

NIELSEN MERKSAMER ^{LLP}

Christopher E. Skinnell, Esq. (S.B. No. 227093)

Hilary J. Gibson, Esq. (S.B. No. 287862)

2350 Kerner Boulevard, Suite 250

San Rafael, California 94941

Telephone: (415) 389-6800

Facsimile: (415) 388-6874

Email: cskinnell@nmgovlaw.com

Email: hgibson@nmgovlaw.com

Attorneys for Plaintiffs

CALIFORNIA APARTMENT

ASSOCIATION, STEPHEN LIN,

RAKESH and TRIPTI JAIN, ALISON

MITCHELL, MICHAEL HAGERTY, &

H. ALEX and DANNIE ALVAREZ

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

vs.

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

Defendants.

Case No. 3:22-cv-02705-LB

**FIRST AMENDED COMPLAINT
FOR DAMAGES**

[42 U.S.C. § 1983]

DEPT: Courtroom B, 15th Floor
JUDGE: Hon. Laurel Beeler

DEMAND FOR JURY TRIAL

(Related to Case 3:22-cv-01274-LB,
Williams v. County of Alameda, et al.)

1 1. Plaintiffs STEPHEN LIN, RAKESH and TRIPTI JAIN, ALISON
2 MITCHELL, MICHAEL HAGERTY, & H. ALEX and DANNIE ALVAREZ
3 (collectively, “Plaintiffs”), hereby bring this complaint against Defendants COUNTY
4 OF ALAMEDA and the BOARD OF SUPERVISORS OF THE COUNTY OF
5 ALAMEDA (collectively, “Defendants”), seeking damages caused by Defendants’
6 residential eviction moratorium (the “Moratorium”), in effect from approximately
7 March 2020 to April 29, 2023,¹ and especially (though not exclusively) the continued
8 maintenance of that Moratorium after September 2021, long after COVID-19
9 vaccinations were widely available, State and County “stay-at-home” orders were
10 repealed, allowing businesses and schools to fully reopen, and state law eviction
11 restrictions were repealed.

12 **JURISDICTIONAL STATEMENT**

13 2. This Court has jurisdiction over this action pursuant to [28 U.S.C. § 1331](#),
14 in that the controversy arises under the United States Constitution and laws and
15 under [42 U.S.C. § 1983](#), as hereinafter more fully appears. This Court also has
16 jurisdiction over this action pursuant to [28 U.S.C. § 1367\(a\)](#) in that the causes of
17 action stated herein arise out of a common nucleus of operative facts, and thus form
18 the same case or controversy under Article III of the United States Constitution.

19 **VENUE**

20 3. Venue in this District is proper pursuant to [28 U.S.C. § 1391\(a\)](#), because
21 all Defendants reside in this District and the events giving rise to the claims occurred
22 in this District.

23 **DIVISIONAL ASSIGNMENT**

24 4. Pursuant to Local Rule 3-2(c), this action arose in Alameda County,
25
26

27 ¹ Plaintiffs would note that though rent that came due after April 2023 was not
28 subject to the Moratorium, any rent that was not paid during the period the
Moratorium was in place remains subject to the Moratorium Ordinance’s permanent
protection against eviction.

1 California, and thus should be assigned to the Court's Oakland Division.

2 **PARTIES**

3 5. Defendant COUNTY OF ALAMEDA (hereafter "COUNTY") is a local
4 government entity organized under the Constitution and laws of the State of
5 California.

6 6. Defendant BOARD OF SUPERVISORS OF THE COUNTY OF
7 ALAMEDA (hereafter "BOARD") is the main legislative and governing body of the
8 COUNTY.

9 7. Plaintiff STEPHEN LIN is an individual over the age of 18 and was at
10 all times relevant to this case an owner of residential rental property in Fremont that
11 was subject to the COUNTY's Moratorium.

12 8. Plaintiffs RAKESH and TRIPTI JAIN are individuals over the age of 18
13 and were at all times relevant to this case owners of residential rental property in
14 Fremont that was subject to the COUNTY's Moratorium.

