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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

CALIFORNIA APARTMENT ASSOCIATION, STEPHEN LIN, RAKESH and TRIPTI JAIN, ALISON MITCHELL, MICHAEL HAGERTY, & H. ALEX and DANNIE ALVAREZ,

Plaintiffs and Petitioners,

v.

COUNTY OF ALAMEDA, BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, and DOES 1-25,

Defendants and Respondents.

Case No. 3:22-cv-02705-LB
(Related Case No. 3:22-cv-01274-LB)

COUNTY DEFENDANTS' NOTICE OF MOTION AND MOTION FOR JUDGMENT ON THE PLEADINGS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

Date: February 1, 2024
Time: 9:30 a.m.
Courtroom: Courtroom B, 15th Floor

The Hon. Laurel Beeler

Action Filed: March 1, 2022
Trial Date: none set

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NOTICE OF HEARING

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on February 1, 2024, at 9:30 a.m. or as soon thereafter as counsel may be heard by the Court, located at 450 Golden Gate Avenue, San Francisco, California, in the courtroom of the Honorable Laurel Beeler, Defendants County of Alameda and County of Alameda Board of Supervisors will and hereby do move this Court for judgment on the pleadings against Plaintiffs. This motion is brought pursuant to Rule 12(c) of the Federal Rules of Civil Procedure on the grounds that Plaintiffs' complaint fails to state a claim upon which relief can be granted, the Court lacks jurisdiction to hear Plaintiffs' request for a writ of mandate, and the Court cannot grant Plaintiff California Apartment Association relief against the County.

This motion is based on this Notice of Motion and the attached Memorandum of Points and Authorities, pleadings and papers on file herein, and upon such other matters as may be presented to the Court at the time of the hearing.

As stipulated by the parties and ordered by the Court, this motion has been filed on or before November 10, 2023. Any opposition must be filed on or before December 28, 2023, and any reply must be filed on or before January 12, 2024.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Nearly a year ago, this Court denied both Plaintiffs' summary judgment motion in this action and the summary judgment motion filed by plaintiffs in the related case (Case No. 3:22-cv-01274-LB) ("*Williams*"), upholding the County's COVID-19 eviction moratorium ("Moratorium") against facial physical takings, Contracts Clause, procedural due process, and state law claims. Since then, intervening rulings have only further undermined Plaintiffs' claims, and the Moratorium's expiration at the end of April debunked any concerns that it would last indefinitely. The Complaint fails to allege facts showing plausible claims, bases its claims on legal theories that lack merit, and, as to one Plaintiff, cannot support subject-matter jurisdiction.

Regarding Plaintiffs' facial physical takings claim, the Court has already found that the Moratorium does not compel landlords to suffer physical invasion and accordingly does not effect a taking. And the Ninth Circuit recently affirmed the Court's reasoning. Plaintiffs also fail to state an as-applied physical takings claim because the Complaint alleges no particular circumstances of one or more Plaintiffs that could lead to a different result.

The Complaint's cursory allegations also fail to support a regulatory takings claim under *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978). It fails to provide any information about the impact of the Moratorium on the value of any of Plaintiffs' properties. A severe impact on the value of property is an indispensable element of a *Penn Central* claim.

Nor does the Complaint allege a cognizable Contracts Clause Claim. As the Court has already found, the Moratorium, on its face, does not substantially impair Plaintiffs' contractual rights. And the Moratorium reasonably advanced the legitimate purposes of promoting housing stability and reducing virus transmission during the pandemic. The Complaint also fails to allege sufficient facts to support an as-applied claim.

Each of Plaintiffs' due process claims must also be dismissed. This Court has already rejected a facial procedural due process claim against the Moratorium, and that same ruling

foreclosures any as-applied claim. Plaintiffs' substantive due process claims fair no better. The Moratorium's provisions are plainly rationally related to its legitimate purposes. And the Complaint cannot state a cognizable as-applied substantive due process claim. The Moratorium's expiration mooted Plaintiffs' request for a writ of mandate to correct alleged violations of the Ellis Act—a purely prospective remedy. In any event, this Court has already found that the Moratorium does not violate state law.

Finally, the Court can no longer award any relief to Plaintiff California Apartment Association ("CAA") against the County. Plaintiffs' requests for declaratory relief are moot. And CAA lacks associational standing to assert damages claims on behalf of its members because participation by individual members is essential to such claims.

These defects demand dismissal of the Complaint. All but one cannot be corrected by repleading. The sole exception is Plaintiffs' *Penn Central* takings claims, which the County acknowledges should be dismissed with leave to amend.

BACKGROUND

In response to the ravaging pandemic caused by the novel coronavirus ("COVID-19"), Governor Newsom declared a State of Emergency on March 4, 2020. *See* Dkt. 43 at 1 (Order Denying Summary Judgment) ("Order"). Later that year, the Legislature enacted a series of eviction protections, including the COVID-19 Tenant Relief Act and the COVID-19 Rental Housing Recovery Act, the latter of which will remain in effect until September 30, 2024. *Id.*; Cal. Civ. Proc. Code § 1179.15.

On April 21, 2020, the County followed suit, enacting a temporary eviction moratorium ("Moratorium"). Order at 7. The County subsequently extended the Moratorium until 60 days after expiration of the local public health emergency. *Id.*; Alameda County Code of Ordinances ("County Code") § 6.120.030(A).[1]

[1] The full County Code is available online at https://library.municode.com/ca/alameda_county/codes/code_of_ordinances.

On May 5, 2022, Plaintiffs filed suit challenging the Moratorium. Plaintiffs' Complaint names eight plaintiffs and raises facial and as-applied constitutional claims, including physical and regulatory takings claims, a Contracts Clause claim, and procedural and substantive due process claims, as well as a state inverse condemnation claim and a request for writ of mandate. *See* Dkt. 1 (Complaint for Damages, Injunctive, and Declaratory Relief; Petition for Writ of Mandate) ("Compl.").

