Indeed, the City Council did everything in its power to eliminate all remedies
6 available to property owners.

7 32. The City also created a private right of action in favor of tenants only,
8 which allows tenants to sue their landlords for violating the Eviction Moratorium,
9 after providing notice to the landlord and 15-day period to cure the violation. A tenant
10 may bring an action for civil penalties of up to \$10,000 per violation (plus up to an
11 additional \$5,000 if the tenant is senior citizen or disabled). The private right of action
12 applies from May 12, 2020 forward. Thus, while landlords have been stripped of all
13 remedies and any tribunal, such as a court to protect their rights, tenants are free to go
14 to court to assert monetary claims against their landlords.

15 33. On May 6, 2020, the City enacted Ordinance No. 186606 as an update to
16 the Eviction Moratorium. The update includes a prohibition on the influencing or
17 attempting to influence, “through fraud, intimidation or coercion, a residential tenant
18 to transfer or pay to the Owner any sum received by the tenant as part of any
19 government relief program.” The City did so notwithstanding the fact that, as
20 discussed in more detail below, such government relief programs were specifically
21 designed to allow individuals to continue meeting their monthly expense obligations
22 such as rent.

23 **D. The City’s Rent Freeze Ordinance**

24 34. On March 30, 2020, the Mayor enacted Ordinance No. 186607 (“Rent
25 Freeze Ordinance”), prohibiting owners from increasing rents on occupied rental units
26 that are subject to the City’s rent control provisions beginning on the date of the order.
27 As a result, property owners, like Plaintiff’s members, are prohibited from increasing
28 rents on occupied rental units subject to the Ordinance through sixty (60) days after

1 the expiration of the local emergency period.

2 35. On May 6, 2020, the City Council extended the Rent Freeze Ordinance
3 to *one year* after the expiration of the Local Emergency period.

4 36. The Rent Freeze Ordinance freezes all rents without any consideration
5 of the impact of such rent freezes on the legally required mandate that rent control
6 ordinances allow for a “fair return.”

7 **E. The Alleged Statutory Basis for the City’s Eviction Moratorium**

8 37. The City’s Eviction Moratorium cites the Governor’s Executive Order
9 No. N-28-20 as allegedly authorizing the City to establish additional measures to
10 promote housing security and stability to protect public health and mitigate the
11 economic impacts of COVID-19. The Rent Freeze Ordinance is notably silent as to
12 any statutory basis for its enactment, but otherwise states the ordinance is “required
13 for the immediate protection of the public peace, health and safety for the following
14 reasons: the City of Los Angeles will suffer irreparable damage, including loss of life
15 and property, should the devastating effects of COVID-19 not be quickly mitigated.”

16 38. Notably, the City’s Ordinances do not impose the same obligations on
17 tenants as do Newsom’s eviction-related Executive Orders, such as mandating tenants
18 “retain verifiable documentation” to support a “substantial decrease in household or
19 business income related to COVID-19.” *See* Newsom’s Executive Order
20 No. N-37-20. Additionally, Newsom’s Executive Order No. N-37-20 specifically
21 states, “Nothing in this Order shall prevent a tenant who is able to pay all or some of
22 the rent due from paying that rent in a timely manner or relieve a tenant of liability
23 for unpaid rent.”

24 **F. The CARES Act and Increased Availability of Unemployment**
25 **Benefits**

26 39. To combat the growing financial losses suffered by many Americans
27 during the Pandemic, Congress passed the Coronavirus Aid, Relief, and Economic
28 Security (“CARES”) Act, signed into law by President Trump on March 27, 2020.

1 The CARES Act provides over \$2 trillion in direct economic assistance for American
2 workers, families, and small businesses, and preserves jobs for American industries.⁴

3 40. Specifically, the CARES Act expands the scope of individuals who are
4 eligible for unemployment benefits, including those who are “furloughed” or
5 otherwise unemployed as a direct result of COVID-19, including self-employed
6 individuals, independent contractors, gig workers/freelancers, and those who have
7 exhausted state and federal unemployment benefits. It provides for Economic Impact
8 Payments to American households of up to \$1,200 per adult for individuals whose
9 income was less than \$99,000 (or \$198,000 for joint filers) and \$500 per child under
10 17 years old – or up to \$3,400 for a family of four. The Act adds \$600 per week from
11 the federal government on top of whatever base amount a worker receives from the
12 state.

13 41. Under the CARES Act, employers of all sizes that face closures or suffer
14 economic hardship due to COVID-19 are incentivized to keep employees on the
15 payroll through a 50% credit on up to \$10,000 of wages paid or incurred from
16 March 13, 2020 through December 31, 2020.⁵

17 42. To be eligible for unemployment benefits under the CARES Act,
18 individuals must provide self-certification to the state that they are (1) partially or
19 fully unemployed, or (2) unable and unavailable to work because:

- 20 a. They have been diagnosed with COVID-19 or have symptoms of
21 it and seeking diagnosis;
- 22 b. A member of their household has been diagnosed with COVID-
23 19;
- 24 c. They are providing care for a family or household member
25 diagnosed with COVID-19;

27 ⁴ <https://home.treasury.gov/policy-issues/cares/assistance-for-american-workers-and-families>

28 ⁵ <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry>

- 1 d. A child or other person in the household for whom they have
- 2 primary caregiving responsibility is unable to attend school or
- 3 another facility that is closed as a direct result of the COVID-19
- 4 health emergency, and such school or facility care is required for
- 5 the individual to work;
- 6 e. They cannot reach the place of employment because of a
- 7 quarantine imposed as a direct result of the COVID-19 health
- 8 emergency;
- 9 f. They were scheduled to start employment and do not have a job
- 10 or cannot reach their place of employment as a result of the
- 11 COVID-19 public health emergency;
- 12 g. They have become the breadwinner or major support for a
- 13 household because the head of household has died as a direct result
- 14 of COVID-19;
- 15 h. They had to quit their job as a direct result of the COVID-19 public
- 16 health emergency;
- 17 i. Their place of employment is closed as a direct result of the
- 18 COVID-19 public health emergency; or
- 19 j. They meet other criteria established by the Secretary of Labor.