15 9. Plaintiff ALISON MITCHELL is an individual over the age of 18 and
16 was at all times relevant to this case the co-owner, along with her husband, of
17 residential rental property in Emeryville that was subject to the COUNTY's
18 Moratorium.

19 10. Plaintiff MICHAEL HAGERTY is an individual over the age of 18 and
20 was at all times relevant to this case also an owner of residential rental property in
21 Emeryville that was subject to the COUNTY's Moratorium.

22 11. Plaintiffs H. ALEX and DANNIE ALVAREZ are individuals over the age
23 of 18 and were at all times relevant to this case owners of residential rental property
24 in Pleasanton that was subject to the COUNTY's Moratorium.

25 12. Plaintiffs are not aware of the identities of Defendants DOES 1-25, who
26 are responsible for the acts and omissions alleged herein and that caused damage to
27 Plaintiffs; therefore, Plaintiffs will amend this Complaint when the true identities of
28 DOES 1-25 are ascertained.

13. Plaintiffs are informed and believe that, at all times mentioned in this Complaint, all Defendants were the agents or employees of their co-Defendants, and, in doing the things alleged in this Complaint, were acting within the course and scope of that agency and employment.

GENERAL FACTUAL ALLEGATIONS

A. Background: The California Governor’s Order, the Judicial Council’s Eviction Moratorium, and the COVID-19 Tenant Relief Act.

14. On March 4, 2020, in response to the COVID-19 pandemic, Governor Newsom declared a State of Emergency in California, pursuant to the California Emergency Services Act (ESA), [Govt. Code § 8550](#), *et seq.* On March 16, 2020, Governor Newsom issued an executive order, which, in relevant part, permitted local governments to temporarily limit landlords’ ability to evict tenants for nonpayment of rent due to the COVID-19 crisis, to the extent the tenants’ inability to pay was attributable to negative financial impacts caused by the COVID-19 pandemic. In pertinent part, that order provided:

[T]he statutory cause of action for unlawful detainer, Code of Civil Procedure section 1161 *et seq.*, and any other statutory cause of action that could be used to evict or otherwise eject a residential . . . renter . . . is suspended only as applied to any tenancy . . . to which a local government has imposed a limitation on eviction pursuant to this paragraph 2 [relating to inability to pay rent because of Covid-19 financial distress], and only to the extent of the limitation imposed by the local government. [¶] Nothing in this Order shall relieve a renter of the obligation to pay rent, nor restrict a housing provider’s ability to recover rent due.

[Executive Order \(“EO”\) N-28-20, ¶ 2.](#)

15. On or about April 6, 2020, the California Judicial Council adopted [Emergency Rule No. 1](#), prohibiting California courts from issuing a summons in an unlawful detainer action unless the eviction was deemed by the court to be “necessary to protect public health and safety.” That Rule remained in effect until September 1, 2020.

1 16. The March 16, 2020 provision permitting local governments to
 2 temporarily limit COVID-19-related nonpayment evictions expired on September 30,
 3 2020, *see* [EO N-71-20, ¶ 3](#). Prior to the expiration of that latter provision, the
 4 California Legislature enacted the “COVID-19 Tenant Relief Act” but the “COVID-19
 5 Small Housing Provider and Homeowner Relief Act of 2020” via [Assembly Bill 3088](#)
 6 [\(2019-2020 Reg. Sess.\), 2020 Cal. Stats., ch. 37](#) (“AB 3088”), effective August 31, 2020.

7 17. AB 3088 in part amended the State’s unlawful detainer (UD) statutes,
 8 [Code of Civil Procedure § 1161](#) *et seq.*, and was aimed at “temporary emergency relief
 9 for financially distressed renters, homeowners, and small housing providers...”
 10 Among other things, AB 3088 provided statewide eviction protections during the
 11 “covered time period” (initially March 20, 2020, through January 31, 2021) for renters
 12 who could not pay their full rent for COVID-19-related reasons, provided that they
 13 paid at least 25 percent of the amount due during that period. AB 3088 also directed
 14 state agencies to engage about potential strategies for relief for renters and landlords
 15 who suffered COVID-19-related financial hardship.

