

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO APARTMENT
ASSOCIATION, et al.,

Plaintiffs,

v.

CITY AND COUNTY OF SAN
FRANCISCO,

Defendant.

Case No. 15-cv-01545-PJH

**ORDER GRANTING MOTION FOR
JUDGMENT ON THE PLEADINGS**

Defendant's motion for judgment on the pleadings came on for hearing before this court on September 30, 2015. Plaintiffs appeared by their counsel James R. Parrinello and Christopher E. Skinnell, and defendant appeared by its counsel Assistant San Francisco City Attorney Jeremy M. Goldman. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, the court hereby GRANTS the motion as follows.

BACKGROUND

On October 21, 2014, the San Francisco Board of Supervisors enacted Ordinance No. 225-14 ("the Ordinance"), which became operative on March 7, 2015, and imposes requirements on the process of negotiating tenant buyouts.

The Ordinance amended the San Francisco Administrative Code to add § 37.9E,

1) to require landlords to provide tenants with a disclosure of the tenants' rights before the landlord commences buyout negotiations; 2) to require landlords to file a form with the [San Francisco] Rent Board indicating the address of the unit that may become the subject of buyout negotiations; 3) to require all buyout agreements to be in writing and to include certain statements about the tenant's rights; 4) to allow tenants to rescind buyout agreements for up to 45 days after the agreements are fully executed; 5) to require landlords to file a copy of buyout agreements with the Rent Board and to pay a fee to the Rent Board; 6) to require the Rent Board to create a publically available, searchable database of buyout agreements; 7) to require the Rent Board to provide an annual report to the Board of Supervisors regarding tenant buyouts; 8) to authorize tenants to bring civil actions for actual damages and civil penalties against landlords who fail to provide the required disclosures about the tenants' rights; and 9) to authorize certain non-profits to bring civil actions for a landlord's failure to file a buyout agreement with the Rent Board.

Ord. No. 225-14. The Ordinance also amended § 1396 of the San Francisco Subdivision Code to "prohibit buildings from entering the condominium conversion lottery if the owners of the building have entered certain tenant buyout agreements." Id.

The stated purpose of the Ordinance is to "increase the fairness of buyout negotiations and agreements by requiring landlords^[1] to provide tenants with a statement of their rights and allowing tenants to rescind a buyout agreement for 45 days after signing the agreement, thus reducing the likelihood of landlords pressuring tenants into signing buyout agreements without allowing the tenants sufficient time to consult with a tenants' rights specialist." S.F. Admin. Code § 37.9E(a). Another stated goal of the Ordinance is to "help the City collect data about . . . the number, location, and terms of the buyout agreements[.]" in order to understand the level of tenant displacement in San Francisco. See id.

Plaintiffs in this action are four organizations of residential landlords, property managers, and/or realtors – the San Francisco Apartment Association ("SFAA"), the Coalition for Better Housing ("CBH"), the Small Property Owners of San Francisco Institute ("SPOSFI"), and the San Francisco Association of Realtors ("SFAR") – and one

¹ Chapter 37 of the Administrative Code defines "landlord" as "[a]n owner, lessor, sublessor, who receives or is entitled to receive rent for the use and occupancy of any residential rental unit or portion thereof in the City and County of San Francisco, and the agent, representative or successor of any of the foregoing." S.F. Admin. Code § 37.2(h).

1 individual landlord, Norman T. Larson ("Larson"). Defendant is the City and County of
2 San Francisco ("CCSF").

3 Plaintiffs initiated this action by filing a "petition for writ of mandate" and a
4 "complaint for injunctive and declaratory relief" in the Superior Court of California, County
5 of San Francisco, on March 5, 2015. Plaintiffs seek an order declaring the Ordinance to
6 be illegal and unenforceable in whole or in part. CCSF removed the case on April 3,
7 2015, alleging federal question jurisdiction based on allegations of federal constitutional
8 violations. Plaintiffs assert three causes of action – (1) writ of mandate, based on alleged
9 violation of rights under the U.S. and California Constitutions;² (2) injunctive relief; and (3)
10 declaratory relief.

11 In the first cause of action, plaintiffs allege that the Ordinance violates free speech
12 rights under the U.S. and California Constitutions; violates "the right to enter into
13 voluntary settlement of disputes" (no constitutional provision specified); violates equal
14 protection and due process rights under the U.S. and California Constitutions; and
15 violates the right to privacy under the California Constitution. Plaintiffs challenge the
16 following provisions of the Ordinance:

17 *The Disclosure Provision* – Prior to commencing buyout negotiations,³ the
18 landlord must give the tenant a form developed by the San Francisco Rent Board
19 containing a disclosure of tenants' rights and an explanation of how to obtain advice and
20 information regarding buyout agreements. S.F. Admin. Code § 37.9E(d)(1)-(6). The form

21 _____
22 ² Although plaintiffs' state court complaint refers only to a "petition for writ of mandate,"
23 the court assumes that plaintiffs are seeking this relief under California Code of Civil
24 Procedure § 1085. However, § 1085 is a "procedural mechanism," Kreeft v. City of
25 Oakland, 68 Cal. App. 4th 46, 52 (1998), not a substantive claim. Moreover, it does not
26 apply in federal court. Hill v. County of Sacramento, 466 F. App'x 577, 579 (9th Cir.
2012) (§ 1085 "authorizes only state courts to issue writs of mandate"); Shaheen v. Cal.
27 Supreme Court, 2002 WL 31928502, at *1 (N.D. Cal. Dec. 27, 2002) (same).
28 Accordingly, the court construes the federal constitutional portions of this cause of action
as a claim under 42 U.S.C. § 1983.

³ "Buyout Negotiations" refers to "any discussion or bargaining, whether oral or written,
between a landlord and a tenant regarding the possibility of entering into a Buyout
Agreement," which is an agreement "wherein the landlord pays the tenant money or other
consideration to vacate the rental unit." S.F. Admin. Code § 37.9E(c).

1 must also disclose the condominium conversion restrictions that apply to certain buyouts
 2 and, if the landlord is an entity, the identity of persons within that entity who have
 3 negotiating and decision-making authority. Id. § 37.9E(d)(7)-(8). In addition, the form
 4 must contain a space for the tenant to sign and write the date he/she was provided with
 5 the disclosure. Id. § 37.9E(d)(10). Plaintiffs allege that the Disclosure Provision violates
 6 landlords' right to free speech, and to due process and/or equal protection. See Cplt
 7 ¶¶ 14, 16.

8 *The Notification Provision* – Prior to commencing buyout negotiations,
 9 landlords must provide the Rent Board with a statement signed under penalty of perjury
 10 that the landlord provided each tenant with the disclosures described in § 37.9E(d) and
 11 set forth above. S.F. Admin. Code § 37.9E(e)(4). The notification must also include the
 12 landlord's name and business contact information, the tenant's name, and the address of
 13 the unit that may be the subject of buyout negotiations. Id. § 37.9E(e)(1)-(3). The Rent
 14 Board is required to make this information publicly available, except that information
 15 regarding the tenant's identity shall be redacted. Id. § 37.9E(e). Plaintiffs assert that the
 16 Notification Provision violates landlords' rights to free speech, equal protection, and
 17 privacy. See Cplt ¶ 16.

18 *The Rescission Provision* – The Ordinance contains a procedural protection
 19 for tenants in the form of a right of rescission for a period of 45 days following execution
 20 of the agreement. S.F. Admin. Code § 37.9E(g). Plaintiffs contend that because the
 21 Rescission Provision grants a tenant the power to unilaterally rescind a buyout
 22 agreement for 45 days after it is entered into, but grants an owner no similar power, it
 23 violates the landlords' rights to equal protection and/or due process. See Cplt ¶ 16.

24 *The Database Provision* – If a buyout agreement is ultimately signed (and
 25 not rescinded by the tenant), landlords must file a copy with the Rent Board within two
 26 weeks following the expiration of the 45-day rescission period. S.F. Admin Code
 27 § 37.9E(h). The Rent Board maintains a searchable database, publicly accessible at its
 28 office, of the information in the agreements, and includes a copy of the agreement with

1 the identity of the tenant redacted. Id. § 37.9E(i). Plaintiffs contend that the Database
 2 Provision violates landlords' rights to equal protection and/or due process, and privacy.
 3 See Cplt ¶ 17.

