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Attorneys for Plaintiffs



FEB 2 7 2019

CLERK OF THE COURT
ROSSALY DE LA VEGA

Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

(UNLIMITED JURISDICTION)

SAN FRANCISCO APARTMENT ASSOCIATION, COALITION FOR BETTER HOUSING, SAN FRANCISCO ASSOCIATION OF REALTORS, and SMALL PROPERTY OWNERS OF SAN FRANCISCO INSTITUTE,

Plaintiffs,

VS.

CITY AND COUNTY OF SAN FRANCISCO, and DOES 1-20,

Defendants.

Case No.: PF-19-516566

VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

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Plaintiffs SAN FRANCISCO APARTMENT ASSOCIATION (hereinafter 1. COALITION FOR BETTER HOUSING (hereinafter "CBH"), SAN "SFAA"), FRANCISCO ASSOCIATION OF REALTORS (hereinafter "SFAR"), and SMALL PROPERTY OWNERS OF SAN FRANCISCO INSTITUTE (hereinafter "SPOSFI") (hereinafter collectively "Plaintiffs"), petition this Court for a writ of mandate and injunctive and declaratory relief directed against Defendant CITY AND COUNTY OF SAN FRANCISCO (hereinafter "City" or "Defendant") and seek an order declaring Ordinance No. 005-19 (the Ordinance) to be illegal and unenforceable. As discussed herein, the Ordinance amends San Francisco Administrative Code sections 37.10A ("Section 37.10A") and 37.10B ("Section 37.10B") in an attempt to penalize landlords for imposing rent increases in circumstances where such increases are expressly authorized by state statute. The Ordinance was finally passed by the San Francisco Board of Supervisors on January 15, 2019; signed by the Mayor on January 25, 2019; and became effective on or about February 24, 2019. A true and correct copy of the Ordinance is attached hereto as Exhibit A. The Ordinance specifically targets units protected by the Costa-Hawkins Residential Housing Act, Civ. Code § 1954.50, et seq. ("Costa-Hawkins"), and is preempted by that statute.

2. Plaintiff SFAA, founded in 1917, is a full-service, non-profit trade association of persons and entities who own residential rental properties in San Francisco. SFAA currently has more than 2,800 active members who own more than 65,000 residential rental units in San Francisco; members include hundreds of "mom and pop" owners who own and rent single-family residences and other residential buildings. SFAA is dedicated to educating, advocating for and supporting the rental housing community and preserving the property rights of all residential rental property providers in San Francisco. SFAA fields hundreds of calls each month from property owners with questions about their rights and duties under state law and San Francisco's very complicated and lengthy laws and regulations governing residential rental property and owners. The Ordinance applies to SFAA members who own and

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to exercise their statutory rights with respect residential rental property they own in San Francisco. SFAA has standing because (i) individual members of SFAA by virtue of their property ownership are subject to the Ordinance and could have challenged it in their own right; (ii) the ability of residential rental property owners to exercise their rights under Costa-Hawkins free from punitive consequences is germane to SFAA's organizational purpose; and (iii) this preemption challenge to the Ordinance under Costa-Hawkins does not require participation of individual members of SFAA. 3. Plaintiff CBH is a non-profit trade organization representing persons and entities who own over 20,000 residential rental units in San Francisco. Organized in 1979, the purpose and objective of CBH is to work to bring a healthier real estate climate to the rental housing industry in San Francisco and to advocate for, support, and protect the property and legal rights of CBH members and other rental property owners in the city. As residential rental property owners, CBH members own buildings subject to the provisions of the Ordinance. The ability of residential property owners to exercise their rights free from the constraints of the Ordinance is germane to CBH's organizational purpose, and this challenge does not require the participation of individual members of CBH. CBH and its members are directly and adversely affected by the Ordinance. Said legislation harms said CBH

and its members by adversely affecting their ability to manage and otherwise control

real property, and to exercise their statutory rights with respect to residential rental

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property they own in San Francisco, and subjects them to criminal prosecutions and substantial penalties for exercising rights expressly authorized by Costa-Hawkins. CBH has standing because (i) individual members of CBH by virtue of their property ownership are subject to the Ordinance and could have challenged it in their own right; (ii) the ability of residential rental property owners to exercise their rights under Costa-Hawkins free from punitive consequences is germane to CBH's organizational purpose; and (iii) this preemption challenge to the Ordinance under Costa-Hawkins does not require participation of individual members of CBH.