On July 18, 2022, Plaintiffs and the plaintiffs in the *Williams* case filed motions for partial summary judgment, seeking judgment on facial physical takings claims, Plaintiffs' facial Contracts Clause claim, the *Williams* plaintiffs' facial procedural due process claims, and facial challenges under state law. Dkt. 23 (Motion for Summary Judgment or Partial Summary Judgment on Facial Claims); Order at 8-9. The Court denied both motions on each claim. *See* Order.

Three months later, the County Health Officer confirmed that the local public health emergency terminated on February 28, 2023, the same day the California State of Emergency ended. Dkt. 58, Ex. A (Health Officer Order No. 23-01).[2] By its terms, the Moratorium expired 60 days later, on April 29, 2023. County Code § 6.120.030(A).

LEGAL STANDARD

A motion for judgment on the pleadings is subject to the same standards as a Rule 12(b)(6) motion to dismiss. *RLI Ins. Co. v. City of Visalia*, 297 F. Supp. 3d 1038, 1046 (E.D. Cal. 2018), *aff'd*, 770 F. App'x 377 (9th Cir. 2019). The motion is thus proper where the court lacks subject-matter jurisdiction. Article III of the Constitution "requires those who invoke the power of a federal court to demonstrate standing." *Already, LLC v. Nike, Inc.*, 568 U.S.

[2] The County sought judicial notice of this Health Officer Order when filing its Motion for Stay. *See* Dkt. 58 (County Defendants' Request for Judicial Notice in Support of Motion for Stay). This Health Officer Order is an official act and public record of a government agency that is not reasonably subject to dispute. Accordingly, it is properly subject to judicial notice. *See* Fed. R. Evid. 201; *Johnson v. Boitano*, No. 21-cv-01402-SVK, 2021 WL 4818943, at *3 n. 1 (N.D. Cal. Oct. 15, 2021); *Kater v. Churchill Downs Inc.*, 886 F.3d 784, 788 n.3 (9th Cir. 2018); Dkt. 58.

85, 90-91 (2013). It also prevents adjudication of moot claims, "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Id.* at 90-91; *Allen v. Wright*, 468 U.S. 737, 750 (1984). "The party asserting federal subject-matter jurisdiction bears the burden of proving its existence." *Chandler v. State Farm Mut. Auto. Ins. Co*, 598 F.3d 1115, 1122 (9th Cir. 2010).

The motion is also proper where the plaintiff has alleged insufficient facts to state a plausible claim on which relief can be granted. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 569-70 (2007). "A claim is the aggregate of operative facts which give rise to a right enforceable in the courts." *Bautista v. Los Angeles Cnty.*, 216 F.3d 837, 840 (9th Cir. 2000) (internal quotation marks omitted). A "plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions . . . Factual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. In other words, a plaintiff must show that there is "more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "[F]ormulaic recitation of the elements of a cause of action" is insufficient. *Id*.

In evaluating a motion for judgment on the pleadings, a court assumes all material allegations in the complaint are true, but "need not accept conclusory allegations of law or unwarranted inferences." *Perfect 10, Inc. v. Visa Int'l Serv. Ass'n*, 494 F.3d 788, 794 (9th Cir. 2007); *Nelson v. City of Irvine*, 143 F.3d 1196, 1200 (9th Cir. 1998). Nor must a court accept as true allegations that contradict facts subject to judicial notice. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

ARGUMENT

I. Plaintiffs cannot state a valid physical takings claim.

The Complaint asserts that the Moratorium "purports to prohibit Plaintiffs from evicting any renter in the COUNTY . . . for virtually any reason, with few exceptions." Compl. ¶ 54. Plaintiffs thus claim the Moratorium effects a physical taking under *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021). Compl. ¶ 54; *see also* Dkt. 25 ([Corrected] Plaintiffs' Motion for Summary Judgment or Partial Summary Judgment on Facial Claims)

at 18-25. But to raise a cognizable physical takings claim, Plaintiffs must show that the County compelled a "physical invasion of [their] property" by strangers. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982). Both this Court and the Ninth Circuit have rejected Plaintiffs' facial physical takings argument. Additionally, the Complaint does not allege and cannot be amended to allege sufficient facts to support an as-applied claim. Plaintiffs' physical takings claims therefore must be dismissed without leave to amend.[3]

A. Courts—including this one—have repeatedly rejected Plaintiffs' facial physical takings argument.

This Court found Plaintiffs' facial physical takings claim unmeritorious almost a year ago when it denied their motion for summary judgment. Plaintiffs contend that the Moratorium "illegally nullif[ies] Plaintiffs' . . . right to occupy their properties," "eliminates renters' rent obligations[,] and sanctions renters' trespassing." Compl. ¶ 54. But the Court found that the Moratorium "do[es] not absolve tenants of their contractual obligation to pay back rent." Order at 17; *see also* County Code § 6.120.090(A). Additionally, landlords could still seek to obtain unpaid rent by initiating a breach of contract action. Order at 17; County Code § 6.120.030(D). Thus, the Moratorium expressly does not eliminate a renter's obligation to pay rent, nor does it foreclose landlords' ability to enforce other lease terms. The Court also highlighted that the Moratorium includes exceptions to avoid conflict with state law and does not prohibit Ellis Act evictions. Order at 17-18. Nor did the Moratorium prohibit landlords from excluding "squatters" from their properties. *Id.* at 18; *see also* Dkt. 32 (County Defendants' Consolidated Opposition to Motions for Summary Judgment) at 27-28. Therefore, the Moratorium does not nullify Plaintiffs' right to occupy their properties or "sanction trespassing." For these reasons, the Court found that under *Yee v. Escondido*, 503 U.S. 519 (1992), the Moratorium did not compel physical invasion by "uninvited intruders."

[3] The result is the same for Plaintiffs' state and federal claims. Courts apply federal takings law to inverse condemnation claims brought under the California Constitution. *San Remo Hotel L.P. v. City & Cnty. of San Francisco*, 27 Cal. 4th 643, 664 (2002).

Rather, it was a permissible regulation of the landlord-tenant relationship not subject to analysis under the physical takings doctrine. Order at 18-21.