16 18. Consistent with EO N-28-20, AB 3088’s temporary moratorium on
 17 residential evictions was specifically limited to those based upon inability to pay for
 18 COVID-19-related financial distress. [Cal. Code Civ. Proc. §§ 1161\(2\)-\(3\), 1179.01-](#)
 19 [1179.07](#). Even during the temporary moratorium, property owners were still
 20 permitted to file actions for, and courts were still permitted to find renters guilty of,
 21 unlawful detainer for fault, and no-fault “just cause” reasons as defined under [Civil](#)
 22 [Code § 1946.2](#).² [Cal. Code Civ. Proc. § 1179.03.5\(a\)\(3\)](#).

23 19. AB 3088 also provided “this section addresses a matter of statewide
 24

25 ² Civil Code § 1946.2, which delineates California’s “just causes for eviction,” does
 26 not apply to residential rental property subject to a local ordinance requiring just
 27 cause for termination. However, any local “just cause” provision enacted or amended
 28 after September 1, 2019, that is more “protective” than Civ. Code § 1946.2, must be
 consistent with that provision, and “not prohibited by any other area of law.” [Cal. Civ.](#)
[Code § 1946.2\(g\)\(1\)](#).

1 concern rather than a municipal affair.” The intent of the legislation “is to protect
 2 individuals negatively impacted by the COVID-19 pandemic,” and “does not provide
 3 the Legislature’s understanding of the legal validity on any specific ordinance,
 4 resolution, regulation, or administrative action adopted by a city, county, or city and
 5 county in response to the COVID-19 pandemic to protect renters from eviction.” [Cal.](#)
 6 [Code Civ. Proc. § 1179.05](#), subds. (b), (e), (f). While AB 3088’s amendments continued
 7 to recognize local government’s authority to enact eviction protections, it did not give
 8 *carte blanche* authority to do so, nor does it immunize “emergency” municipal
 9 regulations from challenges based on state law preemption.

10 20. The COVID-19-related nonpayment eviction protections of AB 3088 were
 11 extended twice thereafter, once to June 30, 2021 (through [Senate Bill 91 \(2021-2022](#)
 12 [Reg. Sess.\), 2021 Cal. Stats., ch. 2](#) (“SB 91”)) and a second time to September 30, 2021
 13 (through [Assembly Bill 832 \(2021-2022 Reg. Sess., 2021 Cal. Stats., ch. 27](#) (“AB 832”)).
 14 SB 91 and AB 832 protected affected renters from eviction during this extended
 15 “covered time period,” so long as they complied with the COVID-19-related financial
 16 distress requirements, including payment of at least 25 percent of the rent due. *See*
 17 [Cal. Code Civ. Proc. § 1179.03\(g\)\(1\)\(B\)](#).

18 21. SB 91 and AB 832 further spelled out the State’s rental assistance
 19 program. Starting October 1, 2021, and until March 31, 2022, for any COVID-19-
 20 related hardship rental debt that came due between those dates, a property owner
 21 could move forward with a UD action for nonpayment of rent if the landlord
 22 submitted an application for rental assistance through the State or applicable local
 23 program on behalf of the tenant and (1) it was denied, or (2) the tenant did not
 24 cooperate in completing the application with specified time periods. [AB 832, 2021 Cal.](#)
 25 [Stats., ch. 27, § 20](#) (codifying former Cal. Code Civ. Proc. § 1179.11(a), (c)). In late-
 26 March 2022 the Legislature enacted, and Lieutenant Governor Kounalakis signed,³

27
 28

³ As Acting Governor, *see* [Cal. Const. art. V, § 10](#).