4 *Penalty and Fee Provisions* – The Ordinance creates private rights of action
 5 where landlords fail to provide disclosures or file buyout agreements, and establishes
 6 penalties and awards of attorneys' fees in cases of successful enforcement. S.F. Admin.
 7 Code § 37.9E(k). Plaintiffs allege that these penalty and fee provisions violate landlords'
 8 rights to equal protection and/or due process because it makes the owner of the property
 9 bear the burden of any departure from the Ordinance's rules. See Cplt ¶ 16.

10 *The Condominium Conversion Provision* – The Ordinance provides that a
 11 property will be ineligible for consideration for condominium conversion for ten years after
 12 an owner or former owner enters into a buyout agreement with a senior, disabled, or
 13 catastrophically ill tenant, or with two or more tenants in the same building. S.F. Subd.
 14 Code § 1396(e)(4). Plaintiffs claim this provision interferes with landlords' right to settle
 15 disputes and violates their rights to due process and/or equal protection. See Cplt ¶¶ 15,
 16 16.

17 CCSF filed an answer to the complaint on April 6, 2015, and now seeks judgment
 18 on the pleadings.

19 **DISCUSSION**

20 A. Legal Standard

21 "After the pleadings are closed – but early enough not to delay trial – a party may
 22 move for judgment on the pleadings." Fed. R. Civ. P. 12(c). A motion for judgment on
 23 the pleadings "challenges the legal sufficiency of the opposing party's pleadings."
 24 William W Schwarzer et al., Federal Civil Procedure Before Trial (2015 ed.) § 9:316.
 25 Judgment on the pleadings is appropriate when the pleaded facts, accepted as true and
 26 viewed in the light most favorable to the non-moving party, entitle the moving party to a
 27 judgment as a matter of law. Hoelt v. Tucson Unified Sch. Dist., 967 F.2d 1298, 1301
 28 (9th Cir. 1992); see also Fleming v. Pickard, 581 F.3d 922, 925 (9th Cir. 2009).

1 The legal standards governing Rules 12(c) and 12(b)(6) are “functionally identical,”
 2 Calfasso, U.S. ex rel. v. General Dynamics C4 Sys., Inc., 637 F.3d 1047, 1054 n.4 (9th
 3 Cir. 2011), as both permit challenges directed at the legal sufficiency of the parties’
 4 allegations. Thus, the standard articulated in Twombly/Iqbal with regard to Rule 12(b)(6)
 5 motions applies equally to a motion for judgment on the pleadings. Chavez v. United
 6 States, 683 F.3d 1102, 1108-09 (9th Cir. 2012); Calfasso, 637 F.3d at 1054-55 & n.4.

7 Under that standard, “the tenet that a court must accept as true all of the
 8 allegations contained in the complaint is inapplicable to legal conclusions.” Ashcroft v.
 9 Iqbal, 556 U.S. 662, 678-79 (2009). In addition, “a plaintiff’s obligations to provide the
 10 grounds of his entitlement to relief requires more than labels and conclusions, and a
 11 formulaic recitation of the elements of a cause of action will not do.” Bell Atlantic Corp. v.
 12 Twombly, 550 U.S. 544, 555 (2007) (citations and quotations omitted); see also id.
 13 (allegations “must be enough to raise a right to relief above the speculative level”).

14 B. Defendant's Motion

15 CCSF argues that the court should grant judgment on the pleadings as to all
 16 claims asserted in the first cause of action. In opposition, plaintiffs contend that they
 17 have adequately stated a claim under each of those theories.

18 1. Violation of free speech rights

19 Plaintiffs allege that the Ordinance violates their First Amendment free speech
 20 rights by imposing restrictions on speech and by compelling speech. They assert that the
 21 Ordinance imposes a prior restraint on owners’ speech because it forbids them from
 22 speaking to tenants about possible buyouts until the owners have provided the required
 23 disclosures, and because it prohibits owners from speaking to any tenant who has not
 24 consented by signing the disclosure form. They also assert that the Ordinance compels
 25 owners and their agents and managers to speak what the City dictates, as a condition of
 26 exercising their free speech rights. See Cplt ¶ 14.

27 Freedom of speech is guaranteed under both the United States and California
 28 Constitutions. The First Amendment to the United States Constitution, made applicable

1 to state and local governments by the Fourteenth Amendment, provides in part that
 2 "Congress shall make no law abridging the freedom of speech." U.S. Const., 1st Amend.
 3 The California Constitution states, "Every person may freely speak, write and publish his
 4 or her sentiments on all subjects, being responsible for the abuse of this right. A law
 5 may not restrain or abridge liberty of speech or press." Cal. Const., art. I, § 2 (a). The
 6 free speech provision in California's Constitution "is 'at least as broad' as and in some
 7 ways is broader than the comparable provision of the federal Constitution's First
 8 Amendment." Kasky v. Nike, Inc., 27 Cal. 4th 939, 958-59 (2002) (citations omitted);
 9 Baba v. Bd. of Sup'rs City & Cnty. of S.F., 124 Cal. App. 4th 504, 513 (2004).

10 a. Restrictions on speech

11 Plaintiffs allege that the Ordinance imposes a prior restraint on speech, and also
 12 operates to restrict or limit speech. Cplt ¶ 14. The term "prior restraint" is used "to
 13 describe administrative and judicial orders forbidding certain communications when
 14 issued in advance of the time that such communications are to occur." Alexander v.
 15 United States, 509 U.S. 544, 549 (1993) (citation omitted). "Prior restraints on speech
 16 are disfavored and carry a heavy presumption of invalidity." Long Beach Area Peace
 17 Network v. City of Long Beach, 574 F.3d 1011, 1023 (9th Cir. 2009), quoted in Greater
 18 L.A. Agency on Deafness, Inc. v. Cable News Network, Inc., 742 F.3d 414, 430 (9th Cir.
 19 2014). Temporary restraining orders and permanent injunctions – i.e., court orders that
 20 actually forbid speech activities – are classic examples of true prior restraints. See
 21 Alexander, 509 U.S. at 549-50, (citing Near v. Minn. ex rel. Olson, 283 U.S. 697 (1931);
 22 Org. for a Better Austin v. Keefe, 402 U.S. 415 (1971); Vance v. Universal Amusement
 23 Co., 445 U.S. 308 (1980) (per curiam)).

24 Under an alternative version of the doctrine, a prior restraint is a law that
 25 "condition[s] the free exercise of First Amendment rights on the unbridled discretion of
 26 government officials." Desert Outdoor Adver. v. City of Moreno Valley, 103 F.3d 814, 818
 27 (9th Cir. 1996) (internal quotation marks omitted). "Unbridled discretion challenges
 28 typically arise when discretion is delegated to an administrator, police officer, or other

1 executive official,” as opposed to a legislative body. Long Beach Area Peace Network,
2 574 F.3d at 1042. Absent standards controlling the exercise of discretion, there is a
3 danger that government officials may determine “who may speak and who may not based
4 upon the content of the speech or viewpoint of the speaker.” City of Lakewood v. Plain
5 Dealer Pub. Co., 486 U.S. 750, 763-64 (1987). Thus, “[r]egulations must contain narrow,
6 objective, and definite standards to guide the licensing authority and must require the
7 official to provide an explanation for his decision.” Long Beach Area Peace Network, 574
8 F.3d at 1025 (quotations and citations omitted); see also Seattle Affiliate of the Oct. 22nd
9 Coal. to Stop Police Brutality v. City of Seattle, 550 F.3d 788, 798 (9th Cir. 2008).

10 CCSF argues that this part of the claim should be dismissed because none of the
11 provisions plaintiffs challenge involve any meaningful restraint. CCSF contends that
12 neither the disclosure nor the requirement that the landlord certify to the Rent Board that
13 he/she/it has provided the disclosure constitutes a restraint. CCSF argues that the
14 challenged provisions are entirely different from restrictions that prohibit speech
15 altogether or subject the content of speech to official approval.