Just last month, in a similar challenge to a local COVID-19 eviction moratorium, the Ninth Circuit affirmed that the holding in *Yee*, "forecloses the Landlords' per se physical-taking claim." *El Papel, LLC v. City of Seattle*, No. 22-35656, 2023 WL 7040314, at *1-2 (9th Cir. Oct. 26, 2023).[4] The court found that unlike the plaintiffs in *Cedar Point Nursery*, the landlords "chose to use their property as residential rentals," and the right to exclude "is not absolute in the landlord/tenant context." *Id.* at *2 (citing *Yee*, 503 U.S. at 528); *see also Cmty. Housing Improvement Prog. v. City of New York*, 59 F.4th 540, 552-53 (2nd Cir. 2023) (*Cedar Point* does not "restrict[]—much less upend[]—the State's longstanding authority to regulate [the landlord-tenant] relationship").

Numerous other district courts have come to the same conclusion in other challenges to COVID-19 eviction moratoria. *See Gallo v. Dist. of Columbia*, 610 F. Supp. 3d 73, 87-90 (D.D.C. 2022), *aff'd*, No. 1:21-cv-03298, 2023 WL 2301961 (D.D.C. Mar. 1, 2023); *Farhoud v. Brown*, No. 3:20-cv-2226-JR, 2022 WL 326092, at *10 (D. Or. Feb. 3, 2022); *S. Cal. Rental Hous. Ass'n v. Cnty. of San Diego*, 550 F. Supp. 3d 853, 865-66 (S.D. Cal. 2021), *appeal dismissed as moot*, No. 21-55798, 2022 WL 16832819 (9th Cir. Nov. 9, 2022); *Baptiste v. Kennealy*, 490 F. Supp. 3d 353, 388 (D. Mass. 2020); *Auracle Homes, LLC v. Lamont*, 478 F. Supp. 3d 199, 220 (D. Conn. 2020); *Elmsford Apt. Assocs., LLC v. Cuomo*, 469 F. Supp. 3d 148, 162-64 (S.D.N.Y. 2020), *appeal dismissed as moot*, *36 Apt. Assocs., LLC v. Cuomo*, 860 Fed.Appx. 215 (2d Cir. 2021). In sum, the overwhelming weight of authority—and this Court's own well-reasoned decision—establish that Plaintiffs cannot state a facial physical takings claim on these facts. It thus should be dismissed with prejudice.

[4] This Court has already acknowledged the relevance of *El Papel* to Plaintiffs' physical takings claim, noting that it "present[ed] the same 'controlling question of law' . . . : what legal standard applies in analyzing whether COVID-19 moratoria are per se takings?" Dkt. 53 at 11 (Order Denying Motion to Certify Summary-Judgment Order for Interlocutory Appeal).

B. Plaintiffs cannot allege sufficient facts to support an as-applied claim.

The Complaint's allegations also cannot support an as-applied physical takings claim. An as-applied claim alleges that, even if a regulation is constitutional on its face, it is unconstitutional when applied to the plaintiff's particular circumstances. *Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 686 (9th Cir. 1993). The "[t]he substantive legal tests used in facial and as-applied challenges are 'invariant.'" *Isaacson v. Horne*, 716 F.3d 1213, 1230 (9th Cir. 2013). Therefore, the question is whether Plaintiffs have sufficiently alleged that the Moratorium compelled one or more Plaintiffs to suffer a physical invasion of their property by strangers despite the fact that the Moratorium does not do so as to landlords generally. *Loretto*, 458 U.S. at 426; *see Levald, Inc.*, 998 F.2d at 686 (in an as-applied takings claim, the question is whether "the particular impact of a government action on a specific piece of property requires the payment of just compensation.'") (citing *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 494 (1987)). Plainly, the answer is that they have not. The Complaint entirely fails to allege facts to show that, despite the Moratorium's facial constitutionality, it effects a physical taking of any one of Plaintiffs' properties due to those Plaintiffs' particular circumstances.

Moreover, Plaintiffs cannot allege a valid as-applied claim given that the Court has already found that the Moratorium's impacts on the landlord-tenant relationship do not effect a physical taking. No set of allegations would allow Plaintiffs to avoid that conclusion because the Moratorium does not provide for the exercise of discretion in its implementation; its implementation is dictated by the terms on its face. Thus, there is no application of the Moratorium that would change its impact on an affected Plaintiff. *See Wal-Mart Stores, Inc. v. City of Turlock*, 483 F. Supp. 2d 987, 1003-04 (E.D. Cal. 2006) (holding "no as-applied challenge can be asserted where a statute grants no discretion to the administering agency") (discussing *Tahoe Sierra Preservation Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1080 & n.15 (9th Cir. 2003)).

Plaintiffs have not and cannot state a cognizable physical takings claim. The Court should therefore dismiss this claim without leave to amend.

II. The Complaint fails to allege facts sufficient to state a claim under *Penn Central*.

The Complaint also asserts that the Moratorium caused a regulatory taking under the test developed in *Penn Central*, under both the federal and state constitutions. Compl. ¶¶ 55-63. The Complaint includes only cursory allegations about how the Moratorium has supposedly affected the Plaintiffs. Critically, it fails to include any allegations of the impact of the Moratorium on the value of Plaintiffs' properties. The skeletal allegations fall far short of that required to state a regulatory takings claim under *Penn Central*. The Court should dismiss the claim with leave to amend.

The *Penn Central* test entails "essentially ad hoc, factual inquiries" that turn "upon the particular circumstances [in each] case." *Penn Central*, 438 U.S. at 124 (quoting *United States v. Cent. Eureka Mining Co.*, 357 U.S. 155, 168 (1958)). The test "focuses directly upon the severity of the burden that government imposes upon [the plaintiff's] private property rights," to determine whether the challenged regulation is "functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 539 (2005). Accordingly, to state a claim under *Penn Central*, a plaintiff must allege facts showing that the challenged regulation has had a severe impact on the value of her property. 438 U.S. at 124. Specifically, the analysis requires "comparison of the pre-deprivation and post-deprivation values of the [p]roperty." *Colony Cove Props., LLC v. City of Carson*, 888 F.3d 445, 451 (9th Cir. 2018). Because a truly severe impact on the value of property is the sine qua non of a *Penn Central* claim, failure to allege that impact is fatal. *See Evans Creek, LLC v. City of Reno*, No. 21-16620, 2022 WL 14955145, at *1 (9th Cir. Oct. 26, 2022) (affirming dismissal of *Penn Central* claim because complaint failed to allege "any information about the value of the property [before the challenged action] or its value after the [action]" and thus "it [wa]s not possible for this Court to determine what the economic impact to the property [wa]s"); *see also Colony Cove*, 888 F.3d at 451 (reversing jury verdict for plaintiff for want of any evidence of the effect of the challenged rent control action on the value of

the plaintiff's property); *Garneau v. City of Seattle*, 147 F.3d 802, 808 (9th Cir. 1998) (affirming grant of summary judgment to defendant where plaintiffs put on no evidence of economic impact).