1 [Assembly Bill 2179 \(2021-2022 Reg. Sess.\), 2022 Cal. Stats., ch. 13](#), which extended
 2 the eviction moratorium to June 30, 2022, but only for tenants with a rent relief
 3 application pending as of March 31, 2022. Landlords were no longer required to
 4 submit an application on behalf of the tenant to pursue a UD action. [Cal. Code Civ.](#)
 5 [Proc. § 1179.11\(a\), \(c\)](#).

6 **B. The COUNTY's Eviction Moratorium.**

7 22. The COUNTY ratified its local emergency on March 10, 2020. ([Res. No.](#)
 8 [R-2020-91](#).) On April 21, 2020, the BOARD adopted Urgency [Ordinance No. O-2020-](#)
 9 [23](#), which purported to prohibit most evictions—for any reason. The language in the
 10 urgency ordinance was then made a permanent part of the COUNTY's Code of
 11 Ordinances on June 23, 2020. ([Ordinance No. O-2020-32](#); [ACCO, ch. 6.120](#) (Ex. 2).)
 12 The COUNTY's moratorium applied to “all evictions from residential units in the
 13 unincorporated and incorporated areas of the county” subject to very few exceptions.
 14 ([ACCO § 6.120.030](#).) These exceptions were (1) Ellis Act withdrawals; (2) government
 15 orders requiring the unit to be vacated; or (3) “the resident poses an imminent threat
 16 to health or safety.” ([ACCO § 6.120.030\(F\)](#).)

17 23. However, even these narrow exceptions did not generally permit
 18 property-owners to evict tenants who claimed a financial hardship due to the COVID-
 19 19 pandemic. ([ACCO § 6.120.040](#).) For the entire duration of the Moratorium the
 20 Alameda County Superior Court refused to accept unlawful detainer complaints for
 21 filing unless they alleged that they were not prohibited by a local ordinance and were
 22 accompanied by “[a] declaration under oath stating specific facts showing the health
 23 and safety related necessity or other exception.” ([Alameda Cty. Super. Court, Former](#)
 24 [Emergency Rule 1.8a](#).) And though this Court construed the Moratorium to permit
 25 Ellis Act evictions in such cases, in its November 2022 order denying Plaintiffs’
 26 motion for summary judgment (ECF No. 43), prior to that date the County’s online
 27 guidelines advised residents that “if you provide documentation that you have a
 28 COVID-related impact that made you unable to pay rent on time, the ordinance

1 prohibits your eviction and *there are no exceptions*. If you do not provide
 2 documentation or are being evicted for any reason besides nonpayment of rent, there
 3 are three exceptions to the eviction ordinance” including the Ellis Act. (ECF No. 24, p.
 4 19 [emphasis added].) Plaintiffs are informed and believe, and on that basis allege,
 5 that the Alameda County Superior Court consequently refused to take action on
 6 unlawful detainer complaints seeking to evict tenants on the basis of the Ellis Act,
 7 when those tenants claimed financial hardship.

8 24. The COUNTY’S Moratorium Ordinance provided that it was an
 9 “absolute defense” to an unlawful detainer action brought during its term. ([ACCO §§](#)
 10 [6.120.030\(D\)](#), [6.120.040\(D\)](#).) By its terms, the Moratorium applied countywide—in
 11 incorporated and unincorporated areas alike—except that cities were permitted to
 12 provide even more stringent protections for renters. ([ACCO § 6.120.110](#).)

13 25. Also, by its terms, the Moratorium was designed to expire sixty days
 14 “after the expiration of the local health emergency.” ([ACCO § 6.120.030](#).) Per the
 15 ratification of the local emergency, the local emergency was to “remain in effect until
 16 the [BOARD] determines that the emergency no longer exists.” ([Res. No. R-2020-91](#);
 17 *see also* Exec. Dept., State of Cal., [“Proclamation of a State of Emergency” \(Mar. 4,](#)
 18 [2020\)](#), ¶¶ 7-8 [waiving requirement that local governments periodically renew state of
 19 emergency].)