Plaintiff SFAR is the official association of licensed real estate brokers 4. and real estate agents in San Francisco. SFAR has over 4,300 members who are dependent for their livelihood upon the sale and management of real property in San Francisco. The great majority of SFAR member brokers and agents are involved in purchases, sales and/or management of San Francisco residential properties including residential rental properties. The objective and mission of SFAR is to provide programs, products and services to its member brokers and agents that will assist them in increasing productivity and realizing success. Through legal advocacy, SFAR seeks to protect the rights of small property owners, including residential rental property owners, against unfair and burdensome regulations. The ability of residential property owners to exercise their rights free from the constraints of the Ordinance, is germane to SFAR's organizational purpose, as the Ordinance adversely affects the ability of SFAR's members to market, sell and manage real property in several ways. Some members manage rental properties and are charged with understanding, applying and/or complying with the Ordinance and advising owners of their rights and duties under it. Other members who are involved primarily in the purchase and sale of real property are affected because the Ordinance punishes owners who exercise their rights under Costa-Hawkins and is a disincentive to the exercise of such rights, which in turn discourages the purchase and sale of residential rental property because existing and prospective owners who would otherwise

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exercise Costa-Hawkins rights are discouraged from doing so. SFAR has standing because (i) individual members of SFAR by virtue of their property management and/or sales are subject to the Ordinance and could have challenged it in their own right; (ii) the ability of SFAR members to make a living unfettered by excessive and illegal regulation and punitive consequences is germane to SFAR's organizational purpose; and (iii) this preemption challenge to the Ordinance under Costa-Hawkins does not require participation of individual members of SFAR.

Plaintiff SPOSFI is a California nonprofit corporation and organization 5. of small property owners that advocates for home ownership and the rights of residential rental property owners in San Francisco. SPOSFI's members range from young families to the elderly on fixed incomes, and its membership cuts across all racial, ethnic, and socio-economic strata. SPOSFI's members own single-family residential properties and other residential rental real property subject to the Ordinance and are subject to the Ordinance. SPOSFI is also involved in education, outreach and research. Through education, it helps owners better understand their rights and learn how to deal with local government; through outreach to community groups and to the public, it demonstrates how restrictive San Francisco regulations harm both tenants and landlords, and through research projects, it aims to separate hyperbole from fact on the effect of rent control on housing stock. Through legal advocacy, SPOSFI seeks to protect the rights of small property owners against unfair and burdensome regulations. The ability of residential property owners to exercise their rights free from the Ordinance is germane to SPOSFI's organizational purpose, and this challenge does not require the participation of individual members of SPOSFI. The Ordinance harms SPOSFI and its members by adversely affecting their ability to manage and otherwise control their real property and to exercise their statutory rights, and subjects them to criminal prosecutions and substantial penalties for exercising rights expressly authorized by Costa-Hawkins. SPOSFI has standing because (i) individual members of SPOSFI by virtue of their property ownership are

subject to the Ordinance and could have challenged it in their own right; (ii) the ability of residential rental property owners to exercise their rights under Costa-Hawkins free from punitive consequences is germane to SPOSFI's organizational purpose; and (iii) this preemption challenge to the Ordinance under Costa-Hawkins does not require participation of individual members of SPOSFI.

- 6. Defendant CITY AND COUNTY OF SAN FRANCISCO is now, and at all times mentioned in this complaint has been, a governmental entity organized and existing under and by virtue of the Constitution and laws of the State of California. Defendant CITY is a municipal corporation whose responsibility it is to enforce and defend the Ordinance.
- 7. The Ordinance is preempted by State law and is illegal, invalid, and of no force or effect, as discussed herein.
- 8. Defendant Does 1-20 are sued herein under fictitious names because their true names and capacities are unknown to Plaintiffs. When their true names and capacities are ascertained, Plaintiffs will amend this complaint to assert their true names. Plaintiffs are informed and believe, and on that basis allege, that each of the fictitiously named Defendants is responsible in some manner for the occurrences, harms, and violations of law alleged herein.