The Complaint fails to describe how the Moratorium allegedly affected the value of any, let alone all, of the Plaintiffs' properties. It fails to allege the value of any Plaintiffs' property, either before the Moratorium was enacted or with the Moratorium in place. It offers only the vague generalities that the Moratorium "devalu[ed] properties," Compl. ¶ 55, and resulted in "loss of property value and loss of opportunity value" *id.* Such conclusory pleading is insufficient to state a claim. *See Iqbal*, 556 U.S. at 678 ("A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'"); *Evans Creek*, 2022 WL 14955145, at *1 ("Conclusory statements that are unsupported by factual allegations are 'not entitled to the assumption of truth.'" (quoting *Iqbal*, 556 U.S. at 679)); *River N. Props., LLC v. City & Cnty. of Denver*, 13–cv–01410–CMA–CBS, 2014 WL 7437048, at *5 (D. Colo. Dec. 30, 2014) (finding plaintiff "offers only labels, conclusions, and a formulaic recitation . . . of the elements of a takings claim, without factual substantiation of those elements").

The closest Plaintiffs have come to specific allegations of an impact to property values is to list the approximate amounts of back rent allegedly owed to each Plaintiff. Compl. ¶¶ 36, 41, 45, 47, 49. But this too provides no basis for evaluating the severity of the alleged impact: without knowing the total value of the properties before the Moratorium and with it in place, the Court and the Defendants cannot assess whether the alleged impact represents 1%, 10%, or 100% of the original value of the properties. *See Colony Cove*, 888 F.3d at 451; *Evans Creek*, 2022 WL 14955145, at *1. Accordingly, Plaintiffs' allegations, even if accepted as true, could not allow the Court to find that the Moratorium is "functionally equivalent to the classic taking in which government directly appropriates private property." *MHC Fin. Lt'd P'ship v. City of San Rafael*, 714 F.3d 1118, 1127 (9th Cir. 2013), *quoted in Colony Cove*, 888 F.3d at 450.

The Complaint also vaguely alludes to "significant financial losses" due to tenants' alleged failure to pay rent. Compl. ¶ 55. Again, such conclusory allegations do not meet the pleading standard. Regardless, the Ninth Circuit has squarely held that *Penn Central* requires more than a showing of lost income; a plaintiff must show a severe impact to the *value of the property*. *Colony Cove*, 888 F.3d at 451 (holding "the mere loss of some income because of regulation does not itself establish a taking"); *see also Bennett v. City of Kingman*, 543 F. Supp. 3d 794, 809 (D. Ariz. 2021). Again, the Complaint fails to make any concrete allegations of such an impact.[5]

In *Nowlin v. Pritzker*, 34 F.4th 629 (7th Cir. 2022), the Seventh Circuit affirmed dismissal of a *Penn Central* challenge to the Governor of Illinois's COVID-19 shelter in place order. The court found inadequate conclusory allegations similar to those here in the Complaint:

> How much money did they lose? How long was each Business closed? Did one or more of them use its property in other, albeit less lucrative, ways? We don't know. Allegations such as "Plaintiff Businesses were unable to open for business[ ]" and "Plaintiffs stand on the precipice of economic collapse" express conclusions, not facts that would permit an inference of the total or near-total deprivation of use or value required by *Lucas* and *Penn Central*.

Id. at 634-35. Quoting *Iqbal*, the court noted that while such "'legal conclusions can provide the complaint's framework, they must be supported by factual allegations.' The Businesses have asserted legal conclusions, but they have not supported those conclusions with factual allegations that plausibly suggest that the Governor's orders constituted regulatory takings." *Id.* at 634 (citation omitted). Here too, Plaintiffs have offered only conclusory allegations about the economic impact of the Moratorium on Plaintiffs.

Finally, the Complaint's broad generalities also fail to show that any *particular* Plaintiff has suffered the kind of severe economic impact necessary to prevail on a *Penn Central* claim—let alone which Plaintiff or Plaintiffs that might be. Even assuming

[5] The Complaint also includes generic allegations of damage to properties allegedly caused by tenants whom Plaintiffs could not evict. Compl. ¶¶ 37-41, 46, 49-50. It provides no basis for evaluating the severity of that damage in terms of property value, however, even assuming the County could somehow be charged with damage caused by tenants.

Plaintiffs suffered "significant financial losses," and assuming (without any support) that such lost value represents a large share of Plaintiffs' original collective property value, we are left to guess how that loss is distributed across the eight Plaintiffs. It is not enough to assert that *some* plaintiff or plaintiffs has experienced a sufficiently severe impact; the complaint must allege such an impact for *each and every* Plaintiff.

The County is faced with damages claims for alleged regulatory takings asserted by eight distinct Plaintiffs. It is incumbent on each one of those Plaintiffs to plead facts plausibly showing entitlement to relief under the famously ad-hoc, fact-specific *Penn Central* test. They have not come close to doing so. Nevertheless, the County recognizes that Plaintiffs should be given leave to amend their complaint to try to allege facts showing that the Moratorium had a severe impact on the value of *each* Plaintiff's property.

III. The Court has already rejected Plaintiffs' Contracts Clause argument, and the Complaint cannot be amended to state a cognizable as-applied claim.