20 26. COVID-19 vaccinations became widely available in early 2021. State and
 21 County “stay-at-home” orders, which initially closed nonessential businesses and
 22 restricted them on an ongoing basis were repealed in June of 2021, allowing
 23 businesses and schools to fully reopen. In August 2021 the U.S. Supreme Court ended
 24 the Center for Disease Control’s federal eviction moratorium, concluding, in light of
 25 the widespread availability of vaccines, that the hardships facing landlords could no
 26 longer be justified, *see Ala. Ass’n of Realtors v. HHS*, 594 U.S. 758, 762-63 & 765-66
 27 (2021). California state law eviction restrictions—already less stringent than the
 28 County’s to begin with—began to phase out entirely at the end of September 2021,

1 under AB 832. Yet the County Board of Supervisors left the Moratorium in place until
 2 April 29, 2023—another 18 months after the state eviction restrictions began to phase
 3 out and more than three years after the Moratorium took effect.

4 27. The County’s Moratorium Ordinance also provides that any rent a
 5 tenant failed to pay during the declared state of emergency can never be the basis of
 6 an eviction, even if the tenant has refused to pay it after the state of emergency
 7 ended. ([ACCO § 6.120.090\(B\) & \(D\)](#).) Such back-rent may only be pursued as
 8 consumer debt and cannot be collected through the unlawful detainer process. ([ACCO](#)
 9 [§ 6.120.090\(D\)](#).) But that remedy has proven—predictably⁴—to be an “illusory” one
 10 for the Plaintiffs herein.

11 28. While Emeryville initially adopted its own eviction moratorium in 2020,
 12 that eviction expired by its own terms on September 30, 2020.⁵ Property owners in
 13 Emeryville nevertheless remained subject to the COUNTY’s Moratorium until the
 14 end of April 2023.

15 29. Pleasanton never had its own separate eviction moratorium, but
 16 property owners in Pleasanton were nevertheless subject to the COUNTY’s
 17 Moratorium from March of 2020 through April of 2023.

18 30. On March 27, 2020, the Fremont City Council [ratified an Executive](#)
 19 [Order](#) of the City Manager, establishing a temporary moratorium on evictions of
 20 residential tenants in Fremont. The City’s Residential Eviction Moratorium provided
 21 that “[d]uring the period of local emergency declared in response to COVID-19, no
 22

23 ⁴ See [Heights Apartments, LLC v. Walz](#), 30 F.4th 720, 729 n.7 (8th Cir. 2022)
 24 (“While landlords may bring an action against delinquent tenants for past-due rent,
 25 monetary relief obtained against a judgment-proof individual is an illusory remedy, as
 26 has been recognized by the Supreme Court.”) (citing [Ala. Ass’n of Realtors v. HHS](#),
 27 [594 U.S. 758, 765 \(2021\)](#)). See also [Baptiste v. Kennealy](#), 490 F. Supp. 3d 353, 376 (D.
 28 [Mass.](#) 2020) (“this right [to seek back rent as consumer debt] is largely illusory, as
 tenants who have not paid their rent for many months because of economic distress—
 or indeed for any other reason—are unlikely to pay a money judgment against
 them.”).

⁵ See [Emeryville Ord. No. 20-017, § 3](#).

1 landlord shall endeavor to evict a Residential Tenant in either of the following
2 situations: (1) for nonpayment of rent if the Tenant demonstrates that the Tenant is
3 unable to pay rent due to financial impacts related to COVID-19 ... or (2) for a no-
4 fault eviction unless immediately necessary because of the existence of a hazardous
5 condition affecting tenants or neighbors.” For-fault evictions continued to be
6 permitted. However, Fremont’s website subsequently advised residents that Alameda
7 “County’s ordinance superseded the City of Fremont’s emergency order establishing a
8 moratorium on residential evictions during the COVID-19 crisis, so the County’s
9 ordinance provides that its regulation of residential evictions applies in the City of
10 Fremont.”⁶ The City Manager, acting as the City Director of Emergency Services,
11 formally withdrew the Executive Order in June 2021, and the City Council ratified
12 that withdrawal at its meeting on July 2021. Yet property owners in Fremont
13 remained subject to the County’s Moratorium for an additional 21 months.