16 In opposition, plaintiffs assert that the restriction on what landlords can say to
17 tenants is more than a “disclosure provision,” because it prohibits landlord speech with
18 regard to buyouts until the tenant signs and returns the disclosure form to the landlord,
19 resulting in an effective veto of the landlord’s speech. Plaintiffs contend that because the
20 Ordinance permits tenants to file civil actions against landlords for failure to comply with
21 the disclosure requirements or the requirements pertaining to buyout agreements, no
22 rational landlord would undertake such a negotiation without first obtaining the tenant’s
23 signature, and the Ordinance thus operates as prior restraint on speech.

24 The court finds, however, that nothing in the Ordinance either forbids particular
25 speech or speech activities, thereby imposing a true restraint on future speech, or
26 conditions speech or speech activities upon the unbridled discretion of government
27 officials. Nor does the Ordinance condition the landlord’s right to speak on obtaining the
28

1 tenant's signature.⁴ The provision at issue – the requirement that the landlord not
 2 discuss a potential buyout until he/she/it has given the tenant the required disclosure and
 3 certified to the City that such disclosure has been provided – does not preclude or limit
 4 any speech after the minimal disclosure/certification requirement has been met.

5 Moreover, there is no government discretion involved. Once the landlord provides
 6 the disclosures and files the certification with the Rent Board – which can be
 7 accomplished with minimal effort – the landlord and the tenant may engage in buyout
 8 negotiations without limitation. In short, the requirements contained in the Ordinance are
 9 entirely different from restrictions that prohibit speech altogether or subject the content of
 10 speech to official approval. Thus, the Ordinance does not impose any prior restraint on
 11 speech under either variation.

12 With regard to the requirement that the landlord not discuss a buyout until the
 13 disclosure/certification requirement has been met, CCSF appears to concede that this
 14 constitutes a species of restriction on speech. Where the parties differ is on what level of
 15 scrutiny should govern the court's determination of the constitutionality of that restriction.
 16 CCSF argues that this restriction should be evaluated under the intermediate scrutiny
 17 standard applicable to commercial speech, as set forth in Central Hudson Gas & Elec.
 18 Corp. v. Pub. Serv. Comm'n, 447 U.S. 557 (1980).

19 Plaintiffs, on the other hand, assert that the Ordinance is content-based and
 20 regulates more than purely commercial speech, and that under Reed v. Town of Gilbert,
 21 135 S.Ct. 2218 (2015), it is thus subject to strict scrutiny. They claim the Ordinance is
 22

23 ⁴ The Ordinance provides that prior to commencing buyout negotiations, the landlord
 24 must provide the tenant with disclosures on a form authorized by the Rent Board, which
 25 must include "a space for each tenant to sign and write the date the landlord provided the
 26 tenant with the disclosure." S.F. Admin Code § 37.9E(d)(10). While the landlord is
 27 required to certify to the Rent Board that he/she/it provided the tenant with the disclosure
 28 required by subsection (d), id. § 37.9E(e)(4), there is no requirement that the landlord
 certify that the tenant signed the form, and no prohibition on commencing buyout
 negotiations if the tenant refuses to sign. The requirement that the landlord "retain a
 copy of each signed disclosure form for five years," id. § 37.9E(d), does not condition the
 right to commence buyout negotiations on the tenant having signed the form.

1 content-based because the restriction on speech is limited to the subject of possible
2 buyouts, and that even if the Ordinance regulates some commercial speech, that speech
3 is "inexplicably intertwined" with non-commercial speech.

4 Plaintiffs assert that having an economic motivation for communicating is
5 insufficient by itself to turn communications into commercial speech, and that unlike an
6 ordinary commercial transaction in which goods or services are sold, a transaction that
7 involves a buyout discussion between a landlord and a tenant also involves
8 communication regarding their relationship and the ongoing terms of the arrangement.
9 Plaintiffs argue that given the "complex, personal and permanent" connection between
10 landlords and tenants, any discussion of buyout terms would be "inextricably intertwined"
11 with "fully protected speech." Thus, they assert, such negotiations between landlords
12 and tenants are not purely commercial speech, but rather are fully-protected speech
13 subject to strict scrutiny.

14 As noted above, the only regulated speech identified in the complaint is the
15 speech of the landlord or his agent involving an offer of payment to the tenant to vacate
16 the premises, and the sole restriction on that speech is that the landlord may not enter
17 into a buyout negotiation until he/she/it has first provided the disclosures to the tenant
18 and so certified to the Rent Board. A discussion between a landlord and a tenant about
19 the possibility of entering into a buyout agreement is commercial speech, as it relates
20 solely to the economic interests of the parties and does no more than propose a
21 commercial transaction. See Am. Acad. of Pain Mgmt. v. Joseph, 353 F.3d 1099, 1106
22 (9th Cir. 2004) (citing Central Hudson, 447 U.S. at 561; Va. State Bd. of Pharmacy v. Va.
23 Citizens Consumer Council, Inc., 425 U.S. 748, 752 (1976)); see also See Bd. of Trs. of
24 State Univ. of N.Y. v. Fox, 492 U.S. 469, 473-74 (1989). Whatever particular relationship
25 a tenant may have with his/her landlord, it cannot transform a conversation between a
26 landlord and a tenant concerning a possible buyout into something other than a
27 discussion proposing a commercial transaction.

28 Commercial speech enjoys "a limited measure of protection, commensurate with

1 its subordinate position in the scale of First Amendment values,' and is subject to 'modes
2 of regulation that might be impermissible in the realm of noncommercial expression.'" Fox, 492 U.S. at 477 (citation omitted). Commercial speech is distinguished from
3 noncommercial speech in the same way whether the claims arise under the federal or
4 state constitution. Kasky, 27 Cal. 4th at 969 (2002); see also Leoni v. State Bar, 39
5 Cal.3d 609, 614 n.2 (1985).
6

7 Reed is inapplicable to the present case, for several reasons, including that it does
8 not concern commercial speech. Restrictions on commercial speech are evaluated
9 under Central Hudson, using a four-part test:

10 (1) [I]f the communication is neither misleading nor related to unlawful activity,
11 then it merits First Amendment scrutiny as a threshold matter; in order for the
12 restriction to withstand such scrutiny, (2) the State must assert a substantial
13 interest to be achieved by restrictions on commercial speech; (3) the
14 restriction must directly advance the state interest involved; and (4) it must
15 not be more extensive than is necessary to serve that interest.

16 World Wide Rush v. World Wide Rush, LLC v. City of L.A., 606 F.3d 676, 684 (9th Cir.
17 2010) (citations and quotation marks omitted) (citing Central Hudson, 447 U.S. at 564-
18 66).

19 CCSF bears the burden of establishing that the Ordinance meets the Central
20 Hudson elements. See Desert Outdoor Adver., 103 F.3d at 819. CCSF argues that the
21 communication is neither misleading nor related to unlawful activity. CCSF also asserts
22 that the City's interest in protecting tenants is substantial, particularly given the severity of
23 the housing crisis and the vulnerability of tenants to displacement where inadequate
24 alternatives exist.

25 CCSF argues that both the Notification Provision and the Disclosure Provision
26 advance the stated interests, as they make it more likely that tenants who enter into
27 buyout agreements will do so with a full understanding of their rights, and also assist the
28 City in understanding the prevalence of buyout offers and the extent to which tenants
accept or decline them.

Finally, CCSF argues that any burden imposed by the Notification Provision is

1 minimal, as it does not give the City any control over the landlord's communications or
2 subject them to government review, and works no meaningful delay in the landlord's
3 ability to engage in buyout negotiations. As such, CCSF contends, it is narrowly tailored
4 to the City's interest in protecting tenants by ensuring that they understand their rights
5 and have a meaningful opportunity to receive advice and information.