20 43. The CARES Act allows for substantial unemployment benefits for
21 virtually every American directly or indirectly impacted by the Pandemic. Individuals
22 who meet the above criteria will receive the weekly benefit as determined by their
23 state for a maximum of 39 weeks, plus Pandemic Unemployment Compensation
24 (“PUC”) equal to \$600 per week on top of the normal unemployment benefit.
25 Individuals who were previously approved for unemployment benefits will continue
26 to receive their weekly unemployment benefit for a maximum of 39 weeks. Since
27 most states provide 26 weeks of unemployment benefits, the CARES Act effectively
28 expands coverage for an additional 13 weeks.

1 44. One of the more notable “loopholes” of the CARES Act is the “windfall”
2 received by many employees, where individuals actually receive *higher wages*
3 through available unemployment benefits in comparison to their wages pre-Pandemic.
4 For example, if an employer places an employee on a reduced schedule, depending
5 on the employee’s rate of pay, he or she may receive a “windfall” by receiving PUC.
6 That is, the employee may receive more through unemployment benefits than he or
7 she would have at work. The CARES Act does not address whether a state has the
8 authority to adjust PUC for employees who are considered “partially unemployed”
9 under state law.

10 45. While the stated goal of the CARES Act was to replace employee wages
11 that had been impacted by COVID-19, the result is many individuals may now be
12 eligible for substantially more money while unemployed than they made while
13 working.

14 46. A new analysis by Peter Ganong, Pascal Noel and Joseph Vavra,
15 economists at the University of Chicago, uses government data from 2019 to estimate
16 that 68% of unemployed workers who can receive tax-free benefits are eligible for
17 payments that are greater than their lost earnings.⁶ They also found that the estimated
18 median replacement rate – the share of a worker’s original weekly salary that is being
19 replaced by unemployment benefits – is 134%, or more than 1/3 above their original
20 wage. A substantial minority of those workers, particularly in low-wage professions
21 like food service and janitorial work, may end up receiving more than 150% of their
22 previous weekly salary.

23 47. In addition to the CARES Act and PUC, there are several additional
24 financial resources available to individuals as a result of the Pandemic, such as the
25 Families First Coronavirus Response Act (“FFCRA”), new paid leave laws under the
26 Family and Medical Leave Act (“FMLA”), and relief from federal student loans, to

27
28 ⁶ <https://fivethirtyeight.com/features/many-americans-are-getting-more-money-from-unemployment-than-they-were-from-their-jobs/>

1 name a few. Thus, the premise behind the Ordinances—*i.e.*, that dramatic action by
2 the City was necessary to prevent huge numbers of Los Angeles residents from being
3 removed from their housing due to Pandemic-related financial hardship—is simply
4 false.

5 48. While the financial resources available to tenants impacted by COVID-
6 19 abound, the remedies available to landlords and property owners are noticeably
7 absent. Landlords and property owners, like Plaintiff’s members, are still responsible
8 for paying mortgages, property taxes, utilities, security, managers, government-
9 imposed fees, employee salaries, and a host of other expenses needed to maintain and
10 operate their rental properties.

11 **G. The City’s Ordinances Violate California Law and the**
12 **Constitutional Rights of Plaintiff’s Members**

13 49. As a result of the issuance and enforcement of the City’s Ordinances, the
14 City has violated Plaintiff’s members’ constitutional rights to the free use of their
15 properties. The Ordinances abrogate Plaintiff’s members’ contractual rights in that
16 they permit tenants to unilaterally violate the terms of their leases, without the
17 landlords’ or lessors’ consent.

18 50. “To be sure, individual rights secured by the Constitution do not
19 disappear during a public health crisis.” *In re Abbott*, 954 F.3d 772, 784 (5th Cir.
20 2020). Fundamental and unalienable rights are by their very nature “essential” – they
21 are the essential rights which led to the founding of this country and this state. For,
22 “[h]istory reveals that the initial steps in the erosion of individual rights are usually
23 excused on the basis of an ‘emergency’ or threat to the public. But the ultimate
24 strength of our constitutional guarantee lies in the unhesitating application in times of
25 crisis and tranquility alike.” *United States v. Bell*, 464 F.2d 667, 676 (2d Cir. 1972)
26 (Mansfield, J., concurring).

27 51. “Emergency does not create power. Emergency does not increase
28 granted power or remove or diminish the restrictions imposed upon power granted or

1 reserved. The Constitution was adopted in a period of grave emergency. Its grants
2 of power to the federal government and its limitations of the power of the States were
3 determined in light of emergency, and they are not altered by emergency. What power
4 was thus granted and what limitations were thus imposed are questions which have
5 always been, and always will be, the subject of close examination under our
6 constitutional system.” *Home Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 425-
7 426 (1934) (“*Blaisdell*”).

8 52. Plaintiff’s members desire to protect their properties, while at the same
9 time giving reasonable opportunity for their tenants to maintain their tenancies. In
10 order to do so, Plaintiff’s members must have the ability to commence a residential
11 non-payment proceeding before a Court of competent jurisdiction. Any relief
12 afforded to tenants that is justified by the public health emergency, in order not to
13 contravene Plaintiff’s members’ constitutional rights, can only be of character
14 appropriate to that emergency, and granted only upon reasonable conditions.
15 *Blaisdell, supra*, 290 U.S. at 445. In cases of leases, the Supreme Court has observed
16 that relief may be appropriate where “the relief afforded was temporary and
17 conditional; that it was sustained because of the emergency due to scarcity of housing;
18 ***and that provision was made for reasonable compensation to the landlord during***
19 ***the period he was prevented from regaining possession.***” *Id.* at 441-442 (emph.
20 added).

21 53. Here, however, the City’s Ordinances are neither “appropriate,” nor
22 granted upon “reasonable conditions.” The relief afforded is neither temporary nor
23 conditional. Nor do the Ordinances provide for “reasonable compensation” to the
24 landlords or lessors, during the indefinite period by which the Ordinances are in effect.
25 Indeed, the Eviction Moratorium expressly allows tenants to remain in possession
26 without paying any rent during the emergency period. The Ordinances are not
27 addressed to a legitimate end and the measures taken by the City are not reasonable
28 or appropriate to that end. *Blaisdell, supra*, 290 U.S. at 438.

1 54. The City's Ordinances have caused widespread and catastrophic
2 financial damage to landlords and lessors, like Plaintiff's members, who have no
3 remedies available to them by which to recover the losses caused by their tenants'
4 non-payment of rent. There exist hundreds of thousands of rental properties subject
5 to the Ordinances within the City. Even a modest reduction in rent payments as a
6 result of the Ordinances would equate to tens of millions of dollars in lost rent per
7 month. A year's worth of lost rent City-wide would easily equate to billions of dollars
8 in losses borne exclusively by property owners with rental properties in the City.
9 Accordingly, Plaintiff complains against the City for violations of the United States
10 and California Constitutions and the Federal Civil Rights Act, 42 U.S.C. § 1983
11 ("FCRA"), to declare and enjoin the enforcement of the City's Ordinances, due to the
12 following circumstances:

- 13 a. The Ordinances further violate the Contracts Clauses of Article I,
14 Section 10 of the United States Constitution and Article I,
15 Section 9 of the California Constitution.
- 16 b. The Ordinances effectively amount to an impermissible "partial"
17 or "complete" taking in violation of the Takings Clause of the
18 Fifth Amendment of the United States Constitution in that the
19 prohibition on Plaintiff's members' ability to collect rent
20 constitutes a regulatory taking of private property, for public
21 purpose, without providing just compensation therefor.
22 Furthermore, the Ordinances violate the Takings Clause of the
23 Fifth Amendment in that the complete prohibition on Plaintiff's
24 ability to collect rent constitutes an irrational, arbitrary, and
25 capricious law bearing no rational basis to any valid government
26 interest. The notion that the Ordinances are absolutely necessary
27 to protect tenants from losing their homes amidst the wide
28 availability of financial resources, unemployment benefits, and

1 other reasonable alternatives, demonstrates the gross overreach by
2 the City at the unconstitutional expense of the property owners.

3 c. The Ordinances further violate the substantive and procedural due
4 process clauses of the Fifth and Fourteenth Amendments to the
5 United States Constitution.

6 d. The Ordinances subject the City to liability under 42 U.S.C.
7 § 1983 as a deprivation of Plaintiff’s rights, privileges, and
8 immunities secured by the United States Constitution and/or laws
9 of the United States to which Plaintiff’s members are and were
10 legitimately entitled.

11 55. Moreover, the City’s Ordinances are not “narrowly tailored” to further
12 any compelling governmental interest. On the contrary, while the Ordinances were
13 ostensibly intended to protect tenants from being evicted due to their inability to pay
14 rent, this goal could have been achieved by far less intrusive means, including, but
15 not limited to: (a) permitting the courts to hear each case on its own merits and
16 fashion relief appropriate to the specific positions of the affected landlords and
17 tenants, thereby protecting tenants from immediate eviction but also providing
18 protection to landlords from excessive periods of non-payment; (b) requiring tenants
19 to substantiate the criteria for qualifying for protection under the Ordinances through
20 documentation or other evidence; (c) providing landlords a tribunal or other forum to
21 challenge a tenant’s claimed qualification for protection under the Ordinances;
22 (d) providing tenants with the means to pay rent in order to satisfy the City’s tenant
23 protection goals, without requiring landlords to bear the burden and threat of
24 significant non-payment of rent to implement the City’s tenant protection program;
25 and/or (e) compensating landlords and property owners directly when a tenant fails to
26 pay rent in order to continue occupying the premises to slow the spread of the virus.

27 56. Instead, the City’s Ordinances give tenants a present sense that they are
28 not contractually bound to pay *any* portion of rent for an indefinite period of time,

1 e.g., up to twelve (12) months *after* the Local Emergency Period ends. Nor do the
2 City’s Ordinances provide a vehicle by which landlords or lessors, like Plaintiff’s
3 members, can continue to collect rent from those with an ability to pay (including
4 even a portion of their rent) or a forum within which lessors and landlords could
5 challenge tenant claims.

6 57. Without immediate relief, Plaintiff’s members are subject to
7 administrative penalties and massive fines based on the enforcement of the City’s
8 Ordinances. Unless and until injunctive relief is granted, Plaintiff’s members will
9 continue to suffer irreparable harm for which they are left without an adequate remedy
10 at law.

11 **FIRST CLAIM FOR RELIEF**

12 **Violation of the Contracts Clause of**
13 **the United States Constitution/42 U.S.C. § 1983**

14 **(U.S. Const. Art. 1, § 10)**

15 ***(By Plaintiff against All Defendants)***

16 58. Plaintiff incorporates herein by reference each and every allegation
17 contained in the preceding paragraphs of this Complaint as though fully set forth
18 herein.

19 59. The Contracts Clause, Art. 1, § 10, of the United States Constitution,
20 provides: “No State shall . . . pass any . . . Law impairing the Obligation of Contracts.”
21 The Contracts Clause applies to cities and prohibits cities from enacting ordinances
22 that substantially impair Plaintiff’s members’ existing, lawful contracts.

23 60. The Ninth Circuit has ruled that Contracts Clause violations are indeed
24 actionable under 42 U.S.C. § 1983. Specifically, the Ninth Circuit has stated, “The
25 right of a party not to have a State, or a political subdivision thereof, impair its
26 obligations of contract is a right secured by the first article of the United States
27 Constitution. A deprivation of that right may therefore give rise to a cause of action
28 under section 1983.” *Southern California Gas Co. v. City of Santa Ana*, 336 F.3d

1 885, 887 (9th Cir. 2003).

2 61. In determining whether a contractual impairment is substantial, courts
3 consider “the extent to which the law undermines the contractual bargain, interferes
4 with a party’s reasonable expectations, and prevents the party from safeguarding or
5 reinstating his rights.” *Sveen v. Melin*, 138 S.Ct. 1815, 1822 (2018). If a court
6 determines that a law works a substantial impairment, it then considers “whether the
7 state law is drawn in an ‘appropriate’ and ‘reasonable’ way to advance ‘a significant
8 and legitimate public purpose.’” *Sveen, supra*, 138 S.Ct. at 1822 (quoting *Energy*
9 *Reserves Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411-12 (1983); *see*
10 *also Interstate Marina Dev. Co. v. City of Los Angeles*, 155 Cal.App.3d 435, 445
11 (1984) (“A substantial impairment can only be justified by a significant and legitimate
12 public purpose behind the regulation, such as the remedying of a broad and general
13 social or economic problem.”))

14 62. Where, as here, a law substantially impairs a contract, the public entity
15 bears the burden of showing that the impairment is both reasonable and necessary.
16 “The government must use the least intrusive means to achieve its goals. It is not free
17 to impose a drastic impairment when an evident and more moderate course would
18 serve its purposes equally well.” *Interstate Marina Dev. Co, supra*, 155 Cal.App.3d
19 435, at 445-46 (citing *United States Trust Co. v. New Jersey*, 431 U.S. 1, 31 (1977)).

20 63. Under these standards, the Ordinances violate the Contracts Clause of
21 the United States Constitution. The Eviction Moratorium and Rent Freeze Ordinance
22 fundamentally upend the contractual bargains struck between Plaintiff’s members and
23 their tenants by effectively relieving the tenants of their obligation to pay rent and
24 comply with certain other provisions of their leases, and leaving owners, like
25 Plaintiff’s members, without any recourse for an undetermined period of time. Under
26 the Eviction Moratorium, Plaintiff’s members, as well as other property owners
27 and/or landlords, are required to allow tenants to remain on the properties rent free
28 for an unspecified duration of time, thus depriving Plaintiff’s members of the

1 opportunity to collect any portion of rent from their current tenants, or otherwise rent
2 their properties to tenants who can pay rent. Such an ordinance is the quintessential
3 “substantial” impairment, as it “undermines the contractual bargain, interferes with a
4 party’s reasonable expectations, and prevents the party from safeguarding or
5 reinstating his rights.” *Sveen, supra*, 138 S.Ct. at 1822.

6 64. A rent control measure – like the City’s Rent Freeze Ordinance – is
7 constitutionally infirm on its face if it operates to deprive owners of a “just and
8 reasonable” return on their property by foreclosing all avenues for a “fair return”
9 increase in rents, or inviting arbitrary, capricious, and/or unreasonably dilatory rent
10 board decisions on landlord applications for same. *Birkenfeld v. City of Berkeley*
11 17 Cal.3d 129, 169-173 (1976); *Pennell v. City of San Jose*, 485 U.S. 1, 11 (1988);
12 *Baker v. City of Santa Monica*, 181 Cal.App.3d 972, 985 (1986).

13 65. The Eviction Moratorium further unilaterally rewrites all residential
14 leases within the City to delete restrictions on pets and on who is authorized to occupy
15 the leased property—without any attempt to tie such revisions to the Pandemic. Even
16 if there were a legitimate purpose behind the City’s Ordinances, which there is not,
17 the complete obliteration of Plaintiff’s members’ contracts and tenants’ obligations to
18 pay rent under such contracts is not a reasonable way of achieving that purpose.
19 Accordingly, the contractual impairments effectuated by the enactment and
20 enforcement of the City’s Ordinances violate the Contracts Clause and are
21 unconstitutional.

22 66. In applying the City’s Ordinances to Plaintiff’s members, the City has
23 acted under color of statute, ordinance, regulation and policy of the municipality. The
24 City’s conduct has deprived Plaintiff’s members of the rights, privileges, and
25 immunities secured by the United States Constitution and/or laws of the United States
26 to which Plaintiff’s members are and were legitimately entitled.

27 67. Plaintiff’s members have no adequate remedy at law to prevent or redress
28 the irreparable injuries alleged herein.

1 68. Unless the City is enjoined and restrained from enforcing or threatening
2 to enforce the City’s Ordinances, Plaintiff’s members will be irreparably injured.
3 Plaintiff’s members will be deprived of rights guaranteed under the United States
4 Constitution, and will continue to suffer substantial loss of rents, profits, and good
5 will, the nature and extent of which will be extremely difficult or impossible to
6 ascertain. While Plaintiff’s members are free to sue the City for damages stemming
7 from the continuous and sustained loss of rent over the as yet undefined period of
8 time, by the time the rent payment obligations are restored in the future, many will
9 have lost their properties to foreclosure. As the City’s constitutional violations are
10 ongoing, Plaintiff’s members are also entitled to injunctive relief now.

11 69. Finally, the City’s conduct has required Plaintiff to incur attorneys’ fees
12 and costs of suit to bring this action, and Plaintiff is entitled to attorneys’ fees and
13 costs under, *inter alia*, 42 U.S.C. § 1983 *et seq.* and 42 U.S.C. § 1988(b).

14 **SECOND CLAIM FOR RELIEF**

15 **Violation of the Contracts Clause of**
16 **the California Constitution**

17 **(Cal. Const. Art. 1, § 9)**

18 ***(By Plaintiff against All Defendants)***

19 70. Plaintiff incorporates herein by reference each and every allegation
20 contained in the preceding paragraphs of this Complaint as though fully set forth
21 herein.

22 71. The California Contracts Clause, Article I, Section 9 of the California
23 Constitution, provides: “A bill of attainder, ex post facto law, or law impairing the
24 obligation of contracts may not be passed.” Like its federal counterpart, the California
25 Contracts Clause applies to cities. The clause prohibits a city from enacting
26 ordinances that substantially impair individuals’ obligations under existing, lawful
27 contracts except under extraordinary circumstances.

28 72. The City’s Ordinances substantially impair Plaintiff’s members’ rights

1 and the tenants' obligations under existing leases and/or rental agreements. By
2 allowing tenants to withhold rent payments, the City has unlawfully impaired the
3 tenants' contractual obligations, leaving no recourse for landlords or lessors, such as
4 Plaintiff's members.

5 73. The City effectively seeks to condemn Plaintiff's members' lease
6 agreements and contract rights and to shift the entire cost of the condemnation onto
7 Plaintiff's members. In doing so, the City seeks to substantially impair the obligations
8 of the existing lease and/or rental agreements without justification, and in direct
9 violation of the Contracts Clause.

10 74. In applying the City's Ordinances to Plaintiff's members, the City has
11 acted under color of statute, ordinance, regulation and policy of the municipality.

12 75. An actual controversy exists between Plaintiff's members and the City
13 in that Plaintiff's members contend, and the City disputes, that the City's Ordinances
14 are unconstitutional under the California Contracts Clause.

15 76. Plaintiff desires an immediate declaration of its rights arising out of all
16 the facts and circumstances alleged herein and the concomitant obligations of its
17 tenants to pay rent. Such declaration is necessary and appropriate at this time
18 inasmuch as Plaintiff's members are being irreparably injured and will continue to
19 suffer irreparable injury in the form of lost constitutional rights, and loss of use of
20 their properties until a declaration of their rights is made.

21 77. Additionally, unless the City is enjoined and restrained from enforcing
22 or threatening to enforce the City's Ordinances, Plaintiff's members will be
23 irreparably injured. Plaintiff's members will be deprived of rights guaranteed under
24 the California Constitution, and will continue to suffer substantial loss of rents and
25 profits, the nature and extent of which will be extremely difficult or impossible to
26 ascertain. Plaintiff's members have no adequate remedy at law to prevent or redress
27 the irreparable injury alleged herein.

28

THIRD CLAIM FOR RELIEF

**Violation of the Takings Clause of the Fifth Amendment
to the United States Constitution/42 U.S.C. § 1983
(By Plaintiff against All Defendants)**

78. Plaintiff incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

79. The Takings Clause, present in the Fifth Amendment to the United States Constitution, provides that private property shall not “be taken for public use, without just compensation.” U.S. Const., amend. V; *see also* Cal. Const., Art. I, § 9(a) (“[p]rivate property may be taken or damaged for a public use . . . only when just compensation . . . has first been paid to . . . the owner.”).

80. The purpose of the Takings Clause is to “bar [] Government from forcing some people alone to bear the public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Lingle v. Chevron Corp.*, 544 U.S. 528, 537 (2005) (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)). Government action may violate the Takings Clause where it is “the functional [] equivalent [of] the classic taking in which government directly appropriates private property or ousts the owner from his domain.” *Id.* At 539.

81. The United States Supreme Court has repeatedly acknowledged that takings liability under the Fifth Amendment to the United States Constitution may be redressed under 42 U.S.C. § 1983.

82. The Ordinances in this case fall squarely within the “physical occupation” line of cases the United States Supreme Court has held constitute “per se” categorical takings for which the government is required to pay “just compensation.” The Ordinances force property owners and lessors to accept the occupation of tenants without any payment of rent concurrent with the occupancies. While the Ordinances purport to allow owners to recover rent from such individuals

1 at some point in the future, they do nothing to protect property owners from losses
2 they will undoubtedly sustain when such tenants are unable to pay their rental
3 obligations in the future or to compensate property owners for the rent they could
4 have obtained from new paying tenants if the City did not indefinitely ban evictions.
5 The City has thus eliminated the property owners' fundamental constitutional right to
6 exclude nonpaying tenants from their respective properties. As Justice Thurgood
7 Marshall proclaimed in *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S.
8 419, 436 (1982), "property law has long protected an owner's expectation that he will
9 be relatively undisturbed at least in the possession of his property" and "[t]o require,
10 as well, that the owner permit another to exercise complete dominion literally adds
11 insult to injury." As the Supreme Court acknowledged, "our cases uniformly have
12 found a taking to the extent of the occupation, without regard to whether the action
13 achieves an important public benefit or has only minimal impact on the owner." *Id.*
14 at 435.

15 83. The Ordinances also constitute a taking under the "ad hoc" test embodied
16 in *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978). To
17 determine whether a particular governmental action rises to this level, courts weigh
18 (1) "the economic impact of the regulation;" (2) "the extent to which the regulation
19 has interfered with distinct investment-backed expectations;" and (3) "the 'character
20 of the governmental action' – for instance, the action amounts to a physical invasion
21 or instead merely affects property interest through 'some program adjusting the
22 benefits and burdens of economic life to promote the common good.'" *Lingle, supra*,
23 544 U.S. at 537 (quoting *Penn Central Transp. Co., supra*, 438 U.S. at 124). This
24 three-part inquiry is "essentially ad hoc," but "turns in large part, albeit not
25 exclusively, upon the magnitude of a regulation's economic impact and the degree to
26 which it interferes with legitimate property interests." *Lingle, supra*, 544 U.S. at 540.

27 84. The Ordinances and the enforcement thereof have caused both a
28 complete and total regulatory and physical taking of Plaintiff's members' properties

1 without just compensation in violation of the Takings Clause of the Fifth Amendment
2 to the U.S. Constitution.

3 85. First, the economic impact of the Ordinances is severe and ruinous to
4 property owners and/or landlords, such as Plaintiff’s members, who are contractually
5 entitled to receive rent from their tenants on a monthly basis and cannot long survive
6 if tenants are permitted to continue occupying the properties rent-free for a sustained
7 and indefinite period of time.

8 86. Second, the Ordinances undermine the “reasonable investment-backed
9 expectations” of property owners and/or landlords, like Plaintiff’s members, who
10 purchased these properties and got into business with the “objectively reasonable”
11 expectation that they would be able to charge rent for their units and have legal
12 recourse if the renters failed to pay rent. *See Bridge Aina Le’a, LLC v. Land Use*
13 *Comm’n*, 950 F.3d 610, 634-35 (9th Cir. 2020) (distinct investment-backed
14 expectations must be “objectively reasonable” and “unilateral expectation[s]’ or
15 ‘abstract need[s]’ cannot form the basis of a claim that the government has interfered
16 with property rights.”) In fact, Plaintiff’s members made their business investments
17 against the backdrop of a decades-old statutory scheme designed to resolve disputes
18 between owners and tenants who do not pay rent. *Cf. Guggenheim v. City of Goleta*,
19 638 F.3d 1111, 1120 (9th Cir. 2010) (en banc).

20 87. Further, while the Eviction Moratorium theoretically allows property
21 owners to eventually try to collect the rent deferred under the ordinance, it does not
22 allow any interest or late fees to be charged on such rent, thereby depriving property
23 owners of their constitutional right to the time value of their money. In reality,
24 practical implications are much more severe, both because: (1) the odds of actually
25 recovering many months of back rent from tenants a year after the fact are extremely
26 low; and (2) many property owners will lose their property as a result of their inability
27 to pay their mortgages and property taxes due to non-payment of rent.

28 88. Additionally, where the effect of the City’s Rent Freeze Ordinance

1 would necessarily be to lower rents more than could reasonably be considered to be
2 required for the Ordinance's stated purpose, such Ordinance is unconstitutionally
3 confiscatory. *Birkenfeld, supra*, 17 Cal.3d at 165 (citing *Federal Power Comm'n v.*
4 *Natural Gas Pipeline Co.*, 315 U.S. 575, 585-586 (1942). Here, the effect of the
5 City's Rent Freeze Ordinance is confiscatory as tenants may never be able to repay
6 back rent, nor are they obligated to repay interest or late fees that would have
7 otherwise accrued.

8 89. Finally, the "character of governmental action" constitutes a clear
9 physical invasion of private property. *Lingle, supra*, 544 U.S. at 537. After all, the
10 Ordinances would effectively require Plaintiff's members to allow their tenants to
11 continue to occupy the properties free of charge *and* requires Plaintiff's members to
12 allow their tenants to remain there for the foreseeable future.

13 90. At a minimum, the effect of the Ordinances constitutes a taking under
14 the *Penn-Central* three-factor test. *Penn Central Trans. Co. v. City of New York*,
15 438 U.S. 104, 124 (1978). As a result, the City's blatant violation of the Takings
16 Clause of the Fifth Amendment has caused proximate and legal harm to Plaintiff's
17 members.

18 91. Plaintiff and its members have no adequate remedy at law and will suffer
19 serious and irreparable harm to their constitutional rights unless the City is enjoined
20 from implementing and enforcing the Eviction Moratorium.

21 92. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to
22 declaratory relief and temporary, preliminary, and permanent injunctive relief
23 invalidating and restraining enforcement of the Eviction Moratorium.

24 93. Plaintiff found it necessary to engage the services of private counsel to
25 vindicate the rights of its members under the law. Plaintiff is therefore entitled to an
26 award of attorney's fees pursuant to 42 U.S.C. § 1988.

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FOURTH CLAIM FOR RELIEF

**Violation of the Takings Clause of
the California Constitution**

(Cal. Const. Art. 1, § 19)

(By Plaintiff against all Defendants)

94. Plaintiff incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

95. Article I, Section 19 of the California Constitution provides, in pertinent part:

Article I, Section 19:

Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings from deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.

96. California courts have routinely held that the California Constitution provides just compensation to property owners when their land is taken for public use because the law seeks to bar the government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. *Jefferson Street Ventures, LLC v. City of Indio*, 236 Cal.App.4th 1175 (2015).

97. Moreover, the principle behind the concept of just compensation for property taken for public use is to put the owner in as good a position pecuniarily as he or she would have occupied if his or her property had not been taken. *City of Carlsbad v. Rudvalis*, 109 Cal.App.4th 667 (2003).

1 98. Finally, the constitutional guarantee of just compensation for property
2 taken by the government is not only intended to protect the landowner (or business
3 owner), but it also protects the public by limiting its liability to losses that can fairly
4 be attributed to the taking. *Emeryville Redevelopment v. Harcros Pigments, Inc.*
5 101 Cal.App.4th 1083 (2002).

6 99. Prohibiting Plaintiff's members from rightfully collecting rent from their
7 tenants in the State of California, in exchange for the tenants' lawful possession of
8 Plaintiff's properties, despite other compliance measures being taken to satisfy the
9 public health interests at stake and to financially compensate those affected by
10 COVID-19, violates Plaintiff's fundamental Constitutional rights.

11 100. Plaintiff and its members have no adequate remedy at law and will suffer
12 serious and irreparable harm to their constitutional rights unless the City is enjoined
13 from implementing and enforcing the Eviction Moratorium.

14 101. Plaintiff has found it necessary to engage the services of private counsel
15 to vindicate its rights under the law. Plaintiff is therefore entitled to an award of
16 attorney's fees and costs pursuant to California Code of Civil Procedure §§ 1021.5
17 and 1036.

18
19 **FIFTH CLAIM FOR RELIEF**

20 **Violation of the Due Process Clause of**
21 **the Fourteenth Amendment/42 U.S.C. § 1983**

22 ***(By Plaintiff against All Defendants)***

23 102. Plaintiff incorporates herein by reference each and every allegation
24 contained in the preceding paragraphs of this Complaint as though fully set forth
25 herein.

26 103. The Due Process Clause of the Fourteenth Amendment to the United
27 States Constitutions stands as an additional constitutional hurdle to the City's
28 enactment of the Ordinances. The Due Process Clause "provides heightened

1 protection against government interference with certain fundamental rights and
2 liberty interests,” including the “specific freedoms protected by the Bill of Rights”
3 and “those fundamental rights and liberties which are, objectively, ‘deeply rooted in
4 this Nation’s history and tradition,’” such as property rights. *Washington v.*
5 *Glucksberg*, 521 U.S. 702, 720-721 (1997) (quoting *Moore V. E. Cleveland*, 431 U.S.
6 494, 502 (1977)). Thus while the “police power” of the government may be broad, it
7 “must be exercised within a limited ambit and is subordinate to constitutional
8 limitations.” *Panhandle E. Pipe Line Co. v. St. Highway Comm’n of Kansas*, 294 U.S.
9 613, 622 (1935).

10 104. The City’s police power therefore does not afford “unrestricted authority
11 to accomplish whatever the public may presently desire.” *Panhandle E. Pipe Line*
12 *Co. v. St. Highway Comm’n of Kansas*, 294 U.S. 613, 622 (1935). Instead, “[i]t is the
13 governmental power of self-protection and permits reasonable regulation of rights and
14 property in particulars essential to the preservation of the community from injury.”
15 *Id.*

16 105. Therefore, “a regulation that fails to serve any legitimate governmental
17 objective may be so arbitrary or irrational that it runs afoul of the Due Process
18 Clause.” *Lingle, supra*, 544 U.S. at 542; *Rea v. Matteucci*, 121 F.3d 483, 485 (9th
19 Cir. 1997) (under Due Process Clause a “federal interest remains in protecting the
20 individual citizen from state action that is wholly arbitrary or irrational”).
21 Furthermore, a law violates the Due Process Clause if it “fails to provide a person of
22 ordinary intelligence fair notice of what is prohibited, or is so standardless that it
23 authorizes or encourages seriously discriminatory enforcement.” *F.C.C. v. Fox*
24 *Television Stations, Inc.*, 567 U.S. 239, 253 (2012) (quoting *United States v. Williams*,
25 553 U.S. 285, 306 (2008)).

26 106. The Ordinances and enforcement thereof, violate Plaintiff’s members’
27 substantive due process rights secured by the Fourteenth Amendment to the U.S.
28 Constitution. Under the Due Process Clause of the Fourteenth Amendment, no State

1 shall “deprive any person of life, liberty, or property, without due process of law.”
2 The fundamental liberties protected by this Clause include most of the rights
3 enumerated in the Bill of Rights. *Duncan v. Louisiana*, 391 U.S. 145, 147-149 (1968).
4 In addition, these liberties extend to certain personal choices central to individual
5 dignity and autonomy, including intimate choices that define personal identity and
6 beliefs. *See, e.g., Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972); *Grisworld v.*
7 *Connecticut*, 381 U.S. 479, 484-486 (1965).

8 107. The Ordinances, which expressly deprive Plaintiff’s members’ of their
9 rights and liberties in the use of their properties, did not afford Plaintiff’s members
10 with a constitutionally adequate hearing to present their case to disallow the Eviction
11 Moratorium and Rent Freeze Ordinance, and specifically the unreasonable prohibition
12 on the collection of rent and termination of rightful eviction processes. As a result of
13 the Ordinances, Plaintiff’s members are unjustifiably prevented from being able to
14 rightfully use their properties and mitigate damages where tenants fail to pay rent. At
15 a minimum, Plaintiff avers that its members should be able to continue to collect rent
16 from those tenants that are able to pay even a reasonable portion of the total amount
17 of rent due and owing, and should be allowed a forum to contest a tenant’s claim
18 concerning qualifications for protections under the Ordinances. *Home Bldg. & Loan*
19 *Ass’n v. Blaisdell*, 290 U.S. 398, 445 (1934).

20 108. Moreover, where a rent control law, such as the City’s Rent Freeze
21 Ordinance, produces unreasonable delay or unnecessarily cumbersome procedural
22 requirements for obtaining approval of a rent increase, such law violates the landlord’s
23 procedure due process rights. *Birkenfeld, supra*, 17 Cal.App.3d at 169-173 “[R]ent
24 adjustment mechanisms must operate without a substantially greater incidence and
25 degree of delay than is practically necessary.”]; see also *Galland v. City of Clovis*, 24
26 Cal.4th 1003, 1039 (2001). The City’s Rent Freeze Ordinance is not set to expire
27 until a **full year** after the end of the local emergency, a prime example of unreasonable
28 and unconstitutional delay.

1 109. The City failed to comply with the procedural and substantive
2 requirements of the United States Constitution in connection with Plaintiff's
3 members' rights and liberties as they relate to their respective properties, which would
4 have given Plaintiff and its members a meaningful opportunity to respond to the
5 proposed ordinances and explain how and why they were so deeply flawed and
6 unconstitutional.

7 110. Because the City's decision in issuing the Eviction Moratorium and Rent
8 Freeze Ordinance was made in reliance on procedurally deficient and substantively
9 unlawful processes, Plaintiff's members were directly and proximately deprived of
10 the rightful use of their properties, and consequently, their ability to lawfully operate
11 their properties without unconstitutional government overreach.

12 111. Because the City's decisions were made without regard to the United
13 States and California Constitutions, or any "law" for that matter, Plaintiff's members
14 were directly and proximately deprived of their property rights absent substantive due
15 process of law, in violation of the Fourteenth Amendment to the United States
16 Constitution.

17 112. Plaintiff and its members have no adequate remedy at law and will suffer
18 continued serious and irreparable harm to their constitutional rights unless the City is
19 enjoined from implementing and enforcing the Eviction Moratorium and Rent Freeze
20 Ordinances.

21 113. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to
22 declaratory relief and temporary, preliminary, and permanent injunctive relief
23 invalidating and restraining enforcement of the Ordinances.

24 114. Plaintiff found it necessary to engage the services of private counsel to
25 vindicate its rights under the law. Plaintiff is therefore entitled to an award of
26 attorney's fees pursuant to 42 U.S.C. § 1988.

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1 **SIXTH CLAIM FOR RELIEF**

2 **Preemption by State Law**

3 **(By Plaintiff against All Defendants)**

4 115. Plaintiff incorporates herein by reference each and every allegation
5 contained in the preceding paragraphs of this Complaint as though fully set forth
6 herein.

7 116. A city ordinance “will not be given effect to the extent that it conflicts
8 with general laws either directly or by entering a field which general laws are intended
9 to occupy to the exclusion of municipal regulation.” *Birkenfeld v. City of Berkeley*,
10 17 Cal.3d 129, 140 (1976). A conflict “exists if the local legislation ‘duplicates,
11 contradicts, or enters an area fully occupied by general law either expressly or by
12 legislative implication.’” *Candid Enters., Inc. v. Grossmont Union High Sch. Dist.*,
13 39 Cal.3d 878, 885 (1985). That is precisely the case here.

14 117. When a California statutory scheme so comprehensively regulates a
15 subject, as here, there is no room for supplementation or alteration by cities – let alone
16 an abolition of rights and remedies as the Eviction Moratorium threatens. Cal. Const.,
17 Art. XI, § 7; *Sherwin-Williams Co. v. City of Los Angeles*, 4 Cal.4th 893, 897 (1993);
18 *Big Creek Lumber Co. v. City of Santa Cruz*, 38 Cal.4th 1139, 1166 (2006); *Water*
19 *Quality Assn. v. City of Santa Barbara* 44 Cal.App.4th 732, 741 (1996).

20 118. California’s unlawful detainer statutes (Code of Civil Procedure sections
21 1159 through 1179a) are designed to “provide landlords with a summary procedure for
22 exercising their rights of repossession against tenants” and fully occupy the field with
23 respect to that procedure. *Birkenfeld v. City of Berkeley*, 17 Cal.3d 129, 151 (1976).
24 Thus, any ordinance that raises “procedural barriers between the landlord and the
25 judicial proceeding” is preempted. *Id.* at 151.

26 119. While Executive Order No. N-28-20 purported to suspend provisions of
27 state law that would “preempt or otherwise restrict a local government’s exercise of
28 its police power to impose substantive limits on residential or commercial evictions,”

1 it was expressly limited to circumstances where a tenant is unable to pay rent due to
2 a documented substantial decrease in income or substantial increase in medical
3 expenses as a result of the Pandemic. The Eviction Moratorium goes far beyond what
4 was contemplated by the executive order in numerous respects, and imposes
5 procedural and substantive limitations on the unlawful detainer process that are not
6 permitted under the order. As such, the Eviction Moratorium is preempted by the
7 unlawful detainer statutes and Executive Order No. N-28-20.

8 120. In addition, in prohibiting property owners from serving eviction notices
9 and/or filing unlawful detainer actions in various circumstances—and providing for
10 penalties against owners who make such communications—the Eviction Moratorium
11 conflicts with the litigation privilege set forth in California Civil Code section 47.
12 *Action Apartment Assn., Inc. v. City of Santa Monica*, 41 Cal.4th 1232, 1249-52
13 (2007). The Eviction Moratorium is thus preempted by multiple provisions of state
14 law.

15 **SEVENTH CLAIM FOR RELIEF**

16 **Violation of the Tenth Amendment**

17 **to the United States Constitution**

18 ***(By Plaintiff against All Defendants)***

19 121. Plaintiff incorporates herein by reference each and every allegation
20 contained in the preceding paragraphs of this Complaint as though fully set forth
21 herein.

22 122. The California Supreme Court has found that “While the police power is
23 very broad in concept, it is *not within restrictions* in relation to the taking of damaging
24 of property. When it passes *beyond proper bounds in its invasion of property rights*,
25 it in effect comes within the purview of the law of eminent domain and its exercise
26 requires compensation.” *House v. Los Angeles County Flood Control Dist.*, 25 Cal.3d
27 384 (1944) (Emphasis added).

28 123. In this case, the City mandated that property owners allow tenants to

1 continue to occupy rental units without paying rent, and without providing any
2 mechanism for owners to be made whole. Such a mandate completely and
3 unconstitutionally deprived Plaintiff’s members of all economically beneficial use of
4 their properties without just compensation.

5 124. A government’s “police power” is restricted by Constitutional
6 considerations, including the Fifth Amendment’s “Takings Clause,” as well as the
7 Due Process and Equal Protection Clauses. The California Constitution requires that
8 a municipality’s exercise of its police power must bear a “reasonable relation to the
9 public welfare.” *Associated Home Builders etc., Inc. v. City of Livermore*, 18 Cal.3d
10 582, 604–605 (1976). The ordinance must have a real and substantial relation to the
11 public welfare,” and “[t]here must be a reasonable basis in fact, not in fancy, to
12 support the legislative determination.” *Id.* at 609.

13 125. The Ordinances go beyond a legitimate exercise of police power in
14 numerous respects. For example, the Eviction Moratorium bars evictions that are
15 necessary to maintain the public welfare, including evictions for lease breaches that
16 have nothing to do with the Pandemic—like unauthorized occupants and pets. It
17 likewise bans evictions for other unspecified “nuisance related to COVID.” Thus,
18 landlords are prohibited from taking necessary actions to stop nuisances if such
19 measures are “related to COVID.” These restrictions not only prevent owners from
20 protecting their own property, but from protecting their other tenants from such
21 nuisance, thus harming, rather than promoting, the public welfare.

22 126. Additionally, the City’s Rent Freeze Ordinance falls outside the bounds
23 of a legitimate exercise of police power, since it is not reasonably calculated to relieve
24 excessive rents while simultaneously providing landlords with just and reasonable
25 return on their property. *Birkenfeld, supra*, 17 Cal.3d at 165 (citing *Federal Power*
26 *Comm’n v. Natural Gas Pipeline Co.*, 315 U.S. 575, 585-586 (1942)). Here, Plaintiff’s
27 members are not provided any returns on their property for as long as the Ordinances
28 remain in effect. Where such provisions would necessarily lower rent more than

1 could be reasonably considered to be required, they are unconstitutionally
2 confiscatory. *Id.*

3 127. Likewise, as described above, numerous other provisions of the
4 Ordinances are not tailored to further a legitimate public purpose and will harm the
5 public welfare. As such, they are not proper exercises of the police power.

6 **REQUESTED RELIEF**

7 WHEREFORE, Plaintiff requests that this Court:

8 1. Issue a declaratory judgment that the City's Ordinances are null and
9 void, and of no effect, as:

- 10 a. unconstitutional under the Fifth Amendment;
- 11 b. unconstitutional under the Fourteenth Amendment;
- 12 c. arbitrary and capricious, an abuse of discretion, or otherwise not
13 in accordance with the United States and/or California
14 Constitutions as violative of the Contracts Clauses of Article I,
15 Section 10 and Article I, Section 9 of the United States and
16 California Constitutions;
- 17 d. in excess of statutory jurisdiction, authority, or limitations, or
18 short of statutory right in violation of the United States and/or
19 California Constitutions;
- 20 e. wholly preempted by State law;
- 21 f. a violation of 42 U.S.C. § 1983 as a deprivation of Plaintiff's
22 members' rights, privileges, and immunities secured by the United
23 States Constitution and/or laws of the United States.

24 2. Set aside and hold unlawful the City's Ordinances;

25 3. Permanently enjoin the City and all persons and entities in active concert
26 or participation with the City from implementing and enforcing the City's
27 Ordinances;

28 4. Issue a preliminary injunction preventing the City from enforcing or

1 implementing the Ordinances until this Court decides the merits of this lawsuit;

2 5. Permanently enjoin the City and all persons and entities in active concert
3 or participation with the City from enforcing the Ordinances unless the ordinance is
4 issued in accordance with all procedural and substantive due process requirements of
5 the United States Constitution;

6 6. Award Plaintiff damages arising out of its Section 1983 Claims, and
7 specifically under the Fourteenth Amendment and the Fifth Amendment of the United
8 States Constitution, and Article I, Section 19 of the California Constitution’s Takings
9 Clause(s);

10 7. Award Plaintiff at least nominal damages;

11 8. Award Plaintiff its costs and reasonable attorney’s fees incurred in this
12 action pursuant to 42 U.S.C. § 1988 and other applicable law; and

13 9. Grant all other such relief to Plaintiff as the Court may deem proper and
14 just.

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16 Dated: June 11, 2020

RUTAN & TUCKER, LLP
DOUGLAS J. DENNINGTON
JOHN A. RAMIREZ
PETER J. HOWELL
KELSEY E. QUIST

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial as to all claims and causes for which a jury trial is available.

Dated: June 11, 2020

RUTAN & TUCKER, LLP
DOUGLAS J. DENNINGTON
JOHN A. RAMIREZ
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