Plaintiffs also allege that the Moratorium violates the Contracts Clause because it allegedly relieves tenants of their obligation to pay rent, affects landlords' ability to pursue back rent with "no guarantee of eventual recovery," and "require[s landlords] to allow tenants to remain on the properties rent free for an unspecified duration of time." Compl. ¶¶ 69-70. It further alleges that even if the Moratorium were justified at earlier stages of the pandemic, its "continued maintenance without end in sight no longer meets the constitutional standard." *Id*. ¶ 70. The Court has already found that the Moratorium does not facially violate the Contracts Clause because it "does not substantially impair the plaintiffs' contractual rights, and is not, on its face, an unreasonable response to the public purpose of avoiding housing displacement during the COVID-19 pandemic." Order at 21. The Court relied on the Ninth Circuit's recent holding that such regulation does not violate the Clause. *See Apt. Ass'n of Los Angeles Cnty., Inc. v. City of Los Angeles*, 10 F.4th 905 (9th Cir. 2021) ("*AAGLA*"). The Complaint does not specify whether Plaintiffs raise an as-applied claim. But even if they do, the Complaint fails to allege sufficient facts to support such a claim.

To bring a Contracts Clause claim, a plaintiff must first establish that the challenged law substantially impairs a contractual relationship. *Sveen v. Melin*, 138 S. Ct. 1815, 1821-22 (2018); *AAGLA*, 10 F.4th at 913. A law substantially impairs a contract if it (1) "undermines the contractual bargain," (2) "interferes with a party's reasonable expectations," and (3) "prevents the party from safeguarding or reinstating his rights." *Sveen,* 138 S. Ct. at 1822. If the plaintiff can prove substantial impairment, then she must further prove that the law is not "drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose." *Id.* at 1821-22. "A legitimate public purpose is one whose goal is to alleviate important general social or economic problems." *S. Cal. Rental Hous. Ass'n*, 550 F. Supp. 3d at 863 (citing *Energy Reserves Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 411-12 (1983)). When the government is not the contracting party, "courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." *AAGLA*, 10 F.4th at 913 (quoting *Energy Reserves Grp., Inc.*, 459 U.S. at 413).

In refusing summary judgment, this Court held that the Moratorium, on its face, survives both parts of the test. First, it does not substantially impair landlords' contractual relationships with their tenants. It "does not relieve tenants of the obligation to pay rent," allows rent to continue to accrue, and is not permanent. Order at 24-25; *see also Gallo*, 610 F. Supp. 3d at 86. Nor does the Moratorium "interfere with landlords' reasonable expectations because there is a long history of regulations governing the landlord-tenant relationship and of Supreme Court cases upholding eviction moratoria." Order at 25. Even though the pandemic may have been unexpected, the history of landlord-tenant regulations meant that intervention by the government to further regulate the landlord-tenant relationship was foreseeable. *Id.* at 25; *S. Cal. Rental Hous. Assn.*, 550 F. Supp. 3d at 862. And the Moratorium does not prevent landlords from safeguarding their contractual rights merely because they may be precluded from their "preferred remedy" of unlawful detainer. Order at 25. Landlords could still sue for breach of contract to recover back rent. *Id.*; *see also Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 430 (1934) (holding that "[w]ithout

impairing the obligation of the contract, the remedy may certainly be modified" (quotation marks omitted)).

Second, this Court held that even if the Moratorium did substantially impair landlords' contractual rights, it nonetheless reasonably advanced a significant and legitimate public purpose. Order at 26-28. The Moratorium's stated purposes—to reduce the transmission of COVID-19, to promote housing stability during the pandemic, and to prevent avoidable homelessness—are plainly legitimate. *See* County Code § 6.120.010; Order at 21; *AAGLA*, 10 F.4th at 913; *see also infra* Argument section V.

The Court also held that the Moratorium used reasonable means to advance those purposes. Order at 27-28. The Moratorium established temporary and reasonable limitations on evictions for nonpayment of rent. It did not prevent Ellis Act evictions from proceeding and contained exceptions for court- and government-ordered evictions and "imminent threats to health and safety." County Code § 6.120.030(F); Order at 26. These provisions helped stabilize residents' living situations during the local health emergency and acknowledged the need for evictions to proceed under some circumstances. *See* Order at 26-27; *AAGLA*, 10 F.4th at 913-14.

It was also reasonable for the County to tie the Moratorium's expiration to the health officer's rescission of the local health emergency. The Complaint asserts that even if the Moratorium was constitutional at the beginning of the pandemic, at some undefined point in time, its "continued maintenance without an end in sight no longer meets the constitutional standard." Compl. ¶ 70. But because the Moratorium aims to mitigate the spread of COVID-19 and ameliorate its impacts, the Board of Supervisors logically tied its expiration to the Health Officer's independent declaration of the end of the COVID-19 emergency. *See* County Code § 6.120.030(A). Plainly, this would advance the County's interest in mitigating the impacts of the pandemic.[6] Courts cannot, as Plaintiffs demand,

[6] When denying their motion for summary judgment, the Court noted that Plaintiffs "cite[d] no authority" to support their objection to the Moratorium's duration. Order at 27.

"second-guess the [the government's] determination that the [challenged action] constitutes the most appropriate way of dealing with the problems identified." *AAGLA*, 10 F.4th at 914; *Energy Reserves Grp., Inc.*, 459 U.S. at 412-13. And as the Court has recognized, "[P]laintiffs' real issue is not the reasonableness of the ordinance itself but instead is the reasonableness of the County's failure to declare the end of the 'Local Health Emergency.'"[7] Order at 28. Such argument is plainly inappropriate here.

The Ninth Circuit's prior decision in *AAGLA* dictated this Court's ruling. There, the court found that a nearly identical eviction moratorium was "fairly tie[d] . . . to its stated goal of preventing displacement from homes, which the City reasonably explain[ed] can exacerbate the [pandemic's] public health-related problems." *AAGLA*, 10 F.4th at 914. The court found that each of the moratorium's provisions, including that its expiration was tied to the mayor's termination of the local emergency, may be viewed as a reasonable attempt to address that valid public purpose.[8] *Id*. Other courts have upheld similar eviction moratoria against Contracts Clause challenges. *Tatoma, Inc. v. Newsom*, No. 3:21-CV-098-BEN-JLB, 2022 WL 686965, at *3 (S.D. Cal. Mar. 8, 2022). *El Papel LLC v. Durkan*, No. 2:20-cv-01323-RAJ-JRC, 2021 WL 4272323, at *7-15 (W.D. Wa. Sep. 15, 2021), *aff'd on other grounds sub nom. El Papel, LLC v. City of Seattle*, No. 22035656, 2023 WL 7040314 (9th Cir. Oct. 26, 2023). Thus, Plaintiffs' facial Contracts Clause claim must be dismissed.