6 In opposition, plaintiffs do not dispute that the speech at issue concerns lawful
7 activity (the landlord's proposal to buy out the tenant) and is not inherently misleading.
8 However, they contend that the restrictions on speech do not serve a "substantial"
9 government interest. They argue that under Edenfield v. Fane, 507 U.S. 761 (1993), the
10 interest must be one that is identified by the legislative body, and must reflect a harm that
11 is real, not speculative. Plaintiffs assert that the restrictions on buyout negotiations do
12 not meet this part of the test, because the Ordinance states on its face that the City "lacks
13 comprehensive information about the number, location, and terms of buyout
14 agreements[.]" and that "[t]his dearth of information precludes the City from
15 understanding the true level of tenant displacement in San Francisco."

16 Instead, plaintiffs assert, the Board of Supervisors relied on "anecdotal" evidence
17 to justify the content-based restrictions imposed by the Ordinance: "Anecdotal evidence
18 indicates that many buyout negotiations are not conducted at arms-length, and landlords
19 sometimes employ high-pressure tactics and intimidation to induce tenants to sign the
20 agreements. Some landlords threaten tenants with eviction if they do not accept the
21 terms of the buyout." S.F. Admin. Code § 37.9E(a). Plaintiffs argue that such
22 unspecified "anecdotal evidence" is not sufficient to sustain the City's burden of showing
23 that the harms it recites are real and that its restriction will in fact alleviate them to a
24 material degree, as required under Edenfield.

25 Plaintiffs compare the facts in this case to those in Sorrell v. IMS Health Inc., 131
26 S. Ct. 2653 (2011), where the Supreme Court struck down a Vermont law restricting the
27 sale or disclosure of prescriber-identifying information to persons or entities such as
28 pharmaceutical manufacturers for marketing to doctors. See id. at 2662-63. The law

1 allowed pharmacies to share the same information with anyone else for any purpose
2 other than marketing. Id. The Court found that the law imposed an impermissible burden
3 on speech, whether a commercial speech inquiry or a stricter form of judicial scrutiny was
4 applied. Id. at 2667-78

5 In evaluating the Central Hudson factors, the Court found no clear “fit between the
6 legislature’s ends and the means chosen to accomplish those ends.” Id. at 2668 (citation
7 omitted). Among the stated goals of the law was the need to protect doctors from
8 “harassing sales behaviors.” Id. at 2669. The Court found that the broad content-based
9 rule was not necessary to prevent “harassment” of doctors because a doctor could simply
10 decline to meet with a pharmaceutical representative. Id. at 2669-70. Moreover, while
11 the Vermont Legislature found “some” doctors experienced “an undesired increasing in
12 the aggressiveness of pharmaceutical sales representatives” and “a few” doctors
13 “reported that they felt coerced and harassed,” the Court was not persuaded that concern
14 for “a few” doctors who may have felt “coerced and harassed” by pharmaceutical
15 marketers could sustain such a broad content-based rule. Id. at 2669. Similarly, plaintiffs
16 assert, while CCSF may be concerned for the welfare of tenants who enter into buyout
17 agreements, it is not permissible for CCSF to impose content-based regulations on
18 speech when it “lacks comprehensive information” about such transactions.

19 Plaintiffs also argue that CCSF has failed to carry its burden of showing that the
20 alleged restriction directly advances the interests identified by the Ordinance (which
21 plaintiffs identify as “preventing fraud or intimidation”) because CCSF has not
22 demonstrated that the harms it recites are real or that the restriction imposed by the
23 Ordinance will in fact alleviate those harms. Plaintiffs claim that CCSF is “pretending”
24 that there is no restriction on speech, and “devotes all of its time merely to showing that
25 disclosures could serve [the stated] purposes.” However, plaintiffs assert, disclosures
26 could be required without prohibiting landlords from speaking to their tenants about
27 possible buyouts for an indefinite period of time.

28 Additionally, plaintiffs contend, the restriction on initiating buyout negotiations until

1 after the landlord has issued the disclosures and filed the certification is “overbroad” as it
2 makes no distinctions on the basis of the time, place, or manner of speech, and
3 empowers a tenant, by refusing to sign the disclosure form, to deny a landlord the right
4 ever to speak regarding the possibility of a buyout. Plaintiffs claim that absent the
5 tenant’s signature, landlords may not ever contact tenants with an offer to vacate the
6 premises by any means or in any location.

7 The court finds that CCSF has met its burden of showing that the Ordinance
8 meets that Central Hudson test. First, the speech is protected because it concerns lawful
9 activity and is not misleading.

10 Second, the interests set forth in the Ordinance are substantial – to increase the
11 fairness of the buyout negotiations and agreements; to reduce the likelihood that tenants
12 will be pressured to accept buyouts without sufficient time to consult with a tenants’ rights
13 specialist; and to help the City collect data about buyout agreements in order to
14 understand the true level of tenant displacement. See S.F. Admin Code § 37.9E(a).

15 As for plaintiffs’ assertion that the City cannot show that the problems it seeks to
16 resolve are “real” because the Ordinance cites anecdotal evidence and acknowledges a
17 lack of data resulting from lack of buyout regulation in the past, the Supreme Court has
18 indicated that speech restrictions can be justified “by reference to studies and anecdotes
19 pertaining to different locales altogether,” and essentially that there is nothing that
20 prohibits the justification from being based on anecdotal evidence. See Florida Bar v.
21 Went For It, Inc., 515 U.S. 618, 628 (1995). Certainly nothing in the Sorrell decision
22 supports plaintiffs’ position.

23 Moreover, Sorrell is distinguishable, as it involved a law that prohibited the
24 disclosure of pharmacy records to pharmaceutical manufacturers, who wanted to use
25 them for marketing purposes, but allowed disclosure to anyone else, whereas the
26 restriction in the present case is not an absolute prohibition on speech, but simply a
27 condition that must be fulfilled before the speech can take place. Once the landlord has
28 provided the tenant with the required disclosures, and has provided the certification to the

1 Rent Board, the Ordinance imposes no further restrictions on the landlord's speech,
2 content-based or otherwise.

3 Third, the Ordinance directly advances the City's interests. For example, the
4 Notification Provision encourages compliance with the Disclosure Provision itself,
5 because it requires landlords to certify under penalty of perjury at the outset that the
6 disclosure was provided, and it also establishes a contemporaneous record of
7 compliance that would not otherwise exist should the tenant decline to sign and date the
8 disclosure form. Further, because the information provided under the Notification
9 Provision is publicly available at the Rent Board, it gives the City and tenant rights'
10 organizations a tool to identify potential failures to file buyout agreements, thereby
11 encouraging compliance with the filing requirement and facilitating potential enforcement
12 actions. Because the filing of agreements is essential to the utility of the database, the
13 Notification Provision advances the City's interests in its creation and maintenance. In
14 addition, it assists the City in understanding the prevalence of buyout offers, and the
15 extent to which tenants decline them.

16 Fourth, the Ordinance is narrowly tailored. Plaintiffs contend that the Ordinance is
17 overbroad because the City already has laws that prohibit "fraud, intimidation or coercion"
18 to induce a tenant to vacate or that prohibit payment of offers to vacate that are
19 "accompanied by threats or intimidation." Were the City's only interest in avoiding
20 coercion and high-pressure tactics, this might be true. However, the principal stated
21 purpose of the Ordinance is to "improve the fairness of buyout negotiations and
22 agreements" by ensuring that tenants are informed about their rights and that they have
23 an opportunity to consult with a tenants' rights specialist.

24 Plaintiffs also assert that the Ordinance is overbroad because it allows a tenant –
25 by virtue of simply refusing to sign the disclosure form – to deny a landlord the right to
26 ever speak regarding the possibility of a buyout. This argument is also without merit. As
27 explained above, the Ordinance does not condition the landlord's right to speak on
28 obtaining the tenant's signature.

1 Apart from this, the court finds that the Ordinance is narrowly tailored because the
 2 landlord is prohibited from speaking to the tenant only until he/she/it has provided the
 3 disclosures and so certified to the City. Reasonably construed, that provision describes a
 4 process that could take less than half a day. In addition to being extremely limited, the
 5 restriction neither gives the City any control over the content of the landlord's
 6 communications, nor works any meaningful delay in the landlord's ability to engage in
 7 buyout negotiations.