14 **C. The COUNTY and Various Cities’ Rent Relief Assistance Programs.**

15 31. State law required local governments to develop mechanisms by which
16 landlords and renters may file applications for, and receive if eligible, COVID-19-
17 related rent relief.

18 32. The COUNTY operated a rent relief assistance program called “Housing
19 Secure.” However, as of April 4, 2022, the Housing Secure website stated, “We are
20 still accepting applications *even though we are oversubscribed*” (emphasis added) and
21 “We have received more requests for funds than we have currently available.”
22 Moreover, many applications to the COUNTY’s rent relief program were held pending
23 in limbo for months at a time without action. The County ceased accepting new
24 applications altogether on May 13, 2022. (See ECF No. 24, pp. 36-37.)

25
26
27 ⁶ See City of Fremont, “Understanding Residential Eviction Moratoriums During
28 the COVID-19 Pandemic,” the text of which is archived online at
<https://www.rhasouthernala.com/2021/07/06/residential-eviction-moratorium-fremont/>
(last visited Feb. 21, 2025).

33. Emeryville likewise operated a rent relief assistance program called the Emeryville Emergency Rental Assistance Program (“ERAP”). Emeryville partnered with an organization called the Bay Area Community Service (“BACS”) to administer the program on the City’s behalf. As of April 4, 2022, the Emeryville ERAP website stated, “As of November 12, 2020, BACS has stopped accepting applications for assistance, as all funds have been reserved under the Emergency Rental Assistance Program. If you have submitted an application and have not received notification regarding your application, please contact BACS at 510-759-4868.” Indeed, as of February 26, 2025, it still does.⁷

34. Fremont operated a rent relief program called “Keep Fremont Housed.” As of April 4, 2022, that program’s website stated, “Keep Fremont Housed will continue to accept applications after March 31, 2022 as long as funds remain. However, as of February 1, 2022, applications submitted for the Keep Fremont Housed Rental Assistance Program will be placed on a waitlist.” The City closed its rental assistance application portal altogether as of July 8, 2022. (ECF No. 24, p. 39.)

35. The Pleasanton website simply directed residents to the County’s rent relief program.⁸

36. Even to the extent the assistance programs operated as intended, any given tenant was limited to 18 months’ rental assistance, *see* [15 U.S.C. § 9058c\(d\)\(1\)\(A\)](#), though the “emergency” declared by the COUNTY dragged on for more than three years. Thus, a property owner whose tenant stopped paying rent in March 2020 would only have been able to potentially obtain rent relief covering the period through the end of August 2021, shortly before the State’s eviction moratorium began

⁷ See City of Emeryville, “COVID-19 Housing Resources,” *online at* <https://www.ci.emeryville.ca.us/1364/COVID-19-Housing-Resources> (last visited Feb. 26, 2025).

⁸ See City of Pleasanton, “Rental Assistance Programs,” *online at* <http://www.cityofpleasantonca.gov/resident/housing/rentals/assistance.asp> (last visited Feb. 26, 2025).

1 to phase out. In other words, even leaving aside the shortage of funds, many
 2 landlords—including the Plaintiffs herein—would not have been able to obtain rent
 3 relief funds to cover the loss of rent for any period during which state law would have
 4 permitted the eviction of tenants for nonpayment of rent but the Moratorium
 5 prevented it.

6 37. Additionally, a tenant was only eligible for assistance under those
 7 programs if the tenant’s “household income ... [wa]s not more than 80 percent of the
 8 area median income,” with priority given to those tenants with household incomes
 9 “not more than 50 percent of the area median income”—regardless of the income of
 10 the landlord. See [Cal. Health & Saf. Code § 50897.1\(b\)](#).

11 38. Importantly, tenants in the COUNTY were not required to participate in
 12 *any* rent relief program to avoid eviction; the Moratorium prohibited evictions even
 13 for those tenants who refused to cooperate with a landlord’s request that they seek
 14 relief under these programs, which directly contradicted the purpose, intent and
 15 procedures of state law.