[7] And indeed, hindsight confirms that Plaintiffs' fears were unfounded when the Moratorium expired on April 29, 2023. Dkt. 58, Ex. A; County Code § 6.120.030(A).

[8] The moratorium in *AGGLA* was similar to that challenged here. It created an affirmative defense to unlawful detainer for nonpayment of rent related to the pandemic during the local emergency and for 12 months after its expiration, evictions for "no-fault reasons" during the local emergency, and evictions "based on the presence of unauthorized occupants or pets, or for nuisance related to COVID-19" during the local emergency. 10 F.4th at 909-10. The moratorium also provided tenants up to a year after the expiration of the local emergency to repay back rent, but did not absolve them of their obligation to pay rent. *Id.* at 910. Finally, the moratorium could be enforced through the assessment of fines or private actions by tenants. *Id.* The mayor had discretion over termination of the local emergency. *Id.*

As pled, Plaintiffs' as-applied Contracts Clause claim fairs no better. They must allege the facts of each Plaintiff's particular circumstances showing that the Moratorium, as applied in those circumstances, is unconstitutional even though it is valid on its face. *See Ventura Mobilehome Communities Owners Ass'n v. City of San Buenaventura*, 371 F.3d 1046, 1051 (9th Cir. 2004); *see supra* Argument section I.B. The operative complaint offers no such factual allegations. *See* Compl. ¶¶ 36-51; *Iqbal*, 556 U.S. at 678 ("[F]ormulaic recitation of the elements of a cause of action" is insufficient).

Nor could Plaintiffs plead around the defects identified in the Court's summary judgment order. Even if Plaintiffs had alleged some particularities about how the Moratorium affected a specific Plaintiff's lease agreement that might show substantial impairment, they could not escape this Court's—and the *AGGLA* court's—conclusion that such impairment is nonetheless legitimate under the second step of the analysis. Order at 25-26*; see* also *AAGLA*, 10 F.4th at 914 (moratorium barring no-fault evictions and evictions based on unauthorized occupants or pets did not violate Contracts Clause). No artful pleading can avoid the conclusion that the Moratorium's restrictions on landlord-tenant relations reflect a reasonable response to grave public health crisis.

Accordingly the Court should dismiss Plaintiffs' facial Contracts Clause claim without leave to amend.

IV. The Court already rejected Plaintiffs' facial procedural due process claim, and the Complaint does not allege any facts to support an as-applied claim.

Plaintiffs fail to state a procedural due process claim. They assert that the Moratorium, "in effect, deprive[s] Plaintiffs of *any* procedure to recover their properties under most cases." Compl. ¶ 74. Due process requires notice and "the opportunity to be heard at a meaningful time and in a meaningful manner" prior to the deprivation of a protected interest. *See Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). Here, even assuming that Plaintiffs have been deprived of a protected property interest, the Court has already found that the Moratorium does not on its face violate procedural due process. And Plaintiffs cannot allege facts to support an as-applied claim.

In denying the summary judgment motions in this and the *Williams* case, the Court held there was no procedural due process violation, finding that the case relied on by the *Williams* plaintiffs, *Chrysafis v. Marks*, 141 S.Ct. 2482 (2021), was inapplicable. Order at 28-30. Specifically, the Court held that the Moratorium did "not deny landlords a hearing or preclude landlords from contesting facts asserted by tenants." Order at 29-30. Indeed, the Moratorium did not and could not alter the procedure in unlawful detainer proceedings supplied by the California Code of Civil Procedure. *See* Cal. Civ. Proc. Code §§ 1159-1179a. Rather, the Moratorium gave tenants a substantive affirmative defense that they could assert in unlawful detainer proceedings. Order at 29; County Code §§ 6.120.030(C), 6.120.040(C). It did not prevent landlords from filing unlawful detainer actions, and it allowed them to recover back rent in breach of contract actions. Order at 29; County Code § 6.120.030(D). The Moratorium also allowed evictions to proceed under specified circumstances. County Code § 6.120.030(F). Accordingly, the Moratorium "d[id] not deprive the plaintiffs of the opportunity to be heard, [and] do[es] not facially violate the Due Process Clause." Order at 30. Thus, the Court should dismiss Plaintiffs' facial procedural due process claim for the same reasons it refused the *Williams* plaintiffs summary judgment.

Plaintiffs also cannot allege any facts to show that the Moratorium violates procedural due process as applied to any Plaintiff or Plaintiffs. *See supra* Argument section I.B. And again, the Court's summary judgment order forecloses any as-applied claim. The Court already found that the affirmative defense established by the Moratorium did not deny Plaintiffs the opportunity to be heard because Plaintiffs could still initiate unlawful detainer proceedings and could still contest tenants' factual assertions. Order at 28-30. Plaintiffs cannot plead allegations that would change this conclusion. *See supra* Argument section I.B. The Court should dismiss Plaintiffs' procedural due process claim without leave to amend.

V. The Complaint does not allege the sort of truly egregious government conduct necessary to state a substantive due process claim.

Plaintiffs summarily allege that they have "protected property interests in their real properties" and that the Moratorium is "irrational and lacking in a legitimate government interest because there is no justification for such extreme measures." Compl. ¶ 74. But such conclusory pleading is patently inadequate. *Iqbal*, 556 U.S. at 678. And the Complaint falls far short of alleging any conduct that meets Plaintiffs' "exceedingly high burden" to bring a substantive due process claim. *See Shanks v. Dressel*, 540 F.3d 1082, 1088 (9th Cir. 2008) (citing *Matsuda v. City & Cnty. of Honolulu*, 512 F.3d 1148, 1156 (9th Cir. 2008)).