8 b. Compelled speech

9 Plaintiffs allege that the Ordinance compels certain state-prescribed speech from
 10 the landlord to the tenant. Specifically, plaintiffs point to the requirement that the landlord
 11 provide the disclosures, and certify to the Rent Board that he/she/it has done so.

12 Plaintiffs allege that this requirement compels owners and their agents and managers to
 13 "speak what the government (Rent Board) dictates as a condition of exercising their free
 14 speech rights." Cplt ¶ 14.

15 Where a law requires factual disclosures in the context of commercial speech, the
 16 speaker has only a "minimal" interest in not providing the information, and the
 17 requirement furthers, rather than impedes, the free flow of information that the First
 18 Amendment protects. Thus, such a requirement need only be reasonably related to the
 19 government's interest in providing the information. See Zauderer v. Office of Disciplinary
 20 Counsel of Supreme Ct. of Ohio, 471 U.S. 626, 651 (1985); see also Environmental Def.
 21 Ctr., Inc. v. U.S. E.P.A., 344 F.3d 832, 849 (9th Cir. 2003).

22 CCSF argues that under the standard articulated in Zauderer, plaintiffs have no
 23 claim under the "compelled speech" doctrine. CCSF contends that the form that
 24 landlords are required to provide to tenants recites purely factual information regarding
 25 the Ordinance and regarding tenants' rights, and that this requirement does not constitute
 26 a mandate that landlords affirm any state-sanctioned opinion.

27 CCSF asserts further that under rational basis review, the Disclosure Provision
 28 enjoys a strong presumption of validity, and must be upheld so long as it bears some

1 rational relationship to a conceivable legitimate state purpose. CCSF contends that the
2 Disclosure Provision is rationally related to the City's legitimate interests in improving the
3 fairness of buyout negotiations by helping to ensure that tenants do not enter into them
4 without understanding their rights and without meaningful opportunities to obtain
5 information and assistance.

6 In opposition, plaintiffs assert that in requiring the landlord to provide the tenant
7 with the disclosures, the Ordinance compels the landlord to convey a City-sanctioned
8 message to that tenant. Plaintiffs contend that under Riley v. Nat'l Fed'n of the Blind, 487
9 U.S. 781, 795 (1988), "[m]andating speech that a speaker would not otherwise make
10 necessarily alters the content of the speech," and that speech compelled by the
11 government is analyzed as a content-based restriction.

12 Plaintiffs concede that Zauderer prescribes rational basis review for laws that
13 require "purely factual and uncontroversial information" to be provided to consumers, but
14 they argue that the ruling is limited to the context of commercial speech. They argue that
15 "forced disclosures" in connection with noncommercial speech, or commercial speech
16 that is "inextricably intertwined" with noncommercial speech remain subject to the full
17 protection of the First Amendment, and to strict scrutiny. Plaintiffs reiterate that the
18 "ongoing existing relationship between landlords and tenants" takes speech between
19 those parties out of the traditional "commercial speech" context and into the realm of fully
20 protected speech.

21 Plaintiffs contend that while Zauderer sanctioned the dissemination of "purely
22 factual and uncontroversial information" to consumers, id., 474 U.S. at 626, it did not
23 require them to be publicly identified or associated with another's hostile message. Here,
24 plaintiffs argue, the Ordinance requires landlords to provide a tenant with a list of
25 "tenant's rights" organizations, which plaintiffs claim effectively associates the landlord
26 with the City's endorsement of organizations that plaintiffs believe are inherently
27 adversarial to landlord interests. Plaintiffs assert that the Ordinance is far more like the
28 requirement at issue in Pacific Gas & Elec. Co. v. Public Utilities Comm'n, 475 U.S. 1

1 (1986), where the Court struck down a requirement by the PUC that required PG&E to
2 apportion space in its billing envelopes for inserts by a public consumer group whose
3 views were opposed to those of PG&E.

4 The compelled disclosures in this case constitute purely factual information
5 regarding the Ordinance and tenants' legal rights, and do not communicate any opinion
6 or viewpoint with regard to buyout discussions or buyout agreements, including any
7 suggestion that buyouts should be considered beneficial or harmful. Riley is
8 distinguishable, as the law in that case imposed a requirement that professional
9 fundraisers disclose to potential donors, before an appeal for funds, the percentage of
10 charitable contributions collected during the previous 12 months that were actually turned
11 over to charity. Id., 487 U.S. at 795. The Court found that charitable solicitations, even if
12 considered commercial, are inextricably intertwined with fully protected informative and/or
13 persuasive speech, and for that reason applied the test for fully protected speech. Id. at
14 796. Here, by contrast, whatever else landlords and tenants may discuss, it is entirely
15 feasible to engage in a buyout negotiation without also engaging in other fully protected
16 speech.

17 Moreover, in requiring that the disclosure form include contact information for
18 tenants' rights organizations, the Ordinance does not require the landlord to be publicly
19 identified or associated with "a hostile third party's message." The challenged law in the
20 Pacific Gas & Elec. case required PG&E to include in billing envelopes copies of letters
21 from third parties with views hostile to PG&E. The Court found that this requirement
22 violated the First Amendment, because PG&E would effectively be forced "either to
23 appear to agree with [the third parties'] views or to respond," and it distinguished
24 Zauderer on the ground that PG&E was forced to "carry the messages of third parties,
25 where the messages themselves are biased against or are expressly contrary to the
26 corporation's views." Id., 475 U.S. at 14-15 & n.12. Here, however, the landlords are not
27 required to carry any messages from tenants' rights organizations – just names and
28 contact information – and the disclosure form does not in any way endorse the messages

1 of those organizations.

2 Under Zauderer, the appropriate level of scrutiny is rational basis, and the
3 Ordinance easily satisfies that test, as the requirement that landlords provide tenants with
4 the disclosure form is reasonably related to the City's interest in providing that
5 information.⁵ Further, the Notification Provision is a simple filing requirement that does
6 not subject the landlord's speech to any government approval, and the requirement is
7 satisfied once the single one-page declaration form is filed. This requirement does not
8 burden or meaningfully delay the landlord's ability to engage in buyout negotiations.

9 2. Violation of right to settle disputes in good faith

10 Plaintiffs allege that the Condominium Conversion Provision "impairs [their] right
11 . . . to enter into voluntary settlement of disputes, and punishes owners for entering into
12 voluntary, mutually-beneficial, wholly legal contracts with their tenants[;]" and "thus
13 illegally impairs and interferes with rights inherent in their rental agreements to settle
14 disputes in good faith." See Cplt ¶ 15.

15 CCSF argues that there is no constitutional basis for this vaguely articulated
16 "right," but that even if it does exist, plaintiffs have failed to allege facts sufficient to state
17 a viable claim. CCSF asserts that nothing in the Condominium Conversion Provision
18 prevents landlords and tenants from settling any hypothesized dispute by entering into a
19 buyout agreement on mutually acceptable terms, and contends that any temporal
20 restriction on an owner's ability to engage in a condominium conversion after particular
21 buyouts have occurred at a property is not an interference with the owner's right to settle
22 a dispute by entering into a buyout agreement with a tenant.

23 CCSF also contends that the regulation of condominium conversions lies within a
24 municipality's police power, and that it need only be reasonably related to a legitimate
25 government purpose. Here, CCSF notes, the restrictions are limited to buyouts involving
26

27 ⁵ Moreover, as explained above, the Ordinance survives even intermediate scrutiny
28 under Central Hudson.

1 senior, disabled, or catastrophically ill tenants (who can face greater hurdles in securing
2 new housing), or multiple buyouts within the same building (which could have a greater
3 impact on the availability of affordable rental housing). CCSF asserts that the
4 Condominium Conversion Provision passes muster under rational basis review, and a
5 provision that must be upheld as a valid exercise of the City's police power does not
6 become unlawful simply because it may reduce one potential incentive for an owner to
7 regain possession through a buyout agreement.

8 In their opposition, plaintiffs recharacterize this claim. They now assert that the
9 Condominium Conversion Project violates the "constitutional right to contract for lawful
10 purposes." Plaintiffs contend that this "right to contract" includes the right to amend
11 existing contracts. In support, they cite California Civil Code § 1698(a) ("[a] contract in
12 writing may be modified by a contract in writing"). They assert that prior to the enactment
13 of the Ordinance, landlords and tenants had an "unrestricted right" to voluntarily
14 renegotiate their leases so as to terminate a tenancy upon mutually agreeable terms, but
15 that CCSF has severely and arbitrarily burdened that "right" by imposing a significant
16 "penalty" on landlords who exercise their right to buy out tenants. Plaintiffs also contend
17 that penalizing landlords who have complied with the Ordinance's requirements interferes
18 with the ability of tenants to engage in lawful contracting, by discouraging landlords from
19 entering buyout agreements tenants may desire.

20 Plaintiffs' attempted reformulation of the asserted "right" does not save this claim,
21 because the Constitution protects freedom of contract only by limiting the states' powers
22 to modify or affect contracts already formed. See McCarthy v. Mayo, 827 F.2d 1310,
23 1315 (9th Cir. 1987); see also Oceanside Mobilehome Park Owners' Assn. v. City of
24 Oceanside, 157 Cal. App. 3d 887, 908-09 (1984) (contract clause prohibits only statutes
25 impairing existing contracts). By contrast, the Condominium Conversion Provision
26 applies only to buyout agreements signed after the Ordinance's enactment.

27 Moreover, "[t]he constitutional principle of inviolability of contracts is subject to the
28 one great qualification that contractual rights, like all other forms of property, are held

1 subject to the exercise of police power.” Briggs v. City of L.A., 154 Cal. App. 2d 642, 645
2 (1957). “California courts have consistently treated condominium conversion regulation
3 as a legitimate exercise of the police power.” Leavenworth Props. v. City & Cnty. of S.F.,
4 189 Cal. App. 3d 986, 990-91 (1987). The Subdivision Map Act (“SMA”), Cal. Gov’t Code
5 §§ 66410 et seq., is “the primary regulatory control” governing the subdivision of real
6 property in California. Hill v. City of Clovis, 80 Cal. App. 4th 438, 445 (2000).
7 Condominium projects are expressly defined as subdivisions within the meaning of the
8 SMA. Cal. Gov’t Code § 66424. The SMA vests the “[r]egulation and control of the
9 design and improvement of subdivisions” in the legislative bodies of local governments
10 which must promulgate ordinances on the subject. Id. § 66411. Under the SMA, local
11 governments possess the powers necessary to set condominium conversion restrictions.
12 See Soderling v. City of Santa Monica, 142 Cal. App. 3d 501, 507-08 (1983).

13 A municipality’s police power includes the ability to limit an economic incentive to
14 engage in a transaction – such as condominium conversion – that it believes poses a risk
15 of harming particularly vulnerable tenants or has a more significant impact on the
16 availability of rental housing. See Griffin Dev. Co. v. City of Oxnard, 39 Cal. 3d 256, 262-
17 66 (1985). Such a regulation need only be reasonably related to a legitimate government
18 purpose. Id. The exercise of this police power does not violate any constitutional right to
19 contract, and plaintiffs have cited no authority for the proposition that the right to contract
20 under either the federal or state constitution prohibits a government from enacting
21 prospective legislation, otherwise concededly within its legitimate power, if it diminishes in
22 any way the economic incentives to engage in a particular transaction.

23 A limit on a landlord’s ability to convert a rental unit into a condominium plainly
24 does not interfere with the landlord’s ability either to “settle disputes in good faith” or to
25 “contract for lawful purposes.” With or without the limits on condominium conversion, the
26 landlord still has the right to negotiate a buyout with a tenant. What plaintiffs appear to
27 be objecting to is the imposition of a limit on a hypothetical possibility of condominium
28

1 conversion.⁶ Apart from the fact that it is questionable that plaintiffs have standing to
 2 raise such a claim absent an allegation of actual injury, the City already has limits on
 3 condominium conversions, and is legally entitled to impose such limits.

4 3. Violation of equal protection and due process rights

5 Plaintiffs allege that the Ordinance violates their rights to equal protection and due
 6 process.⁷ They assert that the Ordinance prohibits an owner from speaking about a
 7 buyout without a tenant's written consent; punishes an owner who has entered into a
 8 buyout agreement by barring condominium conversions in the building for ten years, with
 9 no similar penalty on the tenant; grants a tenant the power to unilaterally rescind a buyout
 10 agreement for 45 days after it is entered into, but grants an owner no similar power;
 11 requires the owner to file the buyout agreement with the Rent Board and to disclose the
 12 identity of all persons with decision making authority for the owner, and commands that
 13 this information be published on the Rent Board's web site, but directs that any tenant
 14 information be redacted and not published; and makes the owner bear the burden of any
 15 departure from the Ordinance's elaborate rules. See Cplt ¶ 16.

16 The Equal Protection Clause of the Fourteenth Amendment requires that persons
 17 who are similarly situated be treated alike. City of Cleburne v. Cleburne Living Center,
 18 Inc., 473 U.S. 432, 439 (1985); Shakur v. Schriro, 514 F.3d 878, 891 (9th Cir. 2008). A
 19 plaintiff may state an equal protection claim by alleging facts showing that the defendant

20 _____
 21 ⁶ San Francisco provides for an annual limitation on the number of units that may be
 22 converted to condominiums in a given year, and imposes other restrictions on the
 23 condominium conversion application process. See generally S.F. Subdivision Code
 24 §§ 1301, et seq.

25 ⁷ Equal protection and due process rights are analyzed the same way under federal and
 26 state constitutions. See Safeway Inc. v. City & Cnty. of S.F., 797 F.Supp. 2d 964, 971
 27 (N.D. Cal. 2011); Habitat Tr. for Wildlife, Inc. v. City of Rancho Cucamonga, 175 Cal.
 28 App. 4th 1306, 1323 (2009). Here, the complaint does not distinguish between equal
 protection and due process, and pleads no facts in support of a due process claim,
 although the analysis applied to the two claims is similar. Thus, a municipal act that
 neither utilizes a suspect classification nor draws distinctions among individuals that
 implicate fundamental rights will violate substantive due process rights when it is shown
 that the action is not "rationally related to a legitimate governmental purpose."
Richardson v. City & Cnty. of Honolulu, 124 F.3d 1150, 1162 (9th Cir. 1997). Here, the
 court has analyzed the claim as an equal protection claim.

1 discriminated against him/her based on membership in a protected class, Comm.
2 Concerning Cmty. Improvement v. City of Modesto, 583 F.3d 690, 702-03 (9th Cir. 2009),
3 or that similarly situated individuals were intentionally treated differently, Engquist v.
4 Oregon Dep't of Agr., 553 U.S. 591, 601-02 (2008).

5 The first inquiry in the equal protection analysis is whether the legislation at issue
6 "operates to the disadvantage of some suspect class or impinges upon a fundamental
7 right explicitly or implicitly protected by the Constitution, thereby requiring strict judicial
8 scrutiny." San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 17 (1973); see also
9 Nordlinger v. Hahn, 505 U.S. 1, 10 (1992). If strict scrutiny is applied, the court will strike
10 down the legislation unless the classification drawn by the legislation is "suitably tailored
11 to serve a compelling state interest." City of Cleburne, 473 U.S. at 440. If strict scrutiny
12 does not apply, the court will presume the challenged classification to be constitutional so
13 long as the classification is rationally related to a legitimate governmental interest. Id.;
14 see also Nordlinger, 505 U.S. at 11-12.

15 CCSF argues that plaintiffs have asserted no viable basis for application of strict
16 scrutiny, and that each of the challenged Ordinance provisions is rationally related to a
17 legitimate government interest. First, CCSF contends that strict scrutiny does not apply
18 because the landlord plaintiffs are not a protected class, and the allegations of the
19 complaint do not establish the infringement of any fundamental right.

20 In opposition, plaintiffs argue that the Ordinance "implicates equal protection
21 concerns" because it applies to the speech of landlords and tenants and because it
22 subjects the "fundamental rights" of one party to a bilateral contract – i.e., landlords – to
23 unique burdens that are not placed on the other party. Plaintiffs also assert that the fact
24 that the Ordinance requires redaction of tenants' identifying information but not landlords'
25 sensitive and financial information triggers strict scrutiny (under the California
26 Constitution's equal protection clause), because the right to privacy is a fundamental right
27 enshrined in the California Constitution, and government may not discriminate among its
28 citizens in granting privacy rights without a compelling justification.

1 Because freedom of speech is a fundamental right, the U.S. Supreme Court has
2 on occasion found that content-based discrimination is not rationally related to a
3 legitimate government interest because it violates the First Amendment, thus fusing the
4 First Amendment into the Equal Protection Clause, but it has made clear that the First
5 Amendment underlies its analysis. See Police Dept. of Chicago v. Mosley, 408 U.S. 92,
6 95 (1972), cited in R.A.V. v. City of St. Paul, Minn., 505 U.S. 377, 384 n.4 (1992). Here,
7 however, as stated above with regard to the analysis of the First Amendment freedom of
8 speech claims, the Ordinance does not impose a severe burden on the landlords'
9 freedom of speech, and indeed does not violate plaintiffs' rights of speech under any
10 level of review.

11 Nor, as explained in more detail below, does the Ordinance violate plaintiffs' right
12 to privacy. As for plaintiffs' argument that because the Ordinance requires the redaction
13 of tenant, but not landlord, names, their claim of violation of the right of privacy should
14 also receive strict scrutiny, plaintiffs have ignored the fact that the landlord's ownership of
15 the property is already a matter of public record, whereas the identity of the tenant is not.
16 Thus, to redact the name of the tenant in a buyout agreement but not the name of the
17 landlord is in accord with the practice already being followed.

18 Thus, because the plaintiff landlords are not a protected class, see Sylvia
19 Landfield Tr. v. City of L.A., 729 F.3d 1189, 1191 (9th Cir. 2013) (applying rational basis
20 standard to substantive due process claim), and because the Ordinance does not infringe
21 on any fundamental right, plaintiffs' equal protection challenge must be considered under
22 rational basis review, which requires only that any classification rationally further a
23 legitimate state interest. See Nordlinger, 505 U.S. at 10. Governmental action is
24 rationally related to a legitimate goal unless the action is "clearly arbitrary and
25 unreasonable, having no substantial relation to the public health, safety, morals, or
26 general welfare." Lebbos v. Judges of Sup. Ct., Santa Clara Cnty., 883 F.2d 810, 818
27 (9th Cir. 1989) (citation and quotation omitted).

28 CCSF argues that landlords and tenants are not similarly situated, and that in any

1 event, the challenged provisions are rationally related to legitimate governmental
2 interests. First, with regard to the claim that the Ordinance prohibits an owner from even
3 speaking about a buyout without a tenant's written consent, CCSF reiterates that the
4 Ordinance does not condition the right to speak on the tenant's signature. Moreover,
5 CCSF asserts, the Disclosure Provision presents no equal protection issue because it
6 rationally distinguishes between landlords and tenants based on disparities in bargaining
7 position and based on landlords' unique incentives to pressure tenants into accepting
8 buyouts, including the avoidance of restrictions and regulations that apply to no-fault
9 evictions.

10 Second, with regard to the claim that the Ordinance punishes an owner who has
11 entered into a buyout agreement by barring condominium conversions in the building for
12 ten years, with no similar penalty on the tenant, CCSF argues that owners and tenants
13 are not similarly situated with respect to restrictions on condominium conversions. CCSF
14 contends that the restrictions apply at the property where the buyout occurred, and it is
15 the property owner who is likely to be motivated by the financial benefits of condominium
16 conversions when they seek to induce tenants to vacate. Moreover, CCSF argues,
17 restrictions on condominium conversions are reasonably related to the City's interest in
18 maintaining rental housing inventory, as the use of buyout agreements to avoid the
19 regulations on condominium conversions that apply in the context of no-fault evictions
20 can undermine the protections those regulations provide.

21 Third, with regard to the claim that the Ordinance grants a tenant 45 days to
22 unilaterally rescind a buyout agreement, but grants an owner no similar power, CCSF
23 contends that landlords and tenants are also not similarly situated with regard to the
24 purposes of this law. CCSF asserts that the Rescission Provision is reasonably related
25 to the City's legitimate interest in protecting tenants by remediating disparities in
26 bargaining position and allowing tenants sufficient time to consult with a tenants' rights
27 specialist.

28 Fourth, with regard to the claim that the Ordinance requires that the Owner's

1 identifying information (including the identity of persons with decision-making authority)
2 be made public, but directs that tenant information be redacted, CCSF argues that the
3 disclosure of persons with decision-making authority for the landlord in terms of the
4 buyout agreement is required to be made only to the tenant, not to the public at large,
5 and is required only when the landlord is an entity rather than a natural person. CCSF
6 contends that this requirement is rationally related to the City's interest in protecting
7 tenants by increasing the fairness of buyout negotiations and agreements. CCSF asserts
8 that no valid purpose is served by concealing from tenants the identity of those persons
9 with whom they are negotiating and who have decision-making authority.

10 CCSF asserts further that the actual notice on which this information is provided to
11 the tenant is not filed with the Rent Board, and that information from buyout agreements
12 is not published on the Rent Board's website, but rather is simply made available at the
13 Rent Board's office. CCSF argues that the establishment of a database that tenants may
14 use to research buyout agreements is likewise reasonably related to the City's interest in
15 increasing the fairness of buyout negotiations and agreements. Similarly, CCSF asserts,
16 the requirement that the landlord file the buyout agreement with the Rent Board is
17 reasonably related to the City's interest in creating the database, and in collecting data to
18 understand the level of tenant displacement and inform the City's future policymaking.
19 CCSF contends that the collection of data is a legitimate goal when its purpose is to
20 understand issues that are themselves legitimate subjects of governmental concern or
21 when it will contribute to future policymaking.

22 Fifth, CCSF argues, the differential treatment of landlord and tenant information –
23 i.e., the redaction only of the latter – is neither arbitrary nor irrational because landlords
24 and tenants are not similarly situated. CCSF contends that the information collected from
25 landlords concerns their business operation, whereas the tenant information pertains to
26 the tenant's residence. CCSF notes that information regarding ownership of real property
27 is already a matter of public record through CCSF offices, and that information about land
28 ownership is available online. CCSF asserts that information about landlords helps

1 ameliorate the disparities in bargaining position between landlords and tenants, as
2 landlords may own multiple properties throughout the City, and tenants' bargaining
3 position is likely to be improved if they can query the database by landlord name, while
4 landlords will already have information about tenants with whom they have entered into
5 buyout agreements.

6 Finally, with regard to the claim that the Ordinance makes the owner bear the
7 burden of any departure from the Ordinance's elaborate rules, CCSF contends that
8 because the Ordinance places certain obligations on landlords, there is nothing arbitrary
9 or irrational about making the landlord "bear the burden" when the landlord fails to satisfy
10 them.

11 In opposition, plaintiffs do not respond to CCSF's arguments regarding the
12 application of the rational basis standard to the specific equal protection claims asserted
13 in the complaint.

14 The court finds that the complaint fails to plead facts showing that landlords and
15 tenants are similarly situated with regard to the challenged provisions, but were treated
16 differently with no legitimate government purpose. In particular, plaintiffs have
17 overlooked the threshold requirement that they allege facts showing that landlords and
18 tenants are in fact similarly situated for purposes of the challenged law.

19 The court agrees with CCSF that landlords and tenants are not similarly situated
20 with regard to bargaining position, with regard to restrictions on condominium
21 conversions, with regard to the purposes of the provision allowing tenants 45 days to
22 rescind a buyout agreement, and with regard to the release of identifying information.
23 Moreover, each of the challenged provisions is rationally related to a legitimate
24 government interest.

25 4. Violation of right to privacy

26 Plaintiffs allege that the Ordinance violates the right to privacy under the California
27 Constitution by "making personal information about the landlord and his/her/its business
28 activities publically available without any legitimate purpose." Cplt ¶ 17.

1 The Ordinance provides that certain information will be made publicly available at
2 the office of the San Francisco Rent Board. This includes the landlord's "name, business
3 email address, and business telephone number;" the address of the rental unit that may
4 be the subject of buyout negotiations; the landlord's certification that the tenant was
5 provided with the required notice of rights; and the searchable database with information
6 from, and copies of, buyout agreements required to be filed with the Rent Board.

7 "[A]rticle I, section 1 of the California Constitution creates a right of action against
8 private as well as government entities." Hill v. National Collegiate Athletic Assn., 7 Cal.
9 4th 1, 15-20 (1994). "The constitutional provision is self-executing; hence, it confers a
10 judicial right of action on all Californians. Privacy is protected not merely against state
11 action; it is considered an inalienable right which may not be violated by anyone." Id. at
12 18 (citations omitted).

13 To state a claim for violation of the right to privacy under the California
14 Constitution, a plaintiff must allege facts sufficient to show a legally protected privacy
15 interest, consisting of either "informational privacy" (an interest which precludes the
16 dissemination or misuse of sensitive and confidential information) or "autonomy privacy"
17 (an interest in making intimate personal decisions or conducting personal activities
18 without observation, intrusion, or interference); a reasonable expectation of privacy under
19 the circumstances; and conduct by the defendant constituting a "serious invasion" of
20 privacy such as constitutes "an egregious breach of the social norms underlying the
21 privacy right. See id. at 35-37 (citing Cal. Const. art. 1, § 1).

22 CCSF argues that landlords have no legally protected privacy interest – let alone a
23 reasonable expectation of privacy – in the information required to be disclosed. CCSF
24 contends that while privacy interests would warrant redaction of a tenant's identifying
25 information, landlords have no privacy interest in their names and business contact
26 information. Moreover, CCSF argues, because ownership of property is a matter of
27 public record, a landlord has no basis to object to the association of his/her/its name with
28 the address of the property at issue.

1 Similarly, CCSF asserts that landlords have no legally protected privacy interest or
2 reasonable expectation of privacy in the certification that they have provided the tenants
3 with the required notice of rights, or in the transactional information related to their buyout
4 of a tenant, as this is not the type of private financial information that has been held to be
5 protected by the right of privacy. Moreover, CCSF argues, unlike in transactions with
6 financial institutions, a landlord has no reasonable expectation of confidential treatment in
7 any event, as tenants are free to disclose details of the transaction to anyone they
8 choose.

9 In a further argument, CCSF contends that were there an invasion of privacy,
10 plaintiffs would still not be able to prevail on this claim because the recording
11 requirements substantively further countervailing interests. CCSF argues that these
12 privacy rights are not absolute, but rather are to be balanced against countervailing
13 interests.

14 In opposition, plaintiffs assert that the Ordinance violates the landlords'
15 constitutional right to privacy, because it requires the widespread public dissemination of
16 "detailed, sensitive information about the landlords' private financial affairs." By contrast,
17 plaintiffs argue, the Ordinance protects the tenants' "comparable private financial
18 information, by requiring that it be redacted."

19 In response to CCSF's suggestion that plaintiffs have no reasonable expectation
20 of privacy in this information because most of it is already publicly available, plaintiffs
21 assert that "the breadth of the information disclosed here goes far beyond anything that is
22 otherwise made publicly available, or that considered in any of the cases cited by the
23 City." Specifically, they point to the fact that "entire buyout agreement, including all of the
24 financial terms such as the amount of consideration agreed to," will be made publicly
25 available. They maintain that landlords "undoubtedly have a 'reasonable expectation' of
26 privacy with respect to such sensitive details of their financial dealings." For this reason,
27 and because the information will be publicly disseminated, they contend that there is a
28 "substantial invasion" of landlords' privacy interests.

1 Plaintiffs refer in general terms to “sensitive details of their financial dealings,” but
2 it appears beyond doubt that the only information they do not want disclosed is the actual
3 amount offered and agreed to for a particular buyout. The landlord’s contact information
4 and the address of the rental unit subject to the buyout negotiations are matters of public
5 record. The statement that the landlord provided each tenant with the disclosure form
6 before commencing buyout negotiations does not implicate any personal information.

7 Plaintiffs offer no reason to conclude that the amount of the buyout is more
8 sensitive or private than other information routinely submitted to the government and
9 made publicly accessible. Transactions involving the landlord-tenant relationship have
10 long been subject to regulations requiring the landlords to submit similar kinds of
11 information to governmental entities in records that are accessible to members of the
12 public. For example, a landlord seeking to impose a rent increase in excess of the
13 generally applicable limitations must file a petition with the Rent Board that includes
14 (among other things) the landlord’s name and contact information, the property address,
15 information about proposed expenditures where applicable, and the current rent for each
16 unit and the proposed increase. S.F. Rent Board Forms 526, 528, 530, 531, and 532;
17 S.F. Admin. Code §§ 37.7, 37.8; S.F. Residential Rent Stabilization and Arbitration Board
18 Rules and Regulations, §§ 5.10, 5.11. Landlords must disclose similar information when
19 they seek to withdraw residential units from the rental market under the Ellis Act. Rent
20 Board Form 541; Cal. Gov’t. Code § 7060.4; S.F. Admin. Code, § 37.9A(f). Similar
21 information is required in applications for condominium conversions, including detailed
22 rental history and proposed sale prices. S.F. Subd. Code, Art. 9, § 1381.

23 In short, plaintiffs have alleged no facts showing that landlords have a legally
24 protected privacy interest or a reasonable expectation of privacy in the certification that
25 they have provided the tenants with the required notice of rights, or in the transactional
26 information related to their buyout of a tenant. In particular, the amount paid by a
27 landlord to buy out a tenant is not the type of private financial information that has been
28 held to be protected by the right of privacy. See e.g., People v. Blair, 25 Cal. 3d 640, 652

1 (1979) (credit card statements); Burroughs v. Sup. Ct., 13 Cal. 3d 238, 243 (1974)
 2 (banking records). Moreover, unlike in transactions with financial institutions, a landlord
 3 has no reasonable expectation of confidential treatment in any event, as tenants are free
 4 to disclose details of the transaction to anyone they choose.

5 As for CCSF's second main argument, it is true that as an affirmative defense to a
 6 claim of invasion of constitutional privacy rights, the defendant may show that "the
 7 invasion is justified by a competing interest." Hill, 7 Cal. 4th at 38-40. However,
 8 dismissal under Rule 12(b)(6) on the basis of an affirmative defense is proper only if the
 9 defendant shows some obvious bar to securing relief on the face of the complaint.
 10 ASARCO, LLC v. Union Pacific R. Co., 765 F.3d 999, 1004 (9th Cir. 2014).

11 Here, CCSF argues that any invasion of privacy is justified because the
 12 disclosures substantively further the City's legitimate countervailing interests. CCSF's
 13 argument asserts a defense rather than pleading defect. An affirmative defense cannot
 14 serve as a basis for dismissal unless it is obvious on the face of the complaint. Rivera v.
 15 Peri & Sons Farms, Inc., 735 F.3d 892, 902 (9th Cir. 2013). Here, the complaint alleges
 16 no facts that can be read as supporting CCSF's asserted defense.

17 CONCLUSION

18 In accordance with the foregoing, the motion for judgment on the pleadings as to
 19 the first cause of action is GRANTED. The second cause of action is also dismissed, on
 20 the basis that injunctive relief is not a standalone cause of action in federal court. The
 21 third cause of action for declaratory relief is duplicative of the first cause of action, and is
 22 also dismissed. Because the court finds that amendment would be futile, the dismissal is
 23 with prejudice.

24
 25 **IT IS SO ORDERED.**

26 Dated: November 5, 2015



27
 28

 PHYLLIS J. HAMILTON
 United States District Judge