16 **D. Regulatory Takings.**

17 39. “The [Takings Clause of the Fifth Amendment](#) states that ‘private
 18 property [shall not] be taken for public use, without just compensation.’” [Knick v.](#)
 19 [Twp. of Scott, 588 U.S. 180, 184 \(2019\)](#) (alterations in original). This includes when
 20 the “government directly appropriates private property or ousts the owner from his
 21 domain,” *i.e.*, a physical takings, see [Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 539](#)
 22 [\(2005\)](#), but the Supreme Court has also “recognized that government regulation of
 23 private property may, in some instances, be so onerous that its effect is tantamount to
 24 a direct appropriation or ouster—and that such ‘regulatory takings’ may be
 25 compensable under the Fifth Amendment. In Justice Holmes’ storied but cryptic
 26 formulation, ‘while property may be regulated to a certain extent, if regulation goes
 27 too far it will be recognized as a taking.’” [Id. at 537](#) (quoting [Pa. Coal Co. v. Mahon,](#)
 28 [260 U.S. 393 \(1922\)](#)). When a regulation denies the owner of *all* economically

1 beneficial or productive use of the land, it is a categorical taking. Lucas v. S.C.
2 Coastal Council, 505 U.S. 1003, 1019 (1992).

3 40. When, however, “a regulation places limitations on land that fall short of
4 eliminating all economically beneficial use, a taking nonetheless may have occurred,
5 depending on a complex of factors” identified by the Court in Penn Central Transp.
6 Co. v. New York City, 438 U.S. 104 (1978). See Palazzolo v. Rhode Island, 533 U.S.
7 606, 617 (2001). That rule has specifically been held to apply when the regulatory
8 action in question takes the form of a temporary moratorium on the use of the private
9 party’s property, as here. Tahoe-Sierra Pres. Council v. Tahoe Reg’l Planning Agency,
10 535 U.S. 302, 335-36 (2002) (“*Tahoe-Sierra*”).

11 41. “[T]he Court for the most part has refrained from elaborating ...
12 definitive rules’ about when regulation goes so far as to become a taking. [Citation]
13 Judicial decisions considering regulatory takings claims are typically ‘characterized
14 by essentially ad hoc, factual inquiries, designed to allow careful examination and
15 weighing of all the relevant circumstances.’” Colony Cove Props., Ltd. Liab. Co. v. City
16 of Carson, 888 F.3d 445, 450 (9th Cir. 2018) (quoting Murr v. Wisconsin, 582 U.S. 383,
17 393 (2017), and Tahoe-Sierra, 535 U.S. at 322). However, under Penn Central, a Court
18 evaluates the following three factors of “particular significance”: (1) “[t]he economic
19 impact of the regulation on the claimant;” (2) “the extent to which the regulation has
20 interfered with distinct investment-backed expectations”; and (3) “the character of the
21 governmental action.” 438 U.S. at 124.

22 42. Moreover, in a temporary regulatory takings case, “the duration of the
23 restriction is one of the important factors that a court must consider.” Tahoe-Sierra,
24 535 U.S. at 342. While “normal delays”—such as those typically involved in “obtaining
25 building permits, changes in ordinances, variances, and the like”—will not typically
26 give rise to a taking, id. at 333, “an extraordinary delay in decision-making may
27 constitute a taking.” Cooley v. United States, 324 F.3d 1297, 1306-07 (Fed. Cir. 2003);
28 see also David Hill Dev., Ltd. Liab. Co. v. City of Forest Grove, No. 3:08-cv-266-AC,

2012 U.S. Dist. LEXIS 156028, at *57-59 (D. Or. Oct. 30, 2012) (denying motions for judgment notwithstanding the verdict and for new trial where jury found extraordinary delay amounted to a regulatory takings).

43. “The question of whether a delay is extraordinary is not a simple matter of the number of months or years taken by the Government to make its decision however.” *Bass Enterprