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

PACIFIC LEGAL FOUNDATION
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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 Defendants.)
19 _____)

No. 3:14-CV-03352-CRB

**NOTICE OF MOTION
AND MOTION FOR A
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION AND MOTION**

Judge Honorable Charles R. Breyer
Courtroom 6, 17th Floor
Date: August 22, 2014
Time: 10:00 a.m.

20 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, TAKE NOTICE: That on
21 August 22, 2014, or as soon thereafter as may be heard by this Court, Plaintiffs Daniel and Maria
22 Levin (Levin) and Park Lane Associates, L.P. (Park Lane) (together, "Plaintiffs") will move, and
23 do hereby move, this Court to issue a temporary restraining order and a preliminary injunction
24 enjoining Defendants City and County of San Francisco (City) and its agents, employees, officers,
25 and representatives from enforcing San Francisco Administrative Code Section 37.9A(e)(3)(E) (the
26 Ordinance) and appurtenant regulations against them, pending resolution of the merits of the
27 claims raised in this action.

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1 This motion is brought pursuant to Federal Rule of Civil Procedure 65, as well as upon the
2 accompanying Memorandum of Points and Authorities, Declaration of Daniel Levin, and
3 Declaration of Chris Dressel, and all other papers and briefs heretofore filed in this action.

4 The grounds for this motion are that:

5 1. In the above-entitled action, Plaintiffs are rental property owners who challenge the
6 constitutionality of San Francisco Administrative Code Section 37.9A(e)(3)(E) (the Ordinance)
7 as applied to Plaintiffs. The Ordinance requires rental property owners like Plaintiffs to pay large
8 sums of money (Differential Payment) to their tenants before they may withdraw their rental units
9 from the rental market pursuant to California’s Ellis Act (Gov’t Code §§ 7060-7060.7) and use
10 them for non-rental purposes. Plaintiffs allege that the Ordinance unconstitutionally takes and
11 seizes their private property, and deprives them of due process, in violation of the Fifth, Fourth,
12 and Fourteenth Amendments to the United States Constitution, and further, violates their Ellis Act
13 rights.

14 2. The Ordinance went into effect on June 1, 2014, but its tenant payment obligations
15 are retroactive in certain cases. In particular, they bind any rental property owner who completed
16 the process, and gave the proper notices, to withdraw a unit from the rental market before the
17 Ordinance was enacted, but the subject tenant had not vacated the unit as of June 1, 2014.

18 3. The Levins and Park Lane filed all paperwork, and gave all notices, including a
19 Notice of Termination of Tenancy (Notice of Termination) and Notice of Withdrawal, to take
20 rental units off the market under Ellis Act procedures in December and October 2013, before the
21 Ordinance passed. Under the City’s Ellis Act rules, the Levins’ tenant has one year from the
22 Notice of Termination, specifically, until December 16, 2014, to vacate the Levins’ property. The
23 tenant had not done so as of June 1, 2014. Park Lane’s tenants also have a year from the Notice
24 of Termination to vacate, specifically, until October 24, 2014, to vacate their units. They had not
25 done so as of June 1, 2014. Accordingly, the Ordinance applied to the Levins and Park Lane based
26 on their filing of their notices under the prior legal scheme.

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1 4. The Ordinance now requires the Levins to pay over \$117,000 to their tenant to
2 complete withdrawal of one unit. Park Lane must pay more the \$1,000,000 to complete
3 withdrawal of ten (10) remaining occupied units.

4 5. These payments are due when the tenants vacate Plaintiff's properties, which could
5 be at any time, but must occur no later than December 16, 2014, for the Levins and October 24,
6 2014, for Park Lane. Indeed, tenants of one of Park Lane's units recently gave notice that they will
7 vacate on **August 25, 2014**, and demanded the payment mandated by the Ordinance at that time,
8 specifically \$143,811.84.¹

9 6. Park Lane has spent substantial sums of money preparing to convert its entire
10 property from residential rental use to a tenancy-in-common property, in reliance on the filing of
11 its withdrawal notices in October, 2013, under the Ellis Act procedures in place at that time. Those
12 procedures did not include the large payment obligations now imposed on Park Lane by the
13 Ordinance

14 7. If the City is not enjoined from enforcing the Ordinance against Park Lane, it will
15 have to pay \$ \$143,811.84 to a pair tenants by August 25, 2014, and more than a million more
16 dollars to other tenants sometime before October 24, 2014, in violation of its constitutional rights,
17 or have the withdrawal of its property from the rental market fall through, resulting in (a) the
18 continued occupancy of Park Lane's property, in violation of its constitutional right to exclude
19 others from private property, (b) a continued obligation to continue serving as landlords, against
20 Park Lane's will and (c) the loss of substantial sums of time, money and effort already invested
21 in converting the property to non-rental use. These are significant, irreparable injuries, and Park
22 Lane has no adequate alternative recourse at law.

23 8. If the City is not enjoined from enforcing the Ordinance against the Levins, they
24 will have to pay more than \$111,871.50 to their tenant as soon as the tenant vacates sometime
25 before December 16, 2014, in violation of their constitutional rights, or have the withdrawal of the
26

27 ¹ Plaintiffs bring this motion now, in a rather expedited fashion, because counsel recently learned
28 that the tenants unit 704 of Park Lane's property are going to vacate on August 25, 2014, and
trigger Park Lane's obligation to make the challenged payment under the Ordinance at that time.

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1 | unit fall through, resulting in (a) the continued, compelled occupancy of their property, in violation
2 | of their constitutional right to exclude others from private property, and an obligation to continue
3 | serving as landlords, and (b) the inability to use the unit for their own purposes, including for visits
4 | by family and friend. These are irreparable injuries, and the Levins have no adequate alternative
5 | recourse at law.

6 | 9. Plaintiffs have a substantial likelihood of success on the merits of the federal
7 | constitutional claims raised under 42 U.S.C. § 1983 because the Ordinance takes private property
8 | for a private purposes, causes an unconstitutional taking without compensation, illegitimately and
9 | unconstitutionally deprives Plaintiffs of property in violation of due process principles, causes an
10 | unreasonable seizure. Plaintiffs are also likely to succeed on their claim that the Ordinance
11 | violates the Ellis Act by impermissibly interfering with their state law right to withdraw their units
12 | from the rental market.

13 | 10. Granting the requested temporary restraining order and preliminary injunction
14 | would be in the public interest, as it would allow resolution of the Levins’ and Park Lane’s
15 | important as-applied constitutional claims, while preserving the City’s general power to enforce
16 | the Ordinance. Given the retroactive nature of the Ordinance, and the large and immediate
17 | payments it requires the Levins and Park Lane to make to recover possession of their properties,
18 | the equities favor the requested relief. The Levins and Park Lane simply want to preserve the
19 | status quo of their particular situation, pending resolution of their as-applied claims against the
20 | City.

21 | DATED: August 11, 2014.

22 | Respectfully submitted,
23 | J. DAVID BREEMER
24 | JENNIFER F. THOMPSON

25 | By /s/ J. David Breemer
26 | J. DAVID BREEMER

27 | Attorneys for Plaintiffs
28 |

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18 CITY AND COUNTY OF SAN FRANCISCO,)

19 Defendants.)
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27)
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No. 3:14-CV-03352-CRB

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF PLAINTIFFS'
MOTION FOR A TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Judge: Hon. Charles R. Breyer
Courtroom 6, 17th Floor
Date: August 22, 2014
Time: 10:00 a.m.

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INTRODUCTION AND SUMMARY OF ARGUMENT

On July 24, 2014, Plaintiffs Daniel and Maria Levin (Levin) and Park Lane Associates, L.P. (Park Lane) (together, Plaintiffs) filed a complaint against Defendant City and County of San Francisco (City). The complaint alleges that the City is violating Plaintiffs’ rights under 42 U.S.C. § 1983 and the United States Constitution through application of a new ordinance (Ordinance) that requires Plaintiffs to make large “Differential Payments” to tenants before Plaintiffs may withdraw their properties from the rental market under California Government Code Sections 7060-7060.7 (Ellis Act).

As applied to Plaintiffs, the Ordinance requires the Levins to pay more than \$117,000 to a single tenant before the Levins can take their small, two-unit home off the rental market, as allowed by the Ellis Act. It requires Park Lane to pay more than \$1,000,000 before it can exercise its Ellis Act right to take thirteen (13) units off the rental market. The Ordinance allows the tenants to use this money for any purpose.

The Ordinance imposes this immense financial liability on a retroactive basis. Both Plaintiffs filed all paperwork to withdraw their properties from the rental market in 2013. But on June 1, 2014, the City enacted the Ordinance and radically increased Plaintiffs’ obligation to pay remaining tenants to effectuate the withdrawal of their properties. The Differential Payments are due any time between now and October 24, 2014, for Park Lane, and between now and December 16, 2014, for the Levins, depending on when their tenants vacate the properties. If the tenants vacate tomorrow, the Ordinance requires Plaintiffs to give them the money then. Indeed, the tenants of one of Park Lane’s units have given notice of intent to vacate the unit on August 25, 2014, and have demanded that Park Lane pay them \$143,000 under the Ordinance on the same day.

The Levins and Park Lane are likely to prevail on their claims that, as applied to them, the Ordinance takes and seizes their property and violates their state law rights. But Plaintiffs’ tenants are almost certain to vacate—and to thereby trigger Plaintiffs’ payment obligation—before the Court can adjudicate these claims. As noted, one of Park Lane’s tenants will leave August 25, 2014. A transfer of a Differential Payment to vacating tenants would violate Plaintiffs’ constitutional rights. But if Plaintiffs refuse to pay, due to the burden imposed or its

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1 | unconstitutionality, they will be unable to complete the withdrawal of their properties from the
 2 | market, incur new rent restrictions on their property based on the filing of the Notice of
 3 | Withdrawal (even if it lapses or is not effective), lose investments made in reliance on the law in
 4 | place when they filed that Notice, be forced to serve the City as landlords, and suffer the
 5 | unconstitutional physical occupation of their property. The harm is clear, immediate, and
 6 | permanent, the equities favor Plaintiffs given the retroactive and extreme nature of the Ordinance,
 7 | and the public interest will be served by an injunction preserving the status quo for the Levins and
 8 | Park Lane. A restraining order and/or injunction is therefore proper.

9 | **LEGAL AND FACTUAL BACKGROUND**

10 | **A. Legal Framework**

11 | **1. The Ellis Act Procedure**

12 | In 1984, the California legislature enacted the Ellis Act. It provides, in part, that no public
 13 | entity may “compel the owner of any residential real property to offer, or to continue to offer,
 14 | accommodations in the property for rent or lease, except for [certain] guestrooms or efficiency
 15 | units within a residential hotel” Cal. Gov’t Code § 7060(a). The Ellis Act further provides
 16 | that it does not alter “any power in any public entity to mitigate any adverse impact on persons
 17 | displaced by reason of the withdrawal from rent or lease of any accommodations.” *Id.* § 7060.1(c).

18 | Section 37.9A(a)(13) of the City’s Administrative Code (the Rent Code) establishes a
 19 | procedure for property owners seeking to exercise their rights under the Ellis Act. Before a
 20 | property owner may evict a tenant and regain a rental unit for non-rental uses, the owner must
 21 | provide tenants with a Notice of Termination of Tenancy (Notice of Termination). The owner
 22 | must also file a Notice of Intent to Withdraw Residential Units from the Rental Market (Notice of
 23 | Withdrawal) with the San Francisco Rent Stabilization Board (Rent Board). Rental units subject
 24 | to a Notice of Withdrawal are considered withdrawn from the rental market 120 days after the
 25 | filing of the Notice. Similarly, a tenant subject to an Ellis Act Notice of Termination has 120 days
 26 | to vacate the unit.

27 | ///

28 | ///

1 If a tenant is at least 62 years of age or “disabled” “within the meaning of Section 12955.3
 2 of the California Government Code,”¹ S.F. Admin. Code § 37.9A(e)(1)(C), and has lived in the
 3 subject rental unit for a year or more, the tenant may postpone the withdrawal of the unit by one
 4 year by giving the owner notice of the extension. A property owner who has filed a Notice of
 5 Withdrawal must file and record a Memorandum of Notice Regarding Withdrawal of Rental Unit
 6 From Rent or Lease with the County Recorder to memorialize the withdrawal of rental units before
 7 the effective date of withdrawal. The Rent Code then requires the City to file and record a Notice
 8 of Constraints on Real Property for the subject property. This Notice restricts the subject property,
 9 imposing substantial limits and penalties on the property owner if the owner tries to re-rent the
 10 property after withdrawal. Such restrictions apply to the owner who filed the Notice of
 11 Withdrawal, and any successor in interest.² Indeed, a property subject to a Notice of Withdrawal
 12 becomes burdened by restrictions for five years even if the Notice is later rescinded or ineffective.
 13 *See id.* § 37.9A(a)(1)(A)(ii).

14 **2. History of the Relocation Payment Ordinance**

15 In 2005, the City imposed a tenant payment requirement on the Ellis Act process through
 16 enactment of San Francisco Administrative Code, ch. 37, § 37.9A, subd. (e)(3) (the 2005 law).
 17 This law obligated rental property owners filing a Notice of Withdrawal on or after February 20,
 18 2005, to give all displaced tenants a “relocation” payment, regardless of a tenant’s income status.³

19
 20 ¹ Under Section 12955.3 of the California Government Code, “‘disability’ includes, but is not
 21 limited to, any physical or mental disability as defined in [Cal. Gov’t Code] Section 12926.”
 22 Under Section 12926, “Physical disability” includes any physical “condition” or “disorder” that
 makes a “major life activity” “difficult,” with “Major life activities” “broadly construed” to include
 “physical, mental, and social activities and working.”

23 ² If the owner tries to re-rent the unit within two years of the date of withdrawal “[t]he owner shall
 24 be liable to any tenant or lessee who was displaced from the property for actual and exemplary
 25 damages.” *Id.* § 37.9A(d)(1). Additionally, the City may institute a civil proceeding for exemplary
 26 damages for displacement of tenants or lessees. If an owner tries to re-rent a withdrawn unit within
 five years of withdrawal, he must offer the unit at the rate in effect at the time of withdrawal.
 Further, if the owner tries to re-rent within ten years of withdrawal, he must take steps to offer the
 unit to the tenant at the rate in effect at the time of withdrawal and can be subject to punitive
 damages for failing to do so. *See id.* § 37.9A(c), (d).

27 ³ The 2005 law amended a prior relocation ordinance which limited “relocation” payments to low-
 28 (continued...)

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1 The 2005 law provided in part that: (A) “each tenant shall be entitled to receive \$4,500.00,
 2 one-half of which shall be paid at the time of the service of the notice of termination of tenancy,
 3 and one-half of which shall be paid when the tenant vacates the unit;” (B) If “there are more than
 4 three tenants in a unit, the total relocation payment shall be \$13,500.00, which shall be divided
 5 equally by the number of tenants in the unit;” and (C) “Notwithstanding Subsections . . . (A) and
 6 (B), any tenant who, at the time the notice of intent to withdraw rental units is filed . . . is 62 years
 7 of age or older, or who is disabled within the meaning of Section 12955.3 of the California
 8 Government Code, shall be entitled to receive an additional payment of \$3,000.00, \$1,500.00 of
 9 which shall be paid within fifteen (15) calendar days of the landlord’s receipt of written notice
 10 from the tenant of entitlement . . . and \$1,500.00 of which shall be paid when the tenant vacates
 11 the unit.” Finally, the 2005 law provided that the “relocation” payments “shall increase annually
 12 at the rate of increase in the ‘rent of primary residence’ expenditure category of the Consumer
 13 Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose Region”
 14 S.F. Admin. Code § 37.9A(e)(3)(A)-(D).

15 3. The 2014 Ordinance and “Differential” Payment Scheme

16 On June 1, 2014, the City again amended its rental laws, increasing the obligation of Ellis
 17 Act applicants to pay displaced tenants. The new Ordinance provides that a property owner
 18 seeking to withdraw rental units under the Ellis Act must give his tenants the “greater” of the
 19 payments required by the 2005 law or an amount equal to the difference between the unit’s rental
 20 rate at the time the landlord files the notice of intent to withdraw rental units with the Board, and
 21 the market rental rate for a comparable unit in San Francisco as determined by the Controller’s
 22 Office, multiplied to cover a two-year period, and divided equally by the number of tenants in the
 23 unit. The owner must “pay one-half of the Rental Payment Differential at the time of the service
 24 of the notice of termination of tenancy, and the remaining one-half when the tenant vacates the
 25 unit.” *Id.* § 37.9A(e)(3)(E)(ii). If a tenant is elderly or “disabled,” he is entitled to an additional
 26

27 _____
 28 ³ (...continued)
 income, elderly, or disabled tenants. *See* S.F. Admin. Code § 37.9A(e)(1).

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1 sum of \$3,000 (as adjusted annually by the CPI inflation rate). *Id.* § 37.9A(e)(3)(C).

2 The exact amount of the required Differential Payment is determined by reference to a
 3 Rental Payment Differential Schedule (“Differential Payment Schedule”) created by the City
 4 Controller’s Office. Within five days of the enactment of the Ordinance, the City adopted a
 5 Schedule and that Schedule is still operative today. *See* Declaration of Daniel Levin (Levin Dec.),
 6 Exhibit 5.

7 Although the Ordinance was passed on June 1, 2014, it applies retroactively to “[a]ny
 8 tenant who has received a notice of termination of tenancy [prior to June 1, 2014], but who has not
 9 yet vacated the unit by [that date].” S.F. Admin. Code § 37.9A(e)(3)(F). Such a tenant is entitled
 10 to the new Differential Payment, reduced by any prior “relocation” payment the tenant received
 11 under the terms of the pre-existing 2005 law.

12 The Ordinance allows a property owner subject to the Ordinance to apply to the Rent
 13 Board for a reduction from the Differential Payment based on “undue financial hardship.” The
 14 primary criteria for “undue financial hardship” is whether the property owner lacks the financial
 15 means to make the Differential Payment, when taking into account all the owner’s economic
 16 “resources,” including “ownership of any other buildings, income, expenses, other assets, debt,
 17 health, and health care costs.” *Id.* § 37.9A(e)(3)(G)(ii).

18 The Ordinance also allows a rental property owner to request a recalculation of his
 19 Differential Payment obligation if the owner believes “that the San Francisco Rental Payment
 20 Differential Schedule . . . does not reasonably reflect the market rental rate for a comparable unit
 21 in San Francisco and would result in an overpayment by the landlord (‘Rent Differential
 22 Recalculation Request’).” *Id.* § 37.9A(e)(3)(H). Neither the Financial Hardship Provision nor
 23 provision for a Board hearing on recalculation of the Differential Payment apply to the non-
 24 differential payment (\$4,500, plus \$3,000 for those who are “disabled” or over 62—as adjusted
 25 annually by the CPI inflation rate) are required by the Ordinance.

26 The Ordinance places no constraints on a tenant’s use of the Differential Payment exacted
 27 from a withdrawing property owner, and has no mechanism for accounting for a tenant’s actual
 28 use of the money. The Ordinance contains no administrative mechanism for rental property

1 owners to seek reimbursement from either the City or tenants after the owners make the
2 Differential Payment.

3 **B. The Levin Property**

4 Daniel and Maria Levin live and work in San Francisco. They own a small business in the
5 North Beach District. In 2008, they purchased a two-unit (top/bottom) building located at 471-473
6 Lombard Street, San Francisco, in the North Beach area near their business. The lower unit, 473
7 Lombard Street, was occupied by a tenant under a discounted, rent controlled rate. The top unit
8 was vacant. The Levins bought the property with the intent to remodel it so they could move into
9 both units in retirement. Upon purchase, they informed the tenant of this intent. Before the Levins
10 could move in, they had to sell their prior residence and make other arrangements. In 2013, the
11 Levins finally moved into the top unit. It is a small, one-bedroom unit that lacks any room for
12 family and guests. *See* Levin Dec. at 1-2 ¶¶ 1-6.

13 In late 2013, the Levins decided to exercise their Ellis Act right to withdraw their property
14 from the rental market so they could use the lower and upper units for their own purposes,
15 including for having family and friends stay over. Accordingly, on December 16, 2013, they filed
16 a Notice of Withdrawal for the property at 471-473 Lombard Street. On the same day, the Levins
17 served a Notice of Termination on the tenant in 473 Lombard Street, as well as a copy of the
18 Notice of Withdrawal. On January 29 2014, the Levins recorded a Memorandum of Notice
19 Regarding Withdrawal of Rental Units from Rent or Lease with the County Recorder's Office.
20 Levin Dec. at 2 ¶¶ 6-10.

21 Under the 2005 law in effect when the Levins filed their Notice to Withdraw and Notice
22 of Termination, the Levins were required to give their tenant a \$5,210.91 "relocation payment"
23 to complete the withdrawal of the unit. Therefore, the Levins included a check in the amount of
24 \$2,605.46 with the Notice of Termination. The tenant subsequently claimed to be disabled "within
25 the meaning of Section 12955.3 of the California Government Code," entitling the tenant to an
26 additional payment in the amount of \$3,473,93 and extending the date of withdrawal of the unit
27 from the market until December 16, 2014. The Levins did not agree with the tenant's disability
28 claim, but decided not to contest it due to the time and expense involved. Therefore, within 15

1 days of the tenant's claim, they paid the tenant one-half of the disability bonus of \$3,473.93. To
 2 date, the Levins have paid the tenant a total of \$6,079.39. Levin Dec. at 3 ¶¶ 11-16.

3 On April 30, 2014, the City recorded a Notice of Constraints on the Levins' property. This
 4 Notice confirmed the pending withdrawal of the property from the rental market, and made clear
 5 that, once withdrawal occurs, legal impediments restrict re-rental of the property. Levin Dec. at
 6 4 ¶ 17.

7 As of June 1, 2014, the Levins' tenant had not vacated the unit. The Ordinance and its
 8 Differential Payment mandate therefore applied retroactively to the Levins based on their filing
 9 of the Notice of Withdrawal. According to the City's Differential Payment Schedule, which the
 10 Levins do not contest, the Ordinance now obligates the Levins to pay their tenant \$117,958.89
 11 (minus the \$6,079.39 already paid) before they can legally withdraw their property from the rental
 12 market. The total owed to the tenant under the Ordinance is \$111,871.50. Levin Dec. at 4 ¶¶ 18-
 13 22.

14 To date, the Levins' tenant has still not vacated the property. But under the Notice of
 15 Withdrawal, Notice of Termination and Rent Code, the tenant can and must do so anytime
 16 between now and December 16, 2014. The moment the tenant leaves, the Ordinance obligates the
 17 Levins to give the tenant the \$111,871.50 remaining on the Differential Payment. This is a heavy
 18 burden to the Levins and would damage and postpone their ability to retire and upset their
 19 expectations. But taking into account all their economic assets, which the Ordinance requires in
 20 considering the existence of "undue financial hardship," the Levins do not qualify for, and do not
 21 claim, an "undue financial hardship" reduction. Levin Dec. at 4-5 ¶¶ 23-25, 29.

22 **C. The Park Lane Property**

23 In 2011, Park Lane acquired a 33-unit building located at 1100 Sacramento Street,
 24 San Francisco, in the Nob Hill District (the Property). Due to its prime location, the building is
 25 occupied by high-income renters. However, the building itself is old. Many of its aging systems
 26 were in need of renovations and updating at the time of purchase. Declaration of Chris Dressel
 27 (Dressel Dec.) at 2, 6 ¶¶ 5, 35.

28 In 2012, as units became vacant through the expiration of short-term leases, Park Lane

1 began to keep some units vacant so as to renovate them; it also worked on the building's
 2 infrastructure. In 2013, Park Lane decided to convert the building into a fractional
 3 Tenancy-In-Common (TIC) ownership system under which the units could be sold rather than
 4 rented. TIC ownership is common in San Francisco. *Id.* at 2 ¶¶ 6-8.

5 To complete the change, Park Lane decided to withdraw the Property from the rental
 6 market under the Ellis Act procedure. However, before doing so, Park Lane invited most tenants
 7 to purchase a TIC interest in the Property, with the exclusive right to continue occupying their unit
 8 at a below market price. At the time, most of the tenants declined the offer or failed to respond.
 9 *Id.* at 2 ¶ 10.

10 Park Lane accordingly moved to withdraw the Property from the rental market. On
 11 October 22, 2013, Park Lane served a Notice of Termination on its tenants. On October 24, 2013,
 12 Park Lane filed its Notice of Withdrawal, serving all of its tenants with a copy. The 2005 law in
 13 effect at the time required Park Lane to give each terminated tenant a \$5,210.91 “relocation
 14 payment,” except for two units that had more than three tenants (in that case, the total payment
 15 was \$13,500.00, divided equally by the tenants in the unit). As required by the Rent Code, Park
 16 Lane paid its tenants half of the amount due—a total of \$88,585.55—upon serving the Notices of
 17 Termination. Dressel Dec. at 3 ¶¶ 11-16.

18 At the time of filing its Notice of Withdrawal, 15 of Park Lane’s units were vacant and 18
 19 were tenant-occupied. Tenants of three of the occupied units subsequently purchased rights to
 20 them, leaving fifteen (15) tenant-occupied. Under the Rent Code, withdrawal of all the units was
 21 to be effective 120 days from Park Lane’s Notice of Withdrawal. However, the tenants in 13 of
 22 the remaining occupied units extended the date of withdrawal for those particular units to a year
 23 from the Notice of Withdrawal by claiming to be over 62 or “disabled” within the meaning of
 24 Government Code Section 12955.3. *Id.* at 3-4 ¶¶ 13, 17-19. Under the 2005 law, Park Lane was
 25 required to give these tenants an additional \$3,473.93 payment. Park Lane made these payments,
 26 paying out a total additional amount of \$39,950.31, within 15 days of its tenants’ claims. It later
 27 paid an additional \$3,473.93 to another tenant. It thus paid a total of \$43,424.65 to 25 tenants
 28 claiming to be over 62 or disabled within the meaning of Section 12955.3 of the California

1 Government Code. All told, it has so far paid approximately \$132,010.20 to tenants to effectuate
2 its Notice of Withdrawal. *Id.* at 3-4 ¶¶ 16, 21

3 On November 13, 2013, Park Lane recorded a Memorandum of Notice regarding the
4 withdrawal of its units. On April 2, 2014, the City recorded two Notice of Constraints on Park
5 Lane's Property. The first Notice applied to the units that were vacant when Park Lane filed its
6 Notice of Withdrawal. It confirmed the withdrawal of those units became effective on
7 February 21, 2014, and that the units are now subject to legal restraints that limit their re-rental
8 in the next ten years. The second Notice of Constraints confirms Park Lane's Notice of
9 Withdrawal of its tenant-occupied units and that certain restrictions constrain the re-rental of those
10 units once they are withdrawn. Dressel Dec. at 4 ¶¶ 23-24.

11 As of June 1, 2014, the tenants of 13⁴ units had not yet vacated Park Lane's Property. As
12 a consequence, the new Differential Payment rules applied to Park Lane based on its prior Notice
13 of Withdrawal. Since June 1 or thereabouts, the tenants of three (3) more units have bought their
14 units or left after reaching agreement with Park Lane, leaving ten (10) units still tenant-occupied
15 today and subject to the Ordinance. Under the Differential Payment Schedule, the Ordinance
16 requires Park Lane to pay a total of **\$1,110,734.23** to the tenants of these remaining ten (10) units
17 to effectuate withdrawal of those units. Five of these tenants are owed more than \$100,000 and
18 one is owed over \$225,000. Park Lane's tenants are financially well-off, and able to pay the high
19 rents necessary to live in the desirable Nob Hill neighborhood where the property is located.
20 Under the Ordinance, they are still eligible to receive the large Differential Payment mandated by
21 the Ordinance. Dressel Dec. at 5-6 ¶¶ 25-32.

22 Under the terms of Park Lane's Notice of Withdrawal, and the City Rent Code, all of Park
23 Lane's remaining tenants can and must vacate the Property anytime between now and October 24,
24 2014. As a soon as a tenant vacates, the Ordinance obligates Park Lane to give the tenant the
25 Differential Payment. The tenants in unit 704 have recently given Park Lane notice that they will
26 _____

27 ⁴ At the time of the drafting and filing of the complaint, it was believed that fifteen (15) units
28 remained occupied on June 1, 2014, giving rise to a higher Differential Payment obligation.
However, this was an error. Thirteen (13) units were tenant-occupied on June 1, 2014.

1 vacate the unit by August 25, 2014, and have demanded a payment under the Ordinance in the
2 amount of \$143,811.84, on that day. *Id.* at 6 ¶¶ 36-38.

3 In reliance on the 2013 filing of its Notice of Withdrawal and Notices of Termination, and
4 the 2005 law under which they were filed, Park Lane has spent approximately \$5,000,000
5 preparing to withdraw all units in the Property from the rental market and to convert the Property
6 to TIC ownership. *Id.* at 7 ¶ 42.

7 STANDARD OF REVIEW

8 Pursuant to Federal Rule of Civil Procedure 65, the granting of a motion for preliminary
9 relief depends on (1) likelihood of success on the merits of the underlying complaint, (2) the risk
10 of suffering irreparable harm if preliminary relief is not granted, (3) whether the balance of
11 equities tips in the movant’s favor, and (4) whether granting preliminary relief would be in the
12 public interest. “In this circuit, preliminary injunctive relief is available to a party who
13 demonstrates either (1) a combination of probable success and the possibility of irreparable harm,
14 or (2) that serious questions are raised and the balance of hardship tips in its favor.” *Arcamuzi v.*
15 *Cont’l Air Lines, Inc.*, 819 F.2d 935, 937 (9th Cir. 1987) (citing *Oakland Tribune, Inc. v.*
16 *Chronicle Publ’g Co.*, 762 F.2d 1374, 1376 (9th Cir. 1985)). A motion for a temporary restraining
17 order is judged under the same standards. *See Credit Bureau Connection, Inc. v. Pardini*, 726 F.
18 Supp. 2d 1107, 1114 (E.D. Cal. 2010).

19 ARGUMENT

20 I

21 PLAINTIFFS ARE LIKELY TO PREVAIL ON THEIR CLAIMS

22 Park Lane and the Levins have asserted that, as applied to them, the Ordinance violates
23 their constitutional rights under the Fourth, Fifth, and Fourteenth Amendments, through 42 U.S.C.
24 § 1983,⁵ and their rights under the Ellis Act.

25 A. Plaintiffs Are Likely To Prevail on Their Private Purpose Takings Claim

26 Under the Fifth Amendment, the government may only take private property for a “public
27

28 ⁵ There is no question the City is subject to suit under 42 U.S.C. § 1983 and that, through the Ordinance, the City is acting against Plaintiffs “under color of state law.”

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1 use.” U.S. Const. amend V. It is accordingly forbidden from taking property for a private
 2 purpose. *Kelo v. City of New London*, 545 U.S. 469, 477 (2005) (“the sovereign may not take the
 3 property of A for the sole purpose of transferring it to another private party B”); *see also id.* (The
 4 government is “forbidden from taking petitioners’ [property] for the purpose of conferring a
 5 private benefit on a particular private party.”). A takings claim alleging a violation of the Public
 6 Use Clause is not subject to any state court ripeness barriers. *Armendariz v. Penman*, 75 F.3d
 7 1311, 1320-21 & n.5 (9th Cir. 1996) (en banc).

8 The Differential Payment mandate is clearly subject to the Takings Clause, including its
 9 prohibition against private takings, because it “operate[s] upon . . . an identified property
 10 interest” “by directing the owner[s] of a particular piece of property to make a monetary
 11 payment.” *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2599 (2013) (quoting
 12 *Eastern Enters. v. Apfel*, 524 U.S. 498, 540 (1998) (Kennedy, J., concurring). The mandate fails
 13 the Public Use test because it requires the Levins and Park Lane to transfer their property to
 14 particular private parties—their tenants—who can put it to any private purpose they wish. *Kelo*,
 15 545 U.S. at 477. The tenants have no duty to use the money for relocation or any housing purpose.
 16 Thus, as the California Court of Appeals held in considering the 2005 “relocation” payment law:
 17 “[t]he payments in question here would directly benefit tenants, not society at large.” *Pieri v. City*
 18 *& County of San Francisco*, 137 Cal. App. 4th 886, 893 n.5 (2006). Because the Ordinance
 19 advances the “sole purpose of transferring [property] to another private party,” for that party’s
 20 benefit, it violates the Public Use Clause. *Kelo*, 545 U.S. at 477.

21 **B. Plaintiffs Are Likely To Succeed on Their Federal Takings Claims**

22 If the Ordinance serves a valid public use, it causes a taking under traditional physical and
 23 regulatory takings analysis. At the outset, these claims are not subject to the second prudential⁶
 24 ripeness rule of *Williamson County Reg’l Planning Comm’n v. Hamilton Bank of Johnson City*,

26 ⁶ *Williamson County’s* ripeness rules are now prudential, *not* jurisdictional. *Stop the Beach*
 27 *Renourishment, Inc. v. Fla. Dep’t of Env’tl. Prot.*, 560 U.S. 702, 729 (2010); *Guggenheim v. City*
 28 *of Goleta*, 638 F.3d 1111, 1118 (9th Cir. 2010) (en banc). This means the Court has discretion to
 hear any claim to which *Williamson County* potentially applies. *Guggenheim*, 638 F.3d at 1118;
Town of Nags Head v. Toloczko, 728 F.3d 391, 399 (4th Cir. 2013).

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1 473 U.S. 172, 192 (1985), which requires some takings claimants who demand monetary “just
 2 compensation” for a past taking to seek damages from a state court. *Williamson County* does not
 3 apply where, as here, a takings litigant’s claims hinge on a legislative demand for a transfer of
 4 money. *Eastern Enters.*, 524 U.S. at 521 (ripeness not applicable where “‘the challenged statute,
 5 rather than burdening real or physical property, requires a direct transfer of funds’ [to] the
 6 Government”) (quoting *In re Chateaugay Corp.*, 53 F.3d 478, 493 (2d Cir. 1995) (declaratory
 7 judgment takings action ripe when money was taken)). This is because it “would entail an utterly
 8 pointless set of activities” to require Plaintiffs to pay money demanded by the City’s legislation
 9 and then go seek “one for one” dollar reimbursement before challenging the legislation in federal
 10 court.⁷ *Student Loan Mktg. Ass’n v. Riley*, 104 F.3d 397, 401 (D.C. Cir. 1997); *see also In re*
 11 *Chateaugay Corp.*, 53 F.3d at 493; *Asociacion De Subscripcion Conjunta Del Seguro De*
 12 *Responsabilidad Obligatorio v. Flores Galarza*, 484 F.3d 1, 20 (1st Cir. 2007) (adopting rationale
 13 that direct transfers of money are exempt from *Williamson*).

14 The Supreme Court has made clear that a demand for money tied to a particular piece of
 15 land is subject to a per se, physical takings analysis. *Koontz*, 133 S. Ct. at 2600 (citing *Brown v.*
 16 *Legal Found. of Wash.*, 538 U.S. 216, 235 (2003)). Since Plaintiffs must directly transfer the
 17 Differential Payment to others in connection with ownership of particular properties, the Payment
 18 is a per se taking of their property interest in the money. *Brown*, 538 U.S. at 235; *Webb’s*
 19 *Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980).

20 It is important to recognize that Plaintiffs would also suffer a physical taking from the
 21 Ordinance if they *refused* the Payment. When the City enacted the Ordinance, Plaintiffs had
 22 already properly invoked their constitutional and state right to exclude others from their property
 23 through the withdrawal process. If they do not submit to the Ordinance’s unconstitutional demand
 24 for their money, Plaintiffs will lose the constitutional right to exclude others. This too is a
 25 physical taking. *Nollan v. California Coastal Comm’n*, 483 U.S. 825, 831-32 (1987). *Yee v. City*
 26

27 ⁷ This exception to *Williamson* is even more appropriate now than when initially advanced because
 28 *Williamson* is no longer a jurisdictional predicate, but a discretionary prudential rule. *See supra*
 n.6.

1 of *Escondido*, 503 U.S. 519, 527-28, 532 (1992) (observing that a rent control scheme would cause
2 a taking if it compelled a property owner to submit to continued occupation of property).

3 If the Ordinance somehow survives physical takings scrutiny, the Ordinance still causes
4 a regulatory taking under *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978),
5 because it destroys Plaintiffs' distinct expectations, causing a severe economic impact, and has the
6 character of a taking. The retroactive nature of the Ordinance is sufficient proof that it frustrates
7 the Levins' and Park Lane's expectations regarding their financial liability when withdrawing their
8 property. *Eastern Enters.*, 524 U.S. at 532-35. The \$117,000 and \$1,000,000 economic impact
9 on Plaintiffs is substantial. The character of the Ordinance is tantamount to a physical taking
10 because it unfairly singles out the Levins and Park Lane to bear a heavy burden to solve a
11 perceived social problem (high rents) that is best borne by the public as a whole. *Eastern Enters.*,
12 524 U.S. at 537. Moreover, the burden frustrates Plaintiffs' right to exclude others.

13 **C. Plaintiffs Are Likely To Prevail on**
14 **Their Unconstitutional Conditions Claim**

15 As a condition on Plaintiffs' property, the Differential Payment mandate violates Plaintiffs'
16 constitutional rights under the Unconstitutional Conditions Doctrine. That doctrine "vindicates
17 the Constitution's enumerated rights [such as the right to be free from uncompensated takings of
18 property] by preventing the government from coercing people into giving them up." *Koontz*, 133
19 S. Ct. at 2594. The controlling unconstitutional conditions precedent in this area is *Nollan* and
20 *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

21 *Nollan* and *Dolan* allow "the government to condition approval of a permit on the
22 dedication of property to the public so long as there is a 'nexus' and 'rough proportionality'
23 between the property that the government demands and the social costs of the applicant's
24 proposal." *Koontz*, 133 S. Ct. at 2595. *Dolan* puts the burden on the government to make a
25 determination that a land use condition is proportional to the impact of a proposed use of property
26 before it issues the condition. *Dolan*, 512 U.S. at 391. Ultimately, *Nollan* and *Dolan* allow the
27 government to mitigate for the direct impacts of property, but bar conditions that "lack an essential
28 nexus and rough proportionality to those impacts." *Koontz*, 133 S. Ct. at 2595. This framework

1 represents a form of heightened judicial scrutiny. *Koontz*, 133 S. Ct. at 2604 (Kagan, J.,
2 dissenting).

3 The Ordinance requires that the Levins and Park Lane pay over \$100,000 and \$1,000,000
4 respectively to their tenants to legalize and complete the withdrawal of their property from the
5 rental market. There is no question that it would be a taking for the City to simply force Plaintiffs
6 to hand over their money in connection with their property, to address a particular governmental
7 interest. *Koontz*, 133 S. Ct. at 2599-2600. Therefore, if the Differential Payment can be construed
8 as a condition on a property right, the City may impose it only if it complies with *Nollan* and
9 *Dolan*. *Id.* at 2599.

10 The Differential Payment fails *Nollan* and *Dolan* because it is not related or proportionate,
11 in either nature or degree, to Plaintiffs' planned withdrawal of units. *Ehrlich v. City of Culver*
12 *City*, 12 Cal. 4th 854, 883-84 (1996). First, there is no basis for believing that Plaintiffs'
13 withdrawal of a few units has caused the pre-existing rental housing shortage and high rent prices
14 faced by tenants. Thus, there is no possible nexus between the Levins' and Park Lane's
15 withdrawal of units and a Differential Payment designed to give tenants enough money to rent on
16 the open market. Making Plaintiffs pay to alleviate the high rent problem just forces them to
17 shoulder a burden that should be borne by the public as a whole. Even if Plaintiffs' withdrawal
18 of units had some negative impact on the rental situation, the Differential Payment condition
19 would be unrelated to that impact because the money it exacts need not be used by tenants to
20 mitigate a rent or housing problem.

21 The Differential Payment condition also is not roughly proportionate "both in *nature* and
22 *extent* to the impact" of Plaintiffs' proposed property use. *Dolan*, 512 U.S. at 391 (emphasis
23 added). There is no reasonable relationship *in nature* between the Differential Payment and
24 Plaintiffs' withdrawal of rental units when the tenants can use the Payment for anything. There
25 is no reasonable relationship *in degree* because the Differential Payment effectively requires
26 Levins and Park Lane to fund *two years of subsidies for rental housing* for their tenants (not just
27 money to "relocate"), to the tune of over \$100,000 and \$1,000,000 respectively, as the price of
28 exercising a federal and state law right to exclude others. *Dolan*, 512 U.S. at 393-94; *Ehrlich*, 12

1 Cal. 4th at 883-84 (\$280,000 mitigation fee not roughly proportional to impact of development).
 2 Plaintiffs are therefore likely to succeed on their unconstitutional conditions claim under *Nollan*
 3 and *Dolan*.

4 *Williamson County*'s prudential "state compensation" ripeness doctrine does not affect this
 5 conclusion. Plaintiffs' claim does not demand "just compensation" damages for a past taking, like
 6 most regulatory takings claims, but instead properly seeks prospective equitable relief to halt the
 7 Differential Payment condition before it causes permanent injury.⁸ The claim stands in the same
 8 posture as facial takings claims, which are exempt from *Williamson County* precisely because they
 9 do not seek monetary compensation. *San Remo Hotel, L.P. v. City & County of San Francisco*,
 10 545 U.S. 323, 345-46 (2005) (facial takings claims were instantly ripe because they "requested
 11 relief distinct from the provision of "just compensation"); *Yee v. City of Escondido*, 503 U.S. at
 12 533-34 (same).

13 **D. Plaintiffs Are Likely To Prevail on Their**
 14 **Due Process and Fourth Amendment Claim**

15 The Levins and Park Lane have also claimed that, as applied to them, the Differential
 16 Payment violates due process principles and the Fourth Amendment. The Due Process Clause
 17 protects individuals from being deprived of protected property interests. It is clear that a discreet
 18 sum of money is protected property. *Eastern Enters.*, 524 U.S. at 547-48 (Kennedy, J.,
 19 concurring). It is also clear that the Ordinance deprives Plaintiffs of a particular sum of money
 20 through the Differential Payment. The only real question here is whether the deprivation is
 21 unconstitutional, in light of its retroactive nature.⁹

22 "Retroactivity is generally disfavored in the law . . . in accordance with 'fundamental
 23 notions of justice' that have been recognized throughout history." *Id.* at 532 (quoting *Kaiser*

24 _____
 25 ⁸ *Williamson* rests on the premise that a federal court cannot adjudicate a takings violation—a
 26 taking occurring without payment of just compensation—until it knows whether a state will refuse
 27 to pay compensation. Such logic has no application to an unconstitutional conditions claim that
 simply does not seek money damages, does not give rise to a damages claim, and which asks for
 prospective equitable relief to halt a takings injury before it is permanent.

28 ⁹ Plaintiffs' Due Process claim does not rest on retroactivity alone, but space limitations preclude
 Plaintiffs from articulating every basis for the claim at this juncture.

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1 *Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 855 (1990) (Scalia, J., concurring)). The
 2 Supreme Court’s “decisions treat due process challenges based on the retroactive character of the
 3 statutes in question as serious and meritorious, thus confirming the vitality of our legal tradition’s
 4 disfavor of retroactive economic legislation.” *Eastern Enters.*, 524 U.S. at 548 (Kennedy, J.,
 5 concurring). Thus, while rational basis scrutiny applies to most due process challenges, a robust
 6 form of that review controls claims based on retroactivity. *Id.* Courts give “careful consideration
 7 to due process challenges to legislation with retroactive effects.” *Id.* at 547 (Kennedy, J.,
 8 concurring).

9 Here, the Ordinance imposes substantial new liability on the Levins and Park Lane for
 10 legal actions they took in the past, before the Ordinance existed. When Plaintiffs made the
 11 decision to file their Notice of Withdrawal, they understood from the then-applicable law that they
 12 would only be liable to pay between \$5,000-\$9,000 to their tenants. Levin Dec. at 2 ¶ 8. Plaintiffs
 13 withdrew units in part based on that expectation. *Id.* On June 1, 2014, the Ordinance destroyed
 14 that expectation and suddenly increased Plaintiffs’ financial liability twenty-fold. *Landgraf v. USI*
 15 *Film Prod.*, 511 U.S. 244, 265 (1994) (“Elementary considerations of fairness dictate that
 16 individuals should have an opportunity to know what the law is and to conform their conduct
 17 accordingly; settled expectations should not be lightly disrupted.”). Moreover, Plaintiffs are being
 18 retroactively required to remedy a rental housing problem they did not create. For these reasons,
 19 the Differential Payment offends due process. *Eastern Enters.*, 524 U.S. at 536; *id.* at 549
 20 (Kennedy, J., concurring).

21 The Ordinance also offends the Fourth Amendment’s seizure clause. That clause applies
 22 in the civil context. *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 51-52 (1993).
 23 Further, the Amendment protects property from unreasonable seizure even when the seizure is
 24 unrelated to a search or a privacy concern. *Soldal v. Cook County*, 506 U.S. 56, 65-68 (1992).
 25 A Fourth Amendment “seizure” arises when “there is some meaningful interference with an
 26 individual’s possessory interests in [] property.” *United States v. Jacobsen*, 466 U.S. 109, 113
 27 (1984). The reasonableness determination reflects a “ ‘careful balancing of governmental and
 28 private interests.’ ” *Soldal*, 506 U.S. at 71 (quoting *New Jersey v. T.L.O.*, 469 U.S. 325, 341

1 (1985)).

2 In this case, the Ordinance interferes not only with the Levins' and Park Lane's possession
3 of their money, but also with their real property interests. It forces them to hand over substantial
4 and discreet sums of money, or accept the physical occupation of their property. The seizure of
5 over \$100,000 and \$1,000,000 from Plaintiffs is unreasonable because it destroys important
6 private interests in an illegitimate and unfair fashion. Plaintiffs' ability to go out of the rental
7 business and exclude strangers is a federal and state right, but the Differential Payment frustrates
8 this right. The money demanded from Plaintiffs is imposed on a retroactive basis and is
9 disproportionate to the impact of the withdrawal of their property from the rental market. The
10 governmental interest in the seizure is weak in light of the reality that the money seized need not
11 be used by tenants for housing, but can be used for any purpose. The Levins and Park Lane
12 therefore have a high chance of success on their Fourth Amendment claim.

13 **E. Plaintiffs Are Likely To Succeed on Their Ellis Act Claim**

14 "To the extent the relocation ordinance conflicts with state law, it is preempted by the state
15 law and is void." *Pieri*, 137 Cal. App. 4th at 889. "A conflict exists when the local legislation
16 contradicts state law. Local legislation contradicts state law when it is inimical to it." *Reidy v.*
17 *City & County of San Francisco*, 123 Cal. App. 4th 580, 587 (2004).

18 The Ordinance is inimical to Plaintiffs' Ellis Act right to go out of the rental business by
19 levying an unheard-of and exorbitant price on the withdrawal of rental units. The Ellis Act may
20 allow some mitigation, but it "does not permit the City to condition plaintiff's departure [from the
21 rental market] upon the payment of ransom." *Bullock v. City & County of San Francisco*, 221 Cal.
22 App. 3d 1072, 1099-1102 (1990). The high Differential Payment imposed on the Levins and Park
23 Lane grants a windfall to their tenants at the landlord's expense, without regard for the tenants'
24 economic need (or lack thereof) and without any strings attached to their use of the money. This
25 is not reasonable mitigation; it punishes Plaintiffs for trying to go out of the market under the Ellis
26 Act, and puts the Ellis Act out of their reasonable grasp. It thus violates that Act. *Pieri*, 137 Cal.
27 App. 4th at 893 ("a requirement of *reasonable* relocation assistance compensation for displaced
28 tenants does not violate the Ellis Act") (emphasis added); *see also Bullock*, 221 Cal. App. 3d at

1 1099-1102; *City of Santa Monica v. Yarmark*, 203 Cal. App. 3d 153, 164-65 (1988) (striking down
2 an ordinance that limited and conditioned withdrawal of the rental units from the market).

3 **II**

4 **PLAINTIFFS WILL SUFFER IRREPARABLE**
5 **INJURY, THE EQUITIES FAVOR THEM, AND**
6 **AN INJUNCTION SERVES THE PUBLIC INTEREST**

7 Since Plaintiffs are likely to prevail on their constitutional claims, it is to be presumed they
8 will suffer irreparable harm warranting an injunction or restraining order. *Elrod v. Burns*, 427
9 U.S. 347, 373 (1976); *Goldie's Bookstore v. Superior Ct.*, 739 F.2d 466, 472 (9th Cir. 1984).
10 Nevertheless, the likelihood of a constitutional harm does not reflect the full scope or the
11 immediacy of likely injuries. On August 25, 2014, a pair of tenants covered by the Ordinance are
12 going to vacate Park Lane's property. Other tenants will vacate before October 24, 2010. If the
13 Ordinance is not halted, Park Lane will have to cede more than a \$1,000,000 to vacating
14 tenants—in violation of its constitutional rights—or refuse to make the Differential Payments. If
15 it balks on the payments, the withdrawal of units will fall through, it will likely lose millions of
16 dollars spent in reliance on withdrawal of the Property, its Ellis Act right to take its property off
17 the rental market will disappear, and the conversion of the Property to TIC ownership will be
18 unsettled. Amazingly, Park Lane cannot return to the status quo ante (even if it wanted to) if the
19 withdrawal process fails. Under Section 37.9A(a)(1)(A)(ii) of the Rent Code, the Property will
20 be burdened by new restrictions for five years based solely on Park Lane's *filing* of the Notice of
21 Withdrawal—even if the withdrawal is never complete. Specifically, the Property will become
22 subject to unit-based rent control, rather than tenancy-based rent control, meaning that even if
23 units become vacant (which normally allows a landlord to increase the rent), Park Lane would
24 have to rent them at the same rent controlled rate for five years.

25 If the Levins do not receive injunctive relief, they face similar harm. Their tenant can
26 leave anytime between now and December 16, 2014, triggering the Levins' duty to pay over
27 \$100,000 under the Ordinance. Without relief, they will have to either pay that money the moment
28 the tenant leaves (perhaps tomorrow), which will severely harm their constitutional rights and
retirement, with no administrative means to get the money back, or submit to continued occupation

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1 of their property, denial of their Ellis Act right to stop being landlords, and new restrictions on
2 their property based on the filing of the Notice of Withdrawal in reliance on the pre-existing law.
3 This harm is sufficiently real and immediate to warrant preliminary relief. Levin Dec. at 5 ¶¶ 25-
4 31. Plaintiffs have at least shown “that serious questions are raised and the balance of hardship
5 tips in its favor.” *Arcamuzi*, 819 F.2d at 937.

6 As the foregoing should show, the equities of this case tilt in the Levins’ and Park Lane’s
7 favor due to the retroactive nature of the Ordinance, the extreme nature of the Differential
8 Payment, the immediate harm Plaintiffs face due to the Ordinance and the lack of real connection
9 between a Differential Payment that can be used by tenants for anything, and the City’s interest
10 in tenant housing. An injunction applying to Plaintiffs will serve the public interest by allowing
11 the Court to determine the Ordinance’s constitutionality in circumstances like those here, while
12 not interfering with enforcement of the Ordinance in general. An injunction will simply preserve
13 the status quo for the Levins and Park Lane. It will not harm tenants because Plaintiffs intend to
14 pay, and have partially paid, the approximately \$5,000-\$8,000 tenant relocation fee mandated by
15 the law in effect when they filed their Notice of Withdrawal.

16 **CONCLUSION**

17 The Court should grant Plaintiffs’ motion to temporarily enjoin application of the
18 Ordinance to them.

19 DATED: August 11, 2014.

20 Respectfully submitted,

21 J. DAVID BREEMER
22 JENNIFER F. THOMPSON

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

25 Attorneys for Plaintiffs
26
27
28

1 J. DAVID BREEMER, No. 215039
E-mail: jdb@pacificallegal.org
2 JENNIFER F. THOMPSON, No. 280885
E-mail: jft@pacificallegal.org
3 Pacific Legal Foundation
930 G Street
4 Sacramento, California 95814
Telephone: (916) 419-7111
5 Facsimile: (916) 419-7747

6 Attorneys for Plaintiffs
7
8

9 UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

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

15 Plaintiffs,)
16)

17 v.)

18 CITY AND COUNTY OF SAN FRANCISCO,)

19 Defendants.)
20

No. 3:14-CV-03352-CRB

**DECLARATION OF
DANIEL LEVIN IN SUPPORT
OF PLAINTIFFS' MOTION FOR
A TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

Judge: Hon. Charles R. Breyer
Courtroom 6, 17th Floor
Date: August 22, 2014
Time: 10:00 a.m.

21 I, Daniel Levin, do hereby declare:

22 1. I have personal knowledge of the following facts and, if called upon to do so, could
23 competently testify to the facts contained herein.

24 2. I am a United States citizen, a resident of San Francisco, California, and a plaintiff
25 in this case. I am a third generation San Franciscan. I am 56 years old. Both my grandparents were
26 in San Francisco predating the 1906 earthquake.

27 3. My wife, Maria Levin, and I own a small business in the North Beach District and
28 have worked seven (7) days a week for the last twenty (20) years.

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1 4. In 2008, my wife and I purchased a two-unit (top/bottom) building located at
2 471-473 Lombard Street, San Francisco, in the North Beach area near our business. The top unit
3 was vacant. The lower unit, 473 Lombard Street, was occupied by a rental tenant who was on a
4 month-to-month lease, which we took over. The tenant's rent was and is rent-controlled and
5 currently comes to \$2,479.67 per month.

6 5. I bought the property with the intent to remodel it so my wife and I could move into
7 it within a few years and retire there. But before we could do that, we had to sell our prior
8 residence and make other business arrangements.

9 6. In 2013, we moved into the top unit, 471 Lombard Street. It is a small, one
10 bedroom unit. There is no room for family and guests.

11 7. In late 2013, my wife and I decided to exercise our right under state law to withdraw
12 the lower unit from the rental market so we could use the unit for our own purposes, including for
13 having family and friends stay with us.

14 8. On December 16, 2013, we filed a fully executed Notice of Intent to Withdraw
15 (Notice of Withdrawal) Residential Rental Units with the Residential Rent Stabilization and
16 Arbitration Board (Rent Board), regarding our properties at 471-473 Lombard Street. A true and
17 correct copy of the Notice is attached as **Exhibit 1**. When making the decision to file the Notice
18 of Withdrawal, my wife and I understood from the then-existing laws that we would have to pay
19 our tenant approximately \$5000-\$8,000 as a "relocation payment" (depending on whether the
20 tenant claimed to be over 62 or disabled).

21 9. On December 16, 2013, my wife and I filed a fully executed Notice of Termination
22 of Tenancy (Notice of Termination) on the tenant in 473 Lombard Street, as well as a copy of the
23 Notice of Withdrawal. A true and correct copy of the Notice of Termination is attached as **Exhibit**
24 **2**.

25 10. Pursuant to Section 37.9A(f)(2) of the City Rent Code, we filed and recorded a
26 Memorandum of Notice Regarding Withdrawal of Units for Rent or Lease with the County
27 Recorder's Office on January 29, 2014. A true and correct copy of the recorded Memorandum is
28 attached as **Exhibit 3**.

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1 11. The City Rent Code (particularly, Section 37.9A(e)(3)(A)) in effect when we filed
2 the Notice of Withdrawal and Notice of Termination required us to give our tenant a \$5,210.91
3 “relocation payment.” Since half of that amount was due when we filed our Notice of Termination,
4 we included a check in the amount of \$2,605.46 when we served that Notice on the tenant on
5 December 16, 2013.

6 12. Under Section 37.9A(e)(3)(c) of the Rent Code in effect at the time my wife and
7 I filed the Notice of Withdrawal and Notice of Termination, a tenant displaced by an Ellis Act
8 withdrawal who is disabled “within the meaning of Section 12955.3 of the California Government
9 Code,” or over age 62 at the time of the filing of a Notice of Withdrawal, is entitled to an
10 additional payment in the amount of \$3,473,93.

11 13. Under Section 37.9A(f)(4) of the Rent Code, a tenant subject to a Notice of
12 Termination under the Ellis Act procedure has 120 days to vacate the subject unit. However, if the
13 tenant is disabled as defined in Government Code section 12955.3, or over 62, and has lived in the
14 unit for more than a year, the tenant may extend the time for withdrawal of the unit to a year after
15 the filing of the Notice of Withdrawal, provided the tenant gives notice to the landlord within 60
16 days after filing of the Notice of Withdrawal.

17 14. The tenant in our unit at 473 Lombard Street is not over 62, and works full time,
18 but timely claimed to be disabled within the meaning of Government Code 12955.3 and gave
19 notice of the extension of the rental unit withdrawal deadline to a year from the December 16, 2013
20 filing of our Notice of Withdrawal.

21 15. I did not agree with the tenant’s disability claim, but decided not to contest it due
22 to the time and expense involved. Therefore, within 15 days of the claim, we paid the tenant one-
23 half of the disability bonus of \$3,473,93, as required by Section 37.9A(e)(3)(c). The date of
24 withdrawal of the unit—and final date for the tenant to vacate the unit—was extended to
25 December 16, 2014.

26 16. To date, we have paid the tenant \$6,079.39.

27 ///

28 ///

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1 17. On April 30, 2014, the City recorded a Notice of Constraints on our property at 471-
 2 473 Lombard Street. This Notice confirmed the withdrawal of our property from the rental market,
 3 and made clear that certain legal constraints would limit and potentially punish re-rental of our
 4 property within the next ten years after withdrawal. A true and correct copy of the Notice of
 5 Constraints is attached as **Exhibit 4**.

6 18. As of June 1, 2014, the tenant in our 473 Lombard Street unit had not vacated the
 7 unit. The tenant has still not left as of the date of this Declaration.

8 19. On June 1, 2014, the City passed a new ordinance (Ordinance) requiring property
 9 owners to pay the difference between a tenant's current (usually rent controlled) rate and the
 10 amount it costs the tenant to rent a comparable unit on the open market, multiplied to cover a two
 11 year period (Differential Payment).

12 20. Under the terms of the Ordinance, the new Differential Payment obligation
 13 retroactively applied to us, even though we filed the paperwork necessary to remove our unit at
 14 473 Lombard Street prior to passage of the Ordinance, because the tenant in our unit had not
 15 vacated as of June 1, 2014, the effective date of the Ordinance.

16 21. The actual amount of the tenant Differential Payments mandated by the Ordinance
 17 is determined by a "Rent Payment Differential Schedule" (Schedule) created and publicized by the
 18 City Controllers' Office. A true and correct copy of the current and operative Schedule is attached
 19 as **Exhibit 5**. Under the terms of the Schedule, my wife and I are now obligated by the Ordinance
 20 to pay the tenant in 473 Lombard Street \$117,958.89 (minus the \$6,079.39 we have already paid)
 21 before we can possess our property. That amount is calculated as follows:

22
$$\$2,479.67 \text{ (rent)} \times 1.9821 \text{ (differential index)} = \$4,914.953$$

23
$$\$4,914.953 \times 24 \text{ months} = \$117,958.89.$$

24 22. My wife and I do not contest the accuracy of the Rental Payment Schedule.

25 23. Given our overall economic assets, my wife and I do not qualify for an "undue
 26 financial hardship" reduction.

27 24. The tenant at our unit at 473 Lombard Street may vacate our property at any time,
 28 but must vacate no later than December 16, 2014.

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1 25. The moment the tenant vacates the unit, the Ordinance obligates us to give the
2 tenant the \$117,958.89 Differential Payment, less the \$6,079.39 we have already paid pursuant to
3 the requirements of the prior law. The total payment we owe to the tenant under the Ordinance
4 when the tenant leaves is **\$111,871.50**.

5 26. It is my understanding that our tenant does not need to use the money for relocation.
6 The tenant can use it for any private purpose whatsoever.

7 27. It is my understanding that we must pay the Differential Payment to our tenant
8 regardless of the tenant's need (or lack thereof) or income.

9 28. Once we pay the money to tenant, it is my understanding there is no way for us to
10 get the payment back from the tenant in the event it is later found to be illegal or unconstitutional.

11 29. If we make the \$111,871.50 Differential Payment, it will severely damage and
12 likely postpone our retirement plans.

13 30. If we do not give the tenant the Differential Payment mandated by the Ordinance
14 when the tenant vacates, my wife and I will be unable to withdraw our unit from the rental market
15 This means the tenant will be able to continue to occupy our property against our will, and we will
16 be required to continue serving as landlords, with all the legal and practical obligations that entails.

17 31. Moreover, under Section 37A (a) (1) (A) (ii) of the Rent Code, our property will
18 be burdened with new rental restrictions for five years based on the filing of a Notice of
19 Withdrawal even if the withdrawal does not become effective or is rescinded due to non-payment
20 of the Differential Payment or for other reasons. Our unit will become subject to unit-based rent
21 control, rather than tenancy-based rent control. Even if the unit becomes vacant (which normally
22 allows a landlord to increase the rent), we would have to rent it out the same rent controlled rate
23 for five years. In other words, we cannot even return to the status-quo ante by refusing to pay the
24 money.

25 32. I do not want to be a landlord any longer. My wife and I have nothing against the
26 tenant; we just want to use and occupy the entirety of our property. We want to be able to have
27 family and friends stay in the lower unit. We do not want anyone to occupy our property except
28 us and our invited family and friends.

1 33. Due the Ordinance, my wife and I must now chose between (a) making an excessive
2 and unconstitutional \$111,871.50 payment to the tenant, which we can never get back, or
3 (b) suffering the continued, unwanted physical occupation of our property, denial of our state law
4 right to stop being landlords, and inability to use our property for our personal purposes.

5 34. I feel like my back is against the wall, and we have no hope except judicial relief.

6 I declare under penalty of perjury that the foregoing is true and correct, to the best of my
7 knowledge, and that this declaration was executed this 11th day of August, 2014, at San Francisco,
8 California.

9 /s/ Daniel Levin
10 DANIEL LEVIN
11 (on his behalf with his permission,
12 by his attorney J. David Breemer)

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EXHIBIT 1

City and County of San Francisco Residential Rent Stabilization and Arbitration Board



**Notice of Intent to Withdraw
Residential Units from the Rental Market**
[RENT ORDINANCE SECTION 37.9A]

NOTE: Owners seeking to withdraw from the rental market their units which are subject to the San Francisco Rent Ordinance must submit this completed form to the Rent Board's office. Submittal may be by personal delivery, registered mail, or certified mail. Please refer to the specific procedures pursuant to Section 37.9A of the San Francisco Rent Ordinance.

I. OWNER INFORMATION (All owners of the property must be listed. If additional space is needed, attach a separate sheet using the same format.)

Name: See Attached
 Address: See Attached
 Phone Number: See Attached (home) _____ (work)

II. PROPERTY INFORMATION

Address: See Attached San Francisco, CA 941_____
(street number and name) (zip)

Number of Units: See Attached

Legal Description: Attach a legal description of the property and mark it as Attachment A.*

2013 DEC -6 PM 1:00
 RECEIVED
 RECYCLED PAPER

*This Notice of Intent to Withdraw Residential Units will ~~not~~ be processed by the Rent Board without a legal description, which is required by the San Francisco Recorder's Office.

III. UNIT INFORMATION (All units, including owner-occupied, commercial and vacant units, and all occupants of the property must be listed. If additional space is needed, attach a separate sheet using the same format.)

<u>UNIT #</u>	<u>DATE TENANCY COMMENCED</u>	<u>NAME OF EACH CURRENT OCCUPANT</u>	<u>CURRENT RENT</u>
<u>See Attached</u>	<u>See Attached</u>	<u>See Attached</u>	<u>See Attached</u>
<u>See Attached</u>	<u>See Attached</u>	<u>See Attached</u>	<u>See Attached</u>
_____	_____	_____	_____
_____	_____	_____	_____

**Notice of Intent to Withdraw
Residential Units from the Rental Market (continued)**

[RENT ORDINANCE SECTION 37.9A]

IV. OWNER'S DECLARATION

Do you certify that actions have been initiated as required by law to terminate all existing tenancies on the property by service of a written notice of termination of tenancy? Yes No See Attached

I declare under penalty of perjury, under the laws of the State of California, that the information provided on this Notice of Intent to Withdraw Form, including any attachments, is true and correct to the best of my knowledge and belief.

Executed on See Attached in See Attached, California.
(date) (city)
See Attached See Attached
(print name) (signature)

ALL OWNERS MUST SIGN. Attach an additional declaration and signature for each owner of record. Attorneys and/or non-attorney representatives may not sign the owner's declaration on behalf of an owner.

STATE OF CALIFORNIA
ARBITRATION BOARD
2013 DEC 16 PM 1:00

ATTACHMENT TO NOTICE OF INTENT TO WITHDRAW RESIDENTIAL
UNITS FROM RENTAL MARKET
(RENT ORDINANCE SECTION 37.9(A))

I. Owner Information

Owner: Daniel Benjamin Levin and Maria Adelia Levin, Trustees of the Levin Family
Trust dated January 25, 2007

Address: c/o Zacks & Freedman, P.C.
A Professional Corporation
235 Montgomery Street, Suite 400
San Francisco, CA 94104

LOCAL CONTACT FOR OWNER:

Andrew M. Zacks, Esq.
Michele L. Scott, Esq.
ZACKS & FREEDMAN, P.C.
A Professional Corporation
235 Montgomery Street, Suite 400
San Francisco, CA 94104
Telephone: (415) 956-8100
Facsimile: (415) 288-9755

II. Property Information

471-473 Lombard Street
San Francisco, CA 94133-2416

Number of Units: 2

Legal Description - Assessor's Block 0077, Lot 034

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

Commencing at a point on the Southerly line of Lombard Street, distant thereon 114 feet 9-1/2 inches Easterly from the Easterly line of Stockton Street; running thence Easterly along said line of Lombard Street 25 feet; thence at a right angle Southerly 137 feet 6 inches; thence at a right angle Westerly 25 feet; thence at a right angle Northerly 137 feet 6 inches to the Southerly line of Lombard Street and the point of commencement.

BEING part of 50 Vara Block No. 104.

2013 DEC 16 PM 1:00
ST. ANTHONY'S
ARBITRATION BOARD

Total Number of Units:

Two (2) residential units: one unit is tenant-occupied and one unit is vacant.

III. Unit Information

<u>Unit #</u>	<u>Date Tenancy Commenced</u>	<u>Name of Each Current Occupant</u>	<u>Current Rent/mo.</u>
473 Lombard Street	May 1988	Thena Holmen	\$2,690.02*
471 Lombard Street	N/A	Vacant	N/A

2013 DEC 16 PM 1:00
 STATE OF NEW YORK
 JUDICIAL BRANCH
 ARBITRATION RECORD

* The base rent is \$2,479.67. The current monthly rent includes banked Bond Measure Passthroughs for the following periods 2007-2008; 2008-2009; 2009-2010; 2010-2011; and the 2012-2013 Bond Measure Passthrough, representing a total monthly passthrough amount of \$210.35, which was imposed on March 1, 2013. All Bond Measure Passthroughs will expire on February 28, 2014. Therefore, commencing on March 1, 2014, the monthly rent will be \$2,479.67. There is a common area light fixture for the entry pathway that is billed on the tenant's electrical meter. As a result, Landlords reimburse the tenant the monthly sum of \$20 for the costs of said utility.

IV. Owner's Declaration

Do you certify that actions have been initiated as required by law to terminate all existing tenancies on the property by service of a written notice of termination of tenancy?

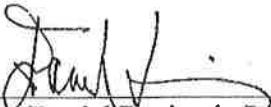
Yes

No

I declare under penalty of perjury, under the laws of the State of California, that the information provided on this Notice of Intent to Withdraw Form, including any attachments, is true and correct to the best of my knowledge and belief.

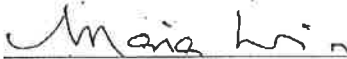
Executed on the date and place as identified below.

Owner:


By: Daniel Benjamin Levin, Trustee
of the Levin Family Trust dated
January 25, 2007

12/16/13 SAN FRANCISCO
Date Place

Owner:


By: Maria Adelia Levin, Trustee
of the Levin Family Trust dated
January 25, 2007

12/16/13 San Francisco
Date Place

2013 DEC 16 PM 1:01
STATE OF CALIFORNIA
ARBITRATION BOARD

PROOF OF SERVICE BY CERTIFIED AND FIRST CLASS MAIL

I, *Meaghan Murphy*, declare as follows:

I am over eighteen years of age and not a party to the within action; I am employed at Zacks & Freedman, PC, my business address is 235 Montgomery Street, #400, San Francisco, California 94104.

On *December 16, 2013*, I served:

NOTICE OF TERMINATION OF TENANCY

by placing a true and correct copy of same in certified and first class envelopes with postage prepaid addressed to:

Thena Holmen
All Others Persons in Possession or Occupancy of
473 Lombard Street
San Francisco, CA 94133-2416
USPS: 7012 2920 0002 1104 0706

Thena Holmen
473 Lombard Street
San Francisco, CA 94133-2416
USPS: 7012 2920 0002 1104 0898


All Others Persons in Possession or Occupancy of
473 Lombard Street
San Francisco, CA 94133-2416
USPS: 7012 2920 0002 1104 0713

I deposited the certified and first class envelopes, postage prepaid, with the United States Postal Service, addressed as identified above.

A check representing the first half of the statutory payments was included in the certified envelope addressed personally to "Thena Holmen"

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: *December 16, 2013*



Meaghan Murphy

2013 DEC 16 PM 1:02
U.S. POSTAL SERVICE
SAN FRANCISCO, CA 94104

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7012 2920 0002 1104 0706

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OFFICIAL USE

Postage	\$ 0.66	0052
Certified Fee	\$3.10	
Return Receipt Fee (Endorsement Required)	\$0.00	
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 3.76	

SAN FRANCISCO CA SUTTER STA 94133
 11 DEC 16 2013
 USPS 146M/8/2013

Sent To: *Thena Holmen, All other Persons in Possession*
 Street, Apt. No., or PO Box No. *473 Lombard Street*
 City, State, ZIP+4 *San Francisco, CA 94133-2416*

PS Form 3800, August 2006 See Reverse for Instructions

ET20 2920 0002 1104 0713

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SAN FRANCISCO CA 94133

OFFICIAL USE

Postage	\$ 0.66	0052
Certified Fee	\$3.10	
Return Receipt Fee (Endorsement Required)	\$0.00	
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 3.76	

SAN FRANCISCO CA SUTTER STA 94133
 11 DEC 16 2013
 USPS 146M/8/2013

Sent To: *All Others in Possession or Occupancy of*
 Street, Apt. No., or PO Box No. *473 Lombard St.*
 City, State, ZIP+4 *San Francisco, CA 94133-2416*

PS Form 3800, August 2006 See Reverse for Instructions

7012 2920 0002 1104 0898

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

SAN FRANCISCO CA 94133

OFFICIAL USE

Postage	\$ 0.66	0052
Certified Fee	\$3.10	
Return Receipt Fee (Endorsement Required)	\$0.00	
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 3.76	

SAN FRANCISCO CA SUTTER STA 94133
 11 DEC 16 2013
 USPS 146M/8/2013

Sent To: *Thena Holmen*
 Street, Apt. No., or PO Box No. *473 Lombard Street*
 City, State, ZIP+4 *San Francisco CA 94133-2416*

PS Form 3800, August 2006 See Reverse for Instructions

EXHIBIT 2

NOTICE OF TERMINATION OF TENANCY

TO: Thena Holmen
All Others Persons in Possession or Occupancy of
473 Lombard Street
San Francisco, CA 94133-2416

2013 DEC 16 PM 1:02
RECEIVED
ARBITRATION BOARD

This Notice concerns the termination of your tenancy and/or occupancy at 473 Lombard Street, San Francisco, California, hereinafter called "the Premises" or "the Rental Unit." The Rental Unit forms a portion of a building and grounds located at 471-473 Lombard Street, San Francisco, California, which building and grounds as a whole are hereinafter referred to as "the Property." This Notice is what is commonly referred to as an "eviction notice."

In accordance with California Government Code Sections 7060 - 7060.7 (hereinafter called the "Ellis Act"), particularly Section 7060.4 thereof, and the San Francisco Residential Rent Stabilization and Arbitration Ordinance of June 13, 1979, as currently amended (hereinafter called "the Rent Ordinance"), particularly Section 37.9(a)(13) thereof, you are hereby notified that your tenancy shall be terminated effective April 15, 2014. This will give you at least one hundred twenty (120) days of notice in that it is intended that this Termination Notice be served on you on December 16, 2013, and the Notice of Intent to Withdraw Residential Units from the Rental Market ("Notice of Intent") be filed with the Rent Board in person or by first class mail as required in Section 37.9A(f)(4) of the Rent Ordinance on December 16, 2013.

Please take notice as follows:

This Notice is being issued by and on behalf of the following: Daniel Benjamin Levin and Maria Adelia Levin, Trustees of the Levin Family Trust Dated January 25, 2007, the owners of the Property, hereinafter collectively referred to as "Owner".

This Notice is issued in good faith for the reasons set forth below:

The grounds for this Notice is per Rent Ordinance Section 37.9(a)(13), which provides in pertinent part that "The landlord wishes to withdraw from rent or lease all rental units within any detached physical structure...and complies in full with Rent Ordinance Section 37.9A with respect to each unit ..."

Pursuant to the Rent Ordinance and the Ellis Act, you are hereby further informed as follows:

1. You have the following rights and obligations under Rent Ordinance Section 37.9A and the Ellis Act:

a. Section 37.9A(e)(3)(A): Subject to subsections 37.9A(e)(3)(B)(C)(D) below, each tenant shall be entitled to receive \$5,210.91, one-half of which shall be paid at the

time of the service of the notice of termination of tenancy, and one-half of which shall be paid when the tenant vacates the unit;

However, as provided in Section 37.9A(e)(3)(B), in the event there are more than three tenants in a unit, the total relocation payment shall be \$15,632.69, which shall be divided equally by the number of tenants in the unit; and

Section 37.9A(e)(3)(C) provides that, notwithstanding Subsections 37.9A(e)(3)(A) and (B), any tenant who, at the time the notice of intent to withdraw rental units is filed with the Rent Board, is 62 years of age or older, or who is disabled within the meaning of Section 12955.3 of the California Government Code, shall be entitled to receive an additional payment of \$3,473.93, one-half of which shall be paid within fifteen (15) calendar days of the landlord's receipt of written notice from the tenant of entitlement to the relocation payment, and one-half of which shall be paid when the tenant vacates the unit.

Section 37.9A(e)(3)(D) provides that commencing March 1, 2005, the relocation payments specified in Sections 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 Rent Board.

In addition to service of this Notice of Termination of Tenancy by regular mail, you will receive a copy of this Notice by certified mail. In the certified mail envelope personally addressed to you is a check made out to you for the first half of the relocation payments. That is, you will receive your own check in the amount of \$2,605.46 pursuant to Section 37.9A(e)(3)(A). Please note that you cannot prevent this eviction by refusing to claim the certified mail envelopes. You will only delay receipt of your relocation payment. Should you claim a right to relocation assistance pursuant to Section 37.9A(e)(3)(C), demand is hereby made that you provide counsel for Owner any and all information that you may rely on to claim said entitlement pursuant to the Government Code or Rent Ordinance, including the factual and legal basis for your claim.

b. The effective date of withdrawal of your Rental Unit from residential rental use may be extended up to one year from the date of delivery of the Notice of Intent to the Rent Board. You are entitled to such an extension in the following circumstances: If you are at least 62 years of age or disabled, have lived in the Rental Unit for at least one year prior to the date of delivery to the Rent Board of the Notice of Intent, and you give written notice of your entitlement to an extension to the Owner within sixty (60) days of the date of delivery to the Rent Board of the Notice of Intent. All three of the above-referenced conditions must be fulfilled in order to receive the extension. The extended tenancy shall be continued on the same terms and conditions as existed on the date of delivery to the Rent Board of the Notice of Intent, subject to any adjustments otherwise available under the Rent Ordinance or other applicable law. No party shall be relieved of the duty to perform any obligation under the lease or rental agreement during the

extended tenancy.

c. If the Owner offers your unit for rent or lease in the future, the Owner is obligated to offer the unit to you as follows:

(1) If, within thirty (30) days after vacating the premises, you give notice to the Owner in writing of your desire to consider an offer to renew your tenancy, you have the right to renew your tenancy in the event that the premises are offered by the Owner for residential rental use within two years of withdrawal. If you give such a notice to the Owner, it must include an address to which the Owner must send an offer to you inviting you to renew your tenancy. You are entitled to advise the Owner at any time of a change of address to which such an offer is to be directed. The written offer would give you thirty days from the date it is mailed to you in which you would have to decide whether or not to accept the offer and renew your tenancy.

For the purposes of this Notice of Termination only, including your right to give notice that you wish to renew your tenancy, you may give notice to the Owner in any manner authorized by law. Though not specifically called for by law, the Owner hereby provides the following address which you may wish to use for the purpose of giving such notice: c/o Zacks & Freedman, P.C., 235 Montgomery Street, Suite 400, San Francisco, CA 94104.

(2) If your Rental Unit is offered for rent or lease within 10 years of withdrawal, the Owner shall notify the Rent Board in writing of the intention to re-rent the unit and make an offer to you if you request the offer in writing within 30 days after the Owner has notified the Rent Board of an intention to re-rent your Rental Unit. If the unit is offered for rent or lease more than two years after the date the property was withdrawn from rent or lease, the Owner shall be liable to you for failure to comply with Rent Ordinance Section 37.9A(c)(2), for punitive damages in an amount which does not exceed the contract rent for six months.

(3) If you request an offer to renew your tenancy, either directly to the Owner or after notice from the Rent Board, then the Owner shall offer to reinstitute a rental agreement or lease at rents permitted under Rent Ordinance Section 37.9A(a). This offer shall be deposited in the United States mail, by registered or certified mail with postage prepaid, addressed to you at the address furnished to the Owner as provided by you and shall describe the terms of the offer. You shall have 30 days from the deposit of the offer in the mail to accept the offer by personal delivery of that acceptance or by deposit of the acceptance in the United States mail by registered or certified mail with postage prepaid.

(4) If more than one tenant or lessee attempts to accept the offer for your unit, the Owner shall notify each tenant or lessee so accepting that other acceptances have been received, and shall further advise each such tenant or lessee of the names and addresses of the others. If all such tenants or lessees do not within thirty (30) days thereafter agree and notify the Owner of which tenant(s) or lessee(s) will reoccupy the unit, the tenant(s) or lessee(s) who first occupied the unit previously shall be entitled to accept the Owner's

offer. If more than one eligible tenant or lessee initially occupied the unit on the same date, then the first such tenant or lessee to have originally sent notice accepting the Owner's offer shall be entitled to occupy the unit.

For further information regarding your rights under applicable law, please refer to California Government Code Section 7060 et seq. and Rent Ordinance Sections 37.9(a)(13) and 37.9A(a) - (i) inclusive. Said references are identified herein in furtherance of the obligation to advise you of your rights under the law.

Please take further notice as follows:

Notification to you that the Notice of Intent has been delivered to the Rent Board shall be provided to you, in compliance with Rent Ordinance Section 37.9A(f)(5).

Should you fail to move out by the termination date of your tenancy, legal proceedings will be commenced to enforce this Notice and to remove you from the premises, subject to your rights as identified in Section 1.b above.

A copy of this Notice shall be filed with the Rent Board within five (5) days after this Notice shall have been served upon you, in compliance with the Rent Ordinance.

Advice concerning this Notice is available from the San Francisco Residential Rent Stabilization and Arbitration Board, 25 Van Ness Avenue, Suite 320, San Francisco, CA 94102; (415) 252-4600.

Rent is due and payable during the term of this Notice. However, Owner shall not accept rent monies for any period of time after the termination date of your tenancy.

State law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former landlord after being notified that property belonging to you was left behind after you moved out.

[SIGNATURE ON NEXT PAGE]

Dated: 12/16/13



Michele L. Scott
Zacks & Freedman, P.C.
Attorneys for Owner
235 Montgomery Street, Suite 400
San Francisco, CA 94104
Telephone (415) 956-8100

cc: San Francisco Rent Board

DANIEL B. LEVIN
MARIA A. LEVIN
1041 FILBERT STREET
SAN FRANCISCO, CA 94133

1231

11-8166/3210
95

12/2/13 DATE

CHECK NUMBER

PAY TO THE
ORDER OF

Thena Holmen

\$ 2,605.46

Twenty six hundred and five

46
100 DOLLARS

Securely
Features
DateMe on
Back



FIRST REPUBLIC BANK

Private Banking-San Francisco
111 Pine Street
San Francisco, CA 94111
Ph (415) 392-3400 / (800) 392-1407 (24hr Cust Serv)

FOR Relocation

Thena Holmen

MP

⑆321081669⑆ 99500113750⑈ 01231

EXHIBIT 3

City and County of San Francisco

Residential Rent Stabilization and Arbitration Board



RECORDING REQUESTED BY:

Zacks & Freedman, P.C.
235 Montgomery St. Ste. 400
San Francisco CA 94104

WHEN RECORDED MAIL TO:

Zacks & Freedman, P.C.
235 Montgomery St. Ste. 400
San Francisco, CA 94104



San Francisco Assessor-Recorder
Carmen Chu, Assessor-Recorder
DOC- 2014-J832045-00

Check Number 5687
Wednesday, JAN 29, 2014 14:03:00
Ttl Pd \$24.00 Rcpt # 0004881287
REEL L073 IMAGE 0412
cfa/FT/1-4

Memorandum of Notice

Regarding Withdrawal of Rental Units from Rent or Lease

(to be recorded by owner)

This memorandum evidences that the undersigned, as the owner of the property described in Exhibit A attached, has filed a notice with the San Francisco Residential Rent Stabilization and Arbitration Board, which contents are certified under penalty of perjury, stating the intent to withdraw from rent or lease all units at said property, pursuant to San Francisco Administrative Code Section 37.9A and the Ellis Act.

I declare under penalty of perjury under the laws of the State of California that the above statements are true and correct. This notice is signed on

See Attached in See Attached California.
(date) (city)

See Attached See Attached
(print name) (signature)


RE: Property located at 471-473 Lombard Street in San Francisco, California.

ALL OWNERS MUST SIGN. Attach an additional declaration and signature for each owner. Please note that the Recorder's Office requires that all owners' signatures must be notarized.

NOTICE: RESTRICTIONS ON THE FUTURE USE OF THE PROPERTY WILL APPLY TO SUCCESSORS IN INTEREST PURSUANT TO SAN FRANCISCO ADMINISTRATIVE CODE SECTION 37.9A.

**ATTACHMENT TO MEMORANDUM OF NOTICE REGARDING
WITHDRAWAL OF RESIDENTIAL UNITS FROM RENT OR LEASE**


I declare under penalty of perjury under the laws of the State of California that the statements contained on the form attached hereto are true and correct.


Daniel Benjamin Levin, Trustee
of the Levin Family Trust dated
January 25, 2007

1/27/14
Date

SAN FRANCISCO
Place

I declare under penalty of perjury under the laws of the State of California that the statements contained on the form attached hereto are true and correct.


Maria Adelia Levin, Trustee
of the Levin Family Trust dated
January 25, 2007

1/27/14
Date

San Francisco
Place

EXHIBIT A
LEGAL DESCRIPTION

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

Commencing at a point on the Southerly line of Lombard Street, distant thereon 114 feet 9-1/2 inches Easterly from the Easterly line of Stockton Street; running thence Easterly along said line of Lombard Street 25 feet; thence at a right angle Southerly 137 feet 6 inches; thence at a right angle Westerly 25 feet; thence at a right angle Northerly 137 feet 6 inches to the Southerly line of Lombard Street and the point of commencement.

BEING part of 50 Vara Block No. 104.

Assessor's Block 0077, Lot 034

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of San Francisco

On 1/27/14

Date

before me, Elizabeth C. Masliah

Here Insert Name and Title of the Officer

personally appeared Daniel Benjamin Levin + Maria Adelia Levin

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Signature:

Handwritten signature of Elizabeth C. Masliah

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Memorandum of Notice Regarding Withdrawal of Rental Units

Document Date: 1/27/14

Number of Pages: 73

Signer(s) Other Than Named Above: //

Capacity(ies) Claimed by Signer(s)

Signer's Name: Daniel Benjamin Levin

Signer's Name: Maria Adelia Levin

Corporate Officer - Title(s):

Corporate Officer - Title(s):

Individual

Individual

Partner - Limited General

Partner - Limited General

Attorney in Fact

Attorney in Fact

Trustee

Trustee

Guardian or Conservator

Guardian or Conservator

Other:

Other:

Signer Is Representing:

Signer Is Representing:



EXHIBIT 4

RECORDING REQUESTED BY:

City and County of San Francisco
Residential Rent Stabilization & Arbitration Board
25 Van Ness Avenue, Suite 320
San Francisco, CA 94102
(415) 252-4602



San Francisco Assessor-Recorder
Carmen Chu, Assessor-Recorder
DOC- 2014-J871837-00

Acct 37-Rent Arbitration Board
Wednesday, APR 30, 2014 10:58:44
Ttl Pd \$0.00 Rcpt # 0004928375
okc/KC/1-1

WHEN RECORDED MAIL TO:

City and County of San Francisco
Residential Rent Stabilization & Arbitration Board
25 Van Ness Avenue, Suite 320
San Francisco, CA 94102
(415) 252-4602

NOTICE OF CONSTRAINTS ON REAL PROPERTY

(to be recorded by the Rent Board)

Pursuant to Government Code Section 7060.2 and San Francisco Administrative Code Chapter 37, Section 37.9A, the City of San Francisco has determined to apply constraints to successors in interest to an owner(s) who has withdrawn residential accommodations from rent or lease.

The real property where the accommodations are located is specifically described as:

Block: 77 Lot: 34
Address: 471-473 Lombard Street, San Francisco, CA 94133

Name of Owner(s): Daniel Benjamin Levin and Maria Adelia Levin, Trustees of the Levin Family Trust dated January 25, 2007

The date on which the accommodations at 473 Lombard Street is to be withdrawn from rent or lease is **December 16, 2014**.

The constraints set forth in the following sections apply to the units until the dates indicated:

- Government Code Section 7060.2(a)&(d) and San Francisco Administrative Code Section 37.9A(a)&(b):
December 16, 2019. (Five years from date of withdrawal)
- Government Code Section 7060.2(c) and San Francisco Administrative Code Section 37.9A(c):
December 16, 2024. (Ten years from date of withdrawal)

ALL OF THE TERMS AND OBLIGATIONS AS NAMED IN THIS DOCUMENT WILL TERMINATE AUTOMATICALLY, WITHOUT THE NECESSITY OF ANY RECORDED TERMINATION, AFTER DECEMBER 16, 2024.

Dated: April 16, 2014


Delene Wolf, Executive Director, San Francisco Rent Board

EXHIBIT 5



San Francisco Residential Rent Stabilization and Arbitration Board

Relocation Payments for Tenants Evicted Under the Ellis Act

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

USE THE GREATER OF:

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

OR

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

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

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

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



San Francisco Residential Rent Stabilization and Arbitration Board

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

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

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

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

Controller's Rental Payment Differential Schedule (Effective 6/1/14 – 2/28/15)

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

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DANIEL LEVIN; MARIA LEVIN; PARK LANE ASSOCIATES, L.P.; THE SAN FRANCISCO APARTMENT ASSOCIATION; and THE COALITION FOR BETTER HOUSING,
Plaintiffs,
v.
CITY AND COUNTY OF SAN FRANCISCO,
Defendants.

No. 3:14-CV-03352-CRB

**[PROPOSED]
ORDER GRANTING
TEMPORARY RESTRAINING
ORDER AND
PRELIMINARY INJUNCTION**

Judge: Hon. Charles R. Breyer
Courtroom 6, 17th Floor
Date: August 22, 2014
Time: 10:00 a.m.

Having reviewed the motion and related papers of Plaintiffs Daniel and Maria Levin (Levins) and Park Lane Associates, L.P. (Plaintiffs), and the opposition papers of Defendant City and County of San Francisco, and pursuant to Federal Rules of Civil Procedure 65, Local Rule 7.2 and 65.1, the Court makes the following findings of fact and conclusions of law:

1. Plaintiffs Daniel and Maria Levin and Park Lane, L.P. (together, Plaintiffs) own real property in the City of San Francisco. In the past, Plaintiffs' properties have been rented out to tenants.

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1 2. Cal. Gov't Code §§ 7060-7060.7 (the Ellis Act) gives the owners of rental
2 properties the right to take their properties off the rental market. In late 2013, Plaintiffs filed all
3 the required notices and took all other steps required under the City's Ellis Act procedures codified
4 in San Francisco Administrative Code § 37.9A to withdraw their properties from the rental market.

5 3. Under the City law in effect at the time, to complete the withdrawal of their
6 properties from the rental market, Plaintiffs had to pay displaced tenants approximately \$5,000 in
7 "relocation" assistance. S.F. Admin. Code § 37.9A(e)(3). Tenants claiming to be over 62 or
8 disabled were entitled to an additional payment of approximately \$3,500. S.F. Admin. Code
9 § 37.9A(e)(3). The Levins' tenant and some of Park Lane's tenants claimed to be disabled within
10 the meaning of the Rent Code. Plaintiffs therefore paid half of the total amount due their tenants
11 at the time of filing their Notices of Withdrawal, or soon thereafter, as required by S.F. Admin.
12 Code § 37.9A(e)(3).

13 4. The default date for a Notice of Withdrawal to become effective is 120 days from
14 filing of a Notice of Withdrawal. S.F. Admin. Code § 37.9A(f)(4). However, based on their
15 disability claim, the Levins' tenant and some of Park Lane's tenants were entitled to extend, and
16 did extend, the time of the withdrawal of their units (and their deadline to vacate the units) to one
17 year from the Plaintiffs' 2013 filing of the Notices of Withdrawal. *See* S.F. Admin. Code
18 § 37.9A(f)(4).

19 5. Accordingly, as of June 1, 2014, the Levins' tenant and the tenants of approximately
20 thirteen (13) of Park Lane's units had not physically vacated Plaintiffs' properties.

21 6. On June 1, 2014, the City enacted San Francisco Administrative Code
22 § 37.9A(e)(3)(E). This Ordinance substantially increased the amount of money that rental property
23 owners are required to pay their tenants before they can complete withdrawal of their properties
24 from the rental market under the Ellis Act. It specifically required property owners filing to
25 withdraw units under the Act to pay to their tenants the difference between their tenants' current
26 (typically, rent-controlled) rate and the amount it would cost the tenant to rent a similar property
27 on the open market, multiplied by two (the Differential Payment). The exact amount is established

28 ///

1 | by a Rent Differential Payment Schedule promulgated by the City. S.F. Admin. Code
2 | § 37.9A(e)(3)(E)(ii).

3 | 7. The Ordinance retroactively applied to Plaintiffs based on their previously filed
4 | Notices of Withdrawal, because their tenants had not physically vacated the properties as of June 1,
5 | 2014, the effective date of the Ordinance. S.F. Admin. Code § 37.9A(e)(3)(F).

6 | 8. According to the City's Rent Differential Schedule, which Plaintiffs do not contest,
7 | the Ordinance requires the Levins to pay \$117,958.89 (less \$6,079.39 already paid), while Park
8 | Lane must pay over \$1,000,000 to the tenants of ten remaining occupied units.

9 | 9. The Ordinance includes no restraints on the tenants' use of the Differential
10 | Payment. Tenants need not use Plaintiffs' money for relocation, rent, or other housing purposes,
11 | but can use it for any private purpose they wish.

12 | 10. The Ordinance allows a rental property owner subject to the Differential Payment
13 | mandate to claim an "undue financial hardship in light of all the resources available to the
14 | landlord." S.F. Admin. Code § 37.9A(e)(3)(G)(i). Plaintiffs have conceded that, in light of all
15 | their economic assets and resources, they do not qualify for an "undue financial hardship"
16 | reduction to the Differential Payment.

17 | 11. Park Lane's tenants can and must vacate Park Lane's property by October 24, 2014.
18 | The Levins' tenant can and must vacate the Levins' property anytime before December 16, 2014.
19 | Plaintiffs are obligated to make the Differential Payment to their tenants the moment the tenants
20 | leave.

21 | 12. The tenants of one of Park Lane's units have recently given Park Lane notice that
22 | they will vacate the unit on **August 25, 2014**, and have demanded a Differential Payment of
23 | \$143,812.84 under the Ordinance on that same day.

24 | 13. Plaintiffs' complaint alleges that, as applied to them the Ordinance takes and seizes
25 | their property and deprives them of property in violation of the Fourth, Fifth, and Fourteenth
26 | Amendments to the United States Constitution and violates their state law rights under the Ellis
27 | Act. Plaintiffs have moved for a temporary restraining order and preliminary injunction.

28 | ///

1 14. Plaintiffs' constitutional claims are ripe. The claims are not subject to the second
2 "state court litigation" ripeness predicate of *Williamson County Reg'l Planning Comm'n v.*
3 *Hamilton Bank of Johnson City*, 473 U.S. 172, 192 (1985), because they do not seek monetary
4 compensation, and requiring Plaintiffs to pay the money demanded by the Ordinance and then to
5 go to state court to seek one-for-one reimbursement before challenging the Ordinance would serve
6 no purpose. *Eastern Enters.*, 524 U.S. at 521 (ripeness not applicable where "the challenged
7 statute . . . requires a direct transfer of funds' [to] the Government"); *San Remo Hotel, L.P. v. City*
8 *& County of San Francisco*, 545 U.S. 323, 345-46 (2005) (takings claims held ripe because they
9 "requested relief distinct from the provision of "just compensation). Alternatively, the Court
10 exercises its prudential discretion to hear the claims. *Guggenheim v. City of Goleta*, 638 F.3d
11 1111, 1118 (9th Cir. 2010) (en banc).

12 15. The money the Ordinance demands of Plaintiffs is constitutionally protected
13 property and subject to the Takings Clause. *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S.
14 Ct. 2586, 2599 (2013) (quoting *Eastern Enters. v. Apfel*, 524 U.S. 498, 540 (1998) (Kennedy, J.,
15 concurring)).

16 16. Plaintiffs are likely to succeed on their claim that, as applied to them, the Ordinance
17 violates the Public Use Clause of the Fifth Amendment. Through the Differential Payment
18 mandate, the Ordinance transfers their private property to particular private parties—their
19 tenants—for the tenants' private purpose and benefit. Any public benefit arising from the transfer
20 of Plaintiffs' property to their tenants is incidental and immaterial. The Differential Payment
21 therefore likely violates the Public Use Clause. *Kelo v. City of New London*, 545 U.S. 469, 477
22 (2005).

23 17. If the Ordinance serves a public purpose, Plaintiffs are likely to succeed on their
24 claim that the Ordinance takes Plaintiffs' property without just compensation, in violation of the
25 Fifth Amendment, because it authorizes a physical taking of their constitutionally protected money
26 or requires them to submit to the physical taking of their right to exclude others from their real
27 property. *Koontz*, 133 S. Ct. at 2599-2600; *Brown v. Legal Found. of Wash.*, 538 U.S. 216, 235
28 (2003). Alternatively, Plaintiffs are likely to prevail on their regulatory takings claim under *Penn*

1 *Central Transportation Co. v. City of New York*, 438 U.S. 104, 124 (1978), because the Ordinance
2 appears to frustrate Plaintiffs' legitimate expectations for their property and regarding their liability
3 for withdrawing it from the rental market, causing a severe economic impact, and the Ordinance
4 has the character of a taking. *Id.*

5 18. As a condition on the exercise of their property rights, Plaintiffs are likely to
6 succeed on their claim that the Ordinance violates the Unconstitutional Conditions Doctrine and
7 the standards of *Nollan* and *Dolan*, because the Differential Payment does not appear related or
8 proportional to the impact of Plaintiffs' withdrawal of their properties from the rental market and
9 the exercise of their right to exclude others. *Dolan*, 512 U.S. at 393-94; *Ehrlich v. City of Culver*,
10 12 Cal. 4th 854, 883-84 (1996).

11 19. Plaintiffs are likely to succeed on their claim that the Ordinance unconstitutionally
12 deprives them of property, in violation of the Due Process Clause of the Fourteenth Amendment,
13 due to the retroactive nature of the Differential Payment. *Eastern Enters.*, 524 U.S. at 536; *id.* at
14 549 (Kennedy, J., concurring). Plaintiffs took all legally required actions to withdraw their
15 properties under the legal regime pre-dating the Ordinance and legitimately expected their liability
16 to their tenants to be limited to the modest relocation payments (approximately \$5,000-\$9,000)
17 mandated by the prior law. The Ordinance drastically increases Plaintiffs' monetary liability to
18 their tenants after the fact, unsettling their legitimate expectations, and therefore likely offends due
19 process principles.

20 20. Plaintiffs are likely to succeed on their claim that the Ordinance unreasonably seizes
21 their property, in violation of the Fourth Amendment. The Ordinance meaningfully interferes with
22 Plaintiffs' possessory interests in their money and real property and therefore causes a seizure
23 within the meaning of the Fourth Amendment. *Soldal v. Cook County*, 506 U.S. 56, 65-68 (1992).
24 The Ordinance appears to unreasonably seize Plaintiffs' property because its Differential Payment
25 mandate is retroactive and disproportionate to Plaintiffs' withdrawal of their property, the money
26 seized can be used by tenants for any private purpose whatsoever, and the requirement impedes
27 important private interests protected by state and federal law, including the right to exclude others
28 from private property.

1 21. Plaintiffs are likely to succeed on their claim that the Ordinance and the Differential
2 Payment violates the Ellis Act. The Differential Payment mandate appears to impermissibly
3 burden their right to withdraw their properties from the rental market and is therefore inimical to,
4 and pre-empted by, the Ellis Act. *Reidy v. City & County of San Francisco*, 123 Cal. App. 4th 580,
5 587 (2004).

6 22. Without an injunction, Plaintiffs are likely to suffer irreparable harm in the form
7 of an irreparable violation of their federal constitutional rights.

8 23. Given the retroactive and excessive nature of the Differential Payment demands
9 imposed by the Ordinance on Plaintiffs, and the threat it poses to their state and federally protected
10 right to exclude others from their property, the equities of the case favor injunctive relief.

11 24. The public interest will be served by an injunction allowing the adjudication of the
12 merits of Plaintiffs as-applied claims, but which still allows the City to enforce the Ordinance in
13 general.

14 Accordingly, the Court hereby orders as follows:

15 1. Defendant, as well as its agents, officers, representatives, and employees, are hereby
16 temporarily enjoined from enforcing or attempting to enforce San Francisco Administrative Code
17 § 37.9A(e)(3)(E) against Plaintiffs Daniel and Maria Levin and Park Lane Associates, L.P.

18 2. This restraining order and preliminary injunction shall remain in effect pending
19 further order of the Court.

20 3. The Court waives the requirement of security under Federal Rule of Civil
21 Procedure 65(c) on the grounds that the preliminary injunction will require Defendant to sustain
22 little or no cost or damage, and because Plaintiffs' action seeks to vindicate constitutional rights
23 and the public interest.

24
25
26 DATED: _____.

HON. CHARLES R. BREYER
Judge of the District Court