#### FIRST CAUSE OF ACTION

### (Writ of Mandate or Other Appropriate Relief)

- 9. Plaintiffs hereby reallege paragraphs 1-8 above as fully and completely as if set forth again herein.
- 10. The Ordinance violates Costa-Hawkins, and thus the legal rights of Plaintiffs and their members and other owners of residential rental property in the City and County of San Francisco.
- 11. Costa-Hawkins wholly exempts single-family homes and separately-alienable condominiums, and units built after 1978, from San Francisco's rent control laws (Cal. Civ. Code § 1954.52), and partially exempts all other units when they

become vacant (Cal. Civ. Code § 1954.53), granting landlords the unfettered right to establish rental rates for residential rental units in specified circumstances. (*Id.*)

- 12. The Ordinance, however, purports to impose penalties on owners of residential rental units that are partially or wholly exempt from rent control if those owners increase rents in an amount "substantially in excess of market rates for comparable units" or "within six months after an attempt to recover possession of the unit." (§§ 37.10A(i) and 37.10B(a)(5), as amended.) Penalizing landlords for exercising their rights to increase rents on such exempt units is in direct contravention of Costa-Hawkins.
- 13. The Ordinance applies to rental units defined in Section 37.2(r)(7) of the San Francisco Administrative Code, which includes all "dwellings or units . . . partially or wholly exempted from rent increase limitations by the Costa-Hawkins Residential Housing Act . . . and/or San Francisco Administrative Code Section 37.3(d)." While the Ordinance's purpose and findings indicate that its provisions apply only to single-family homes, the text of the Ordinance is not so limited. (*Compare* the Ordinance § 1(d) ("Owners of single-family homes have the right to raise rents on existing tenants. This ordinance merely clarifies that these owners . . . do not have the right to impose a rent increase in bad faith in order to circumvent local eviction controls, and that such action constitutes harassment.") with § 37.10(A), as amended ("It shall be unlawful for a landlord to endeavor to recover possession of a rental unit as defined in Section 37.2(r)(7) . . . . ").)
- 14. A violation of the Ordinance is a misdemeanor and is punishable by a fine of up to one thousand dollars, imprisonment in the County Jail for up to six months, or both. (§ 37.10B(c)(2).) In addition to criminal penalties, a violation may also result in an injunction and liability for treble money damages, attorney's fees, and punitive damages. (§ 37.10B(c).)
- 15. Costa-Hawkins grants Plaintiffs' members and other owners of residential rental units in San Francisco the right to establish rental rates for certain

types of units without governmental interference and without limit. (Civ. Code §§ 1954.52, 1954.53.) The Ordinance is preempted by Costa-Hawkins because it penalizes owners of residential rental units that are wholly or partially exempt from local rent control for raising rents on those units "substantially in excess of market rates" (§§ 37.10A(i) and 37.10B(a)(5), as amended) or within six months following "an attempt to recover possession of the unit." (*Id.*)

- 16. Plaintiffs have a beneficial interest in ensuring that the Ordinance is not enforced so as to deprive them, their members and other agents, owners and managers of rental property of their statutory rights.
  - 17. Plaintiffs have no speedy or adequate remedy at law.
  - 18. This action is ripe for adjudication and is timely filed.

# SECOND CAUSE OF ACTION (Injunctive Relief)

- 19. Plaintiffs hereby reallege paragraphs 1-18 above as fully and completely as if set forth again herein.
- 20. The Ordinance's punishment of owners who exercise rights under the Costa-Hawkins Rental Housing Act, if enforced by Defendant, will cause Plaintiffs severe injury in that Plaintiffs and their members will be deprived of their statutory rights as set forth above.
- 21. Plaintiffs do not have a plain, speedy, or adequate remedy in the ordinary course of law, other than the relief requested herein. Due to the foregoing, injunctive relief is a necessary and proper remedy.

# THIRD CAUSE OF ACTION (Declaratory Relief)

- 22. Plaintiffs hereby reallege paragraphs 1-21 above as fully and completely as if set forth again herein.
- 23. An actual controversy has arisen and now exists between Plaintiffs and Defendant as to the validity and enforceability of the Ordinance. Plaintiffs contend

#### **VERIFICATION**

I, Janan New, declare as follows:

 I am the Executive Director of the San Francisco Apartment Association, Plaintiff in this action. I have read the foregoing Verified Complaint for Writ of Mandate and Injunctive and Declaratory Relief and know its contents. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe it to be true.

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

Executed this 26th day of February, 2019, at San Francisco, California.

Janan New

VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

CASE NO.

Page 10

## **EXHIBIT A**

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homes and condominiums covered by existing eviction controls from circumventing eviction controls through rent increases; and to clarify that a rent increase intended to defraud, intimidate, or coerce the tenant into vacating such a rental unit may qualify as

Ordinance amending the Administrative Code to prohibit landlords of single-family

Administrative Code - Harassment of Tenants in Single-Family Units Through Rent

tenant harassment.

NOTE:

Unchanged Code text and uncodified text are in plain Arial font. Additions to Codes are in single-underline italics Times New Roman font. Deletions to Codes are in strikethrough italies Times New Roman font. Board amendment additions are in double-underlined Arial font. Board amendment deletions are in strikethrough Arial font. Asterisks (\* \* \* \*) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Purpose and Findings.

San Francisco is experiencing a crisis shortage of affordable housing, which is contributing to a high rate of evictions and the displacement of low- and moderate-income tenant households. The Residential Rent Stabilization and Arbitration Ordinance (Admin. Code Ch. 37) addresses these concerns by imposing rent control to regulate the amount by which a landlord may increase the rent on an existing tenant; and by imposing eviction controls to regulate the bases for evictions and to mitigate the impact of evictions on tenants. The eviction controls also include provisions to regulate against tenant harassment, which has been on the rise during the housing crisis.

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- (b) The Costa-Hawkins Rental Housing Act, California Civil Code Sections 1954.50 et seq., guarantees the owner of a separately alienable property (hereafter, "single-family home") to raise the rent on an existing tenant, but also states, at Section 1954.52(c), that "[n]othing in this section shall be construed to affect the authority of a public entity that may otherwise exist to regulate or monitor the basis for eviction." The City has long exercised this authority, by regulating evictions and tenant harassment, and these regulations apply to all rental units covered by the Rent Ordinance including single-family homes.
- (c) In recent years, San Francisco has witnessed multiple cases where the owner of a single-family home attempted to circumvent eviction controls and coerce a tenant to vacate a rental unit by means of an exorbitant rent increase. On March 16, 2015, the San Francisco Chronicle reported that the landlord of a two-unit building subject to rent control had modified one of the units so that it was no longer habitable, claimed the building was a single-family home, and then increased the rent by 315% to far above market rates for comparable units in the area for the purpose of forcing the tenant to vacate the unit. The landlord intended to move into the unit herself, and therefore, under the Rent Ordinance, was required to perform an owner move-in ("OMI") eviction and comply with certain obligations including the duty to provide the tenant a relocation payment. The landlord did not expect to collect the new rent from the tenant, but rather just wanted to coerce the tenant into leaving. In a similar case from 2017, the owner of a two-unit building allegedly removed one of the units, claimed the building was a single-family home, and then raised the rent to far above market rate by means of a 250% rent increase in an attempt to circumvent the OMI requirements and coerce the tenant into vacating the unit. Tenant advocates estimate that many similar cases arise in San Francisco every year.
- (d) Owners of single-family homes have the right to raise rents on existing tenants. This ordinance merely clarifies that these owners, like any owner of any other rental housing

in the City, do not have the right to <u>impose a rent increase harass tenants</u> in bad faith in order to circumvent local eviction controls, and that such <u>action constitutes</u> harassment through rent increases that are imposed in bad faith.

Section 2. The Administrative Code is hereby amended by revising Sections 37.10A and 37.10B, to read as follows:

SEC. 37.10A. MISDEMEANORS, AND OTHER ENFORCEMENT PROVISIONS.

(i) It shall be unlawful for a landlord to endeavor to recover possession of a rental unit as defined in Section 37.2(r)(7) by means of a rent increase that is imposed in bad faith with an intent to defraud, intimidate, or coerce the tenant into vacating the rental unit in circumvention of Section 37.9(a), 37.9A, 37.9B, or 37.9C. Evidence of bad faith may include but is not limited to the following: (1) the rent increase was substantially in excess of market rates for comparable units; (2) the rent increase was within six months after an attempt to recover possession of the unit; and (3) such other factors as a court or the Rent Board may deem relevant.

(j)(i) Any person who violates Section 37.10A(a), (b), (c), (f), or (h) is guilty of a misdemeanor and shall be punished by a mandatory fine of \$1,000, and in addition to such fine may be punished by imprisonment in the County Jail for a period of not more than six months. Each violation shall constitute a separate offense.

#### SEC. 37.10B. TENANT HARASSMENT.

(a) No landlord, and no agent, contractor, subcontractor or employee of the landlord, shall do any of the following, in bad faith or with ulterior motive or without honest intent:

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(5) Influence or attempt to influence a tenant to vacate a rental housing unit through fraud, intimidation or coercion; for example and without limitation, by endeavoring to recover possession of a rental unit as defined in Section 37.2(r)(7) by means of a rent increase that is imposed with an intent to defraud, intimidate, or coerce the tenant into vacating the rental unit in circumvention of Section 37.9(a), 37.9A, 37.9B, or 37.9C, in which case evidence of bad faith may include but is not limited to the following: (1) the rent increase was substantially in excess of market rates for comparable units; (2) the rent increase was within six months after an attempt to recover possession of the unit; and (3) such other factors as a court or the Rent Board may deem relevant.

\* \* \* \*

Section 3. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

Section 5. Application and Enforcement. This ordinance is intended to be interpreted and applied consistent with prior judicial orders and decisions concerning Administrative Code

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Section 37.10B, including but not limited to page 1, lines 12-14, of the May 19, 2009, Order in Larson v. City and County of San Francisco, S.F. Super. Case No. 509-085 (holding that the phrase "without ulterior motive and with honest intent" is severed from Section 37.10B); and Larson v. City and County of San Francisco (2011) 192 Cal. App. 4th 1263 (holding that the Rent Board is precluded from making rent reductions under Section 37.10B(a)(5)).

Section 6. Severability. If any section, subsection, sentence, clause, phrase, or word

invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision

of this ordinance, or any application thereof to any person or circumstance, is held to be

shall not affect the validity of the remaining portions or applications of the ordinance. The

Board of Supervisors hereby declares that it would have passed this ordinance and each and

every section, subsection, sentence, clause, phrase, and word not declared invalid or

unconstitutional without regard to whether any other portion of this ordinance or application

thereof would be subsequently declared invalid or unconstitutional.

APPROVED AS TO FORM: DENNIS J. HERRERA, City Attorney

By: MANU PRADHAN

Deputy City Attorney

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### City and County of San Francisco **Tails**

City Hall 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4689

#### Ordinance

File Number:

180735

Date Passed: January 15, 2019

Ordinance amending the Administrative Code to prohibit landlords of single-family homes and condominiums covered by existing eviction controls from circumventing eviction controls through rent increases; and to clarify that a rent increase intended to defraud, intimidate, or coerce the tenant into vacating such a rental unit may qualify as tenant harassment.

December 05, 2018 Rules Committee - RECOMMENDED

December 11, 2018 Board of Supervisors - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

> Ayes: 11 - Brown, Cohen, Fewer, Kim, Mandelman, Peskin, Ronen, Safai, Stefani, Tang and Yee

December 11, 2018 Board of Supervisors - PASSED ON FIRST READING AS AMENDED

Ayes: 11 - Brown, Cohen, Fewer, Kim, Mandelman, Peskin, Ronen, Safai, Stefani, Tang and Yee

January 15, 2019 Board of Supervisors - FINALLY PASSED

Ayes: 10 - Brown, Fewer, Haney, Mandelman, Mar, Peskin, Ronen, Safai, Stefani

and Yee

Excused: 1 - Walton

File No. 180735

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 1/15/2019 by the Board of Supervisors of the City and County of San Francisco.

London N. Breed Mayor

Date Approved