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7

8 UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION  
11

12 DANIEL LEVIN; MARIA LEVIN; PARK LANE )  
ASSOCIATES, L.P.; THE SAN FRANCISCO )  
13 APARTMENT ASSOCIATION; and THE )  
COALITION FOR BETTER HOUSING, )

14 Plaintiffs, )  
15 )

16 v. )

17 CITY AND COUNTY OF SAN FRANCISCO, )

18 Defendant. )  
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No. \_\_\_\_\_

**COMPLAINT FOR  
VIOLATION OF  
FEDERAL CIVIL RIGHTS  
UNDER 42 U.S.C. § 1983  
AND CALIFORNIA STATE LAW  
(Cal. Gov't Code § 7060-7060.7)**

**DECLARATORY AND  
INJUNCTIVE RELIEF**

1 **INTRODUCTION**

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

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

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

23 4. The Ordinance is retroactive, applying to owners, like the Levins and Park Lane,  
24 who lawfully withdrew units under the Ellis Act and the City’s own procedures before enactment  
25 of the Ordinance, but which have not yet been physically vacated by the tenant. Due to its  
26 retroactive aspect, the Ordinance requires the Levins—who withdrew a unit in order to use their  
27 property for their own purposes—to immediately pay approximately **\$117,958.89** to a single tenant  
28 who has already received all the required notices and benefits under the pre-existing rent laws.

1 Park Lane must now pay approximately **\$1, 448, 023.98** to 15 tenants who also received all  
2 lawfully required process, notices and benefits under pre-existing rental laws, to regain possession  
3 of approximately 15 units.

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

#### 14 THE PARTIES

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

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

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

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

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

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

### 12 JURISDICTION AND VENUE

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

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

### 20 FACTS

#### 21 The Ellis Act Procedure

22 13. The California legislature enacted the Ellis Act in 1984. It provides, in part, that  
23 no public entity may “compel the owner of any residential real property to offer, or to continue  
24 to offer, accommodations in the property for rent or lease, except for [certain] guestrooms or  
25 efficiency units within a residential hotel . . . .” Cal. Gov’t Code § 7060(a).

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

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

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

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

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

14 18. However, if a tenant is at least 62 years of age or “disabled” and has lived in the  
15 subject rental unit for a year or more, the tenant may postpone the withdrawal of the unit by one  
16 year by giving the owner notice of the tenant’s claim to an extension.

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

24 20. The restrictions include a requirement that if the owner tries to rent the unit within  
25 two years of the date of withdrawal “the owner shall be liable to any tenant or lessee who was  
26 displaced from the property for actual and exemplary damages.” Additionally, the City may  
27 institute a civil proceeding against the owner who has again offered the unit for rent or lease, for  
28 exemplary damages for displacement of tenants or lessees.”

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

5 **The 2005 Law**

6           22.     In February, 2005, the City enacted San Francisco Administrative Code, ch. 37,  
7 § 37.9A, subd. (e)(3) (the 2005 law). This law amended a prior City ordinance that required  
8 landlords to make minor “relocation payments” to low income, elderly and disabled tenants  
9 displaced by a property owner’s withdrawal of rental units.

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

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

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

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

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

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

1 **The 2014 Ordinance**

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

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

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

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

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

18 28. The Ordinance requires the City Controller to establish a San Francisco Rental  
19 Payment Differential Schedule (“Schedule” to govern the calculation of the new tenant payments  
20 required by the Ordinance. The current Schedule is attached as **Exhibit B** and is hereby  
21 incorporated in this complaint. Plaintiffs do not contest the accuracy of the current Schedule.

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

25 30. The Ordinance applies retroactively to “[a]ny tenant who has received a notice  
26 of termination of tenancy, but who has not yet vacated the unit by [June 1, 2014].” *Id.*  
27 § 37.9A(e)(3)(F). Such a tenant is entitled to the new payment, reduced by any payment the tenant  
28 received under the pre-existing 2005 law.

31. The Ordinance allows a property owner subject to its new tenant payment  
obligations to apply to the Board for a reduction of his obligation based on “undue financial

1 | hardship.” (Financial Hardship Reduction.) The sole criteria for a Financial Hardship Reduction  
2 | is whether a rental property owner has or lacks sufficient economic assets to make the tenant  
3 | payments.

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

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

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

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

22 |         36.     The Ordinance imposes no income limitations on a tenant’s eligibility for a  
23 | payment. High income, “penthouse” renters are just as eligible to receive a payment under the  
24 | Ordinance as low-income persons.

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1 **The Levins' Property**

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

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

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

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

14 41. The tenant in the bottom unit is a single, non-elderly, working and economically  
15 self-sufficient tenant who moved into the unit in 1988. The tenant's current monthly rent is  
16 \$2,479.67.

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

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

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

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

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

8 46. The Ordinance retroactively applies to the Levins and now obligates them to pay  
9 the tenant **\$117,958.89**, calculated as follows:

10  $\$2,479.67$  (rent) x 1.9821 (differential index) =  $\$4,914.953$

11  $\$4,914.953$  x 24 months =  $\$117,958.89$ .

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

14 48. As of the date of filing of this complaint, the Levins’ tenant has not vacated the  
15 unit.

16 49. The City has recorded a Notice of Constraints on the Levins’ property, based on  
17 their Notice of Withdrawal, which deed restricts the Levins’ ability to continue renting its units,  
18 and punishes them if they try to do so. The Notice of Constraints is attached as **Exhibit C**.

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

25 51. The Ordinance thus immediately obligates the Levins to pay the tenant  
26 **\$117,958.89**, \$4,342.43 of which has already been paid to the tenant under the 2005 law.

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

1 \$100,000 dollars simply so they can regain the exclusive possession of their private property for  
2 their own personal uses.

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

5 **The Park Lane Property**

6 54. Park Lane owns a thirty-three (33) unit residential apartment building located at  
7 1100 Sacramento Street, San Francisco, California. In the past, Park Lane has rented the units.  
8 However, at various times, it has struggled with vacancies.

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

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

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

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

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

23 60. The 2005 law in place when Park Lane served the Notice of Termination required  
24 Park Lane to give each terminated tenant a \$4,500 (as increased annually by the CPI inflation rate)  
25 payment, except for two units that had more than three tenants (in that case, the total payment was  
26 \$13,500.00, divided equally by the tenants in the unit). The specific amount owed to each Park  
27 Lane tenant under the 2005 law was \$5,210,91, half of which had to be paid at the time

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

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

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

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

15 64. The Ordinance retroactively applies to Park Lane and now requires it to pay the  
16 same tenants a total of **\$1,448,023.98**.

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

19 66. The Ordinance immediately obligates Park Lane to pay the tenants the total amount  
20 due (**\$1,448,023.98**) because Park Lane has already filed its Notice of Withdrawal, committing  
21 it to withdraw the units, but the tenants have not vacated the units, and the Ordinance retroactively  
22 applies to this situation.

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

26 68. Under the City Rent Code, and recorded Notice of Constraints, Park Lane cannot  
27 rescind the Notice of Withdrawal so as to keep renting its units as in the past (in hopes of avoiding  
28 the Ordinance's tenant payment obligations) without (1) incurring severe restrictions on its ability

1 to rent, and potential civil penalties and damages. S.F. Admin. Code § 37.9A(a)(a)(1); *id.*  
2 § 37.9A(c), (d) and (2) being forced to accept the unwanted physical occupation of its property  
3 and inability to use the property for its own purposes.

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

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

#### 11 **DECLARATORY RELIEF ALLEGATIONS**

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

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

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

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

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1 75. A declaratory judgment as to whether the Ordinance unconstitutionally takes  
2 property, deprives individuals, including Plaintiffs, of their property, and/or violates the Ellis Act  
3 will clarify the legal relations between Plaintiffs and Defendant, with respect to enforcement of  
4 the Ordinance.

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

7 **INJUNCTIVE RELIEF ALLEGATIONS**

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

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

14 79. Plaintiffs Levins and Park Lane are immediately required to make the tenant  
15 payments required by the Ordinance, cannot avoid those payments without judicial relief, and will  
16 suffer irreparable injury absent a preliminary injunction restraining Defendant from enforcing the  
17 Ordinance.

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

20 81. Plaintiffs' injury—the immediate, unconstitutional, and illegal taking of  
21 unreasonable sums of their money for the private use of tenants—outweighs any harm the  
22 injunction might cause Defendant.

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

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**LEGAL CLAIMS**

**FIRST CLAIM**

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

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

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

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

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

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

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

89. The Ordinance was intended to benefit private parties.

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

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

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

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

1 **SECOND CLAIM**

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

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

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

9 96. Money is constitutionally protected property.

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

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

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

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

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

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

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

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

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

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

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

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

18 **THIRD CLAIM**

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

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

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

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

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

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

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

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

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

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

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

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

16 **FOURTH CLAIM**

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

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

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

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

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

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

5 **FIFTH CLAIM**

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

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

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

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

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

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

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

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

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

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

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

7 **SIXTH CLAIM**

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

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

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

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

17 136. Under the Ordinance, six of Park Lane’s tenants are due more than \$100,000. One  
18 other tenant is due a payment of more than \$200,000. A spreadsheet showing the amount Park  
19 Lane must pay to each and every tenant under the Ordinance is attached as Exhibit C.

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

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

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

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

27 141. The tenant payments mandated by the Ordinance, requiring the Levins and Park  
28 Lane to give its tenants two years worth of open market rents, but allowing the tenants to use this

1 sum for any purpose, do not address and are not related to the impact of the Levins' and Park  
2 Lane's decision to withdraw units from the rental market.

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

6 143. The total \$1,448,023.98 payment the Ordinance requires Park Lane to make to its  
7 tenants in order to regain possession of its building for nonrental use is not roughly proportionate  
8 in nature and degree to the impact of Park Lane's decision to withdraw rental units from the rental  
9 market.

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

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

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

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

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

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

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

1 SEVENTH CLAIM

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

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

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

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

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

15 154 The Ordinance’s demand that Park Lane pay \$1,448,023.98 has a severe economic  
16 impact on Park Lane. The demand that the Levins pay \$117,958,89 has a severe economic impact  
17 on the Levins.

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

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

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

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

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**EIGHTH CLAIM**

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

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

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

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

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

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

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

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

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

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

**NINTH CLAIM**

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

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

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

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

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

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

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

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

15 175. The Fourth Amendment applies in the civil context.

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

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

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

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

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

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

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1 **TENTH CLAIM**

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

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

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

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

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

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

18 **RELIEF SOUGHT**

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

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

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

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

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

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- 1           5.       A declaratory judgment that the Ordinance violates the Ellis Act on its face and is  
2 therefore invalid and unenforceable;
- 3           6.       A declaratory judgment that the Ordinance violates *Nollan, Dolan, and Koontz* and  
4 the Unconstitutional Conditions doctrine as applied to the Levins and Park Lane, and is therefore  
5 invalid and unenforceable against those Plaintiffs;
- 6           7.       A declaratory judgment that the Ordinance violates the Takings Clause as applied  
7 to the Levins and Park Lane, and is therefore invalid and unenforceable against those Plaintiffs;
- 8           8.       A declaratory judgment that the Ordinance violates the Fourth Amendment as  
9 applied to the Levins and Park Lane, and is therefore invalid and unenforceable against those  
10 Plaintiffs;
- 11          9.       A declaratory judgment that the Ordinance violates the Ellis Act as applied to the  
12 Levins and Park Lane, and is therefore invalid and unenforceable against those Plaintiffs;
- 13          10.      A preliminary prohibitory injunction preventing Defendants from enforcing or  
14 taking further action to enforce the Ordinance on its face and as applied to the Levins and Park  
15 Lane;
- 16          11.      A permanent prohibitory injunction preventing Defendant from enforcing or taking  
17 further action to enforce the Ordinance on its face and as applied to the Levins and Park Lane;
- 18          12.      An award to Plaintiffs of reasonable attorneys' fees and expert fees for bringing and  
19 maintaining this action, including under 42 U.S.C. § 1988;
- 20          13.      An award to Plaintiffs of costs of suit pursuant to Federal Rule of Civil Procedure  
21 54(d); and
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14. An award to Plaintiffs of any other and further relief that the Court deems just and proper under the circumstances of this case.

DATED: July \_\_\_\_, 2014.

Respectfully submitted,

J. DAVID BREEMER  
JENNIFER F. THOMPSON

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

Attorneys for Plaintiffs