The Moratorium does not burden a suspect class or fundamental interest; landlords are not a suspect class. *Schnuck v. City of Santa Monica*, 935 F.2d 171, 176 (9th Cir. 1991). And even assuming the Complaint implicates a protected property interest, any such interest is not fundamental under the Constitution.[9] *See Baptiste*, 490 F. Supp. 3d at 394 ("it does not follow that there is a fundamental right to evict"). Accordingly, conceivable rational basis review applies. *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993). Plaintiffs must show that the challenged action constitutes "egregious official conduct" and "amount[s] to an 'abuse of power' lacking any 'reasonable justification in the service of a legitimate governmental objective.'" *Shanks*, 540 F.3d at 1088 (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998)).

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[9] The Complaint vaguely alleges that Plaintiffs "have protected property interests in their real properties," but does not specify any interests. Compl. ¶ 74. In fact, the actual interests at issue here are quite narrow. The Moratorium was a temporary prohibition on evictions for nonpayment of rent and for violations of a lease that did not pose an imminent health or safety threat. It did not relieve tenants of liability for unpaid rent. *See* County Code § 6.120.090(A). It also provided that tenants must pay rent within a year from when the rent became due. County Code § 6.120.090(D). And landlords may still seek to recover unpaid rent or to enforce against lease violations through a breach of contract action. County Code §§ 6.120.030(C)-(D), 6.120.040(C)-(D). Therefore, the only interests that appear to be at issue are Plaintiffs' interest in prompt payment of rent and in enforcing prompt payment of rent and lease compliance through the remedy of eviction. No court has held that these are property interests protected by the Constitution.

First, the County adopted the Moratorium to "reduce the transmission of COVID-19," "promote housing stability during the COVID-19 pandemic," and "prevent avoidable homelessness." County Code § 6.120.010. These are plainly legitimate governmental objectives. Amazingly, Plaintiffs disagree. Compl. ¶ 74. But this Court has already found that "avoiding housing displacement during the COVID-19 pandemic" is a significant and legitimate public purpose. Order at 21, 26-28.[10] And, many courts, including the Supreme Court, have also so held. *See, e.g., Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) ("Stemming the spread of COVID-19 is unquestionably a compelling interest"); *Schnuck*, 935 F.2d at 175 (city had a legitimate interest in protecting tenants from unreasonable rent increases); *Pennell v. City of San Jose*, 485 U.S. 1, 13 (1988) (legitimate interest in the "protection of tenants").

Second, by providing tenants with a defense in unlawful detainer actions and extending tenants' time to pay rent, the Moratorium helped advance the County's interests in housing stability and preventing homelessness. *See* County Code §§ 6.120.030(D), 6.120.090(B). These provisions aimed to reduce the pandemic's economic impacts and help residents stay sheltered, thereby also mitigating the spread of COVID-19. Whether the Moratorium in fact achieved these goals is legally irrelevant. *See Wedges/Ledges of Cal., Inc. v. City of Phoenix, Ariz.*, 24 F.3d 56, 66 (9th Cir. 1994); *Williamson v. Lee Optical of Okla. Inc.*, 348 U.S. 483, 487-88 (1955). Indeed, courts have upheld similar COVID-19 moratoria and non-emergency rent control measures. *See Schnuck,* 935 F.2d at 175*; Bldg. & Realty Inst. of Westchester & Putnam Counties, Inc. v. New York*, No. 19-CV-11285 (KMK), 2021 WL 4198332, at *30 (S.D.N.Y. Sept. 14, 2021) (appeal filed); *Willowbrook Apt. Assocs., LLC v. Mayor & City Council of Baltimore*, 563 F. Supp. 3d 428, 448-49 (D. Md. 2021).

[10] The Court made this finding in its discussion of Plaintiffs' Contracts Clause claim, where it applied a standard *more favorable* to Plaintiffs. *See* Order at 21 (finding that the Moratorium appropriately and reasonably advanced a significant and legitimate purpose). Those interests are thus more than sufficient to survive the more lenient substantive due process scrutiny.

It was also rational for the County to tie the end of the Moratorium to the end of the local public health emergency. *See supra* Argument section III. Plaintiffs may disagree with that policy decision, but that does not affect the Moratorium's constitutionality. *See Schnuck*, 935 F.2d at 175 ("That rent control may unduly disadvantage others, or that it may exert adverse long-term effects on the housing market, are matters for political argument and resolution."); *Apt. Ass'n of Los Angeles Cnty., Inc. v. City of Los Angeles*, 500 F. Supp. 3d 1088, 1099 (C.D. Cal. 2020) (city's eviction moratorium "indicative of . . . reasoned balancing of competing interests" even if landlords would suffer a shortfall in rent), *aff'd*, 10 F.4th 905 (9th Cir. 2021), *cert. denied,* No. 21-788, 2022 WL 1131544 (Apr. 18, 2022). At the very least, the question of how long the Moratorium should have lasted is "fairly debatable" and thus not open to Plaintiffs' second-guessing. *Shanks*, 540 F.3d at 1089.

Once again, the Complaint fails to allege any facts showing that the Moratorium, as applied to the circumstances of any Plaintiff or Plaintiffs, violated substantive due process. Compl. ¶¶ 36-51, 73-76. The facial analysis forecloses any as-applied substantive due process claim. *See supra* Argument section I.B.

The Court should dismiss the Complaint's substantive due process claim without leave to amend.

VI. Expiration of the Moratorium mooted Plaintiffs' writ of mandate claim because it seeks only prospective relief, and the Court has already found this claim to be meritless.

The Complaint requests a writ of mandate "enjoining and voiding the Moratorium" for alleged violations of state law. Compl. at p. 25. Specifically, the Complaint alleges that the Moratorium is preempted by the Ellis Act. *Id.* ¶ 79. Because this claim seeks solely prospective relief, it was mooted by expiration of the Moratorium. Regardless, the Court has already rejected the underlying claim on the merits.

A claim must be dismissed as moot "[i]f an event occurs that prevents the court from granting effective relief." *Am. Rivers v. Nat'l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997). The Moratorium here expired on April 29, 2023. Dkt. 58, Ex. A; County Code

§ 6.120.030(A). The Court therefore can no longer enter an order to the County to "enjoin" or "void" the Moratorium for supposed violations of state law, as Plaintiffs request. *See Colony Cove Props., LLC v. City of Carson*, 187 Cal. App. 4th 1487, 1509 (2010) (request for writ of mandate moot where challenged moratorium expired); *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383, 393 (1993) (request for writ of mandate moot where amendment to ordinance "repeal[ed] or significantly modifie[d]" challenged language). The claim thus must be dismissed as moot.

Even if Plaintiffs' writ of mandate claim was not moot, it would need to be dismissed for failure to state a claim because the Court has already held that the Moratorium "d[id] not conflict with the Ellis Act." Order at 37. It specifically found that the Moratorium is neither expressly nor impliedly preempted by the Act. *Id.* at 36-37. The claim is thus as meritless as it is moot.

VII. CAA's prospective claims against the County are moot, and it lacks standing to seek damages on behalf of its members.

The Court must dismiss all claims against the County as to CAA because the Court can no longer grant CAA any relief against the County. Because the Moratorium has expired, any claim for prospective relief is moot. *See supra* Argument section VI. And CAA lacks associational standing to seek damages against the County under *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333 (1977). Accordingly, the Court should dismiss all of CAA's claims against the County.

The Complaint alleges that CAA is a nonprofit corporation with members affected by the Moratorium but does not allege that CAA has suffered any direct injury. Compl. ¶ 7. Associational standing allows an organization to "sue to redress its members' injuries, even without a showing of injury to the association itself." *United Food & Com. Workers Union Local 751 v. Brown Grp., Inc.*, 517 U.S. 544, 552 (1996). To establish associational standing, an organization must show that "(1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the

participation of individual members" in the lawsuit (together, the "*Hunt* test"). *Hunt*, 432 U.S. at 343. Although the third prong is prudential, courts regularly dismiss organizations for lack of standing based only on a failure to satisfy the third *Hunt* prong. *See, e.g., Int'l Longshore & Warehouse Union v. Nelson*, 599 Fed. Appx. 701, 702 (9th Cir. 2015); *Laborers Int'l Union Local 261 v. City & Cnty. of San Francisco*, No. 22-cv-02215-LB, 2022 WL 2528602, at *6-7 (N.D. Cal. Jul. 6, 2022) (dismissing plaintiff for failure to satisfy third prong even where "[t]he parties do not dispute that [the association] has satisfied the first two prongs).

Here, the only relief that this Court can still offer Plaintiffs is an award of damages because the Moratorium's expiration has mooted their requests for declaratory relief against the County. A "declaratory judgment merely adjudicating past violations of federal law—as opposed to continuing or future violations of federal law—is not an appropriate exercise of federal jurisdiction." *Bayer v. Neiman Marcus Grp., Inc.*, 861 F.3d 853, 868 (9th Cir. 2017). Thus, where a plaintiff "is no longer subjected to [the] alleged unlawful conduct," her request for declaratory relief is moot. *Id*; *Rocky Mtn. Farmers Union v. Corey*, 913 F.3d 940, 949-50 (9th Cir. 2019). The Complaint seeks a declaratory judgment determining that the Moratorium is unlawful. Compl. at pp. 24-25. Because the Moratorium expired on April 29, 2023, Plaintiffs' request for declaratory relief is moot.

But the Court also cannot award CAA damages against the County because CAA cannot satisfy the third prong of the *Hunt* test. An association seeking monetary relief for its members does not satisfy the third prong of the *Hunt* test because requests for damages "necessarily involve individualized proof and thus the individual participation of association members." *United Union of Roofers, Waterproofers, & Allied Trades No. 40 v. Ins. Corp. of Am.*, 919 F.2d 1398, 1400 (9th Cir. 1990). Courts have consistently held that individualized proof is required to demonstrate entitlement to damages. *See id.*; *Warth v. Seldin*, 422 U.S. 490, 516 (1975) ("to obtain relief in damages [for constitutional violations], each member of [association] who claims injury . . . m[u]st be a party to the suit"); *Laborers Int'l Union Local*

261, 2022 WL 2528602, at *6-7. Consequently, CAA fails to satisfy the third prong of the *Hunt* test.

VIII. The Court should dismiss all of Plaintiffs' claims, except the *Penn Central* claim, without leave to amend.

Plaintiffs cannot make allegations sufficient to support their physical takings, Contracts Clause, due process, or state law claims, and these claims should be dismissed without leave to amend. Dismissal without leave to amend is proper where "amendments would fail to cure the pleading deficiencies and amendment would be futile." *Chubb Custom Ins. Co. v. Space Sys./Loral, Inc.*, 710 F.3d 946, 956 (9th Cir. 2013). As discussed in each respective section above, the Court's summary judgment order and well-established law foreclose the possibility of curing most of the Complaint's shortcomings through further amendment. *See Regino v. Staley*, No. 2:23-cv-00032 JAM-DMC, 2023 WL 4464845, at *7 (E.D. Cal. Jul. 11, 2023) (dismissing claims with prejudice where case presented "purely legal issues" and there were "no material facts . . . that would allow Plaintiff to proceed on any of her six claims in the FAC."). Accordingly, the Court should dismiss Plaintiffs' physical takings, Contracts Clause, due process, and state law claims without leave to amend.

However, as noted above, the County acknowledges that Plaintiffs should be given leave to amend the complaint to allege facts about *each* Plaintiff as required to show that each Plaintiff has a plausible claim under *Penn Central*'s "essentially ad hoc, factual inquir[y]" that turns "upon the particular circumstances [in each] case." 438 U.S. at 124.

CONCLUSION

For the reasons stated above, the County requests that the Court (1) dismiss the Complaint's physical takings, Contracts Clause, due process, and state law claims without leave to amend, (2) dismiss the Complaint's *Penn Central* claim with leave to amend, and (3) dismiss all claims against the County as to Plaintiff CAA without leave to amend.

DATED: November 10, 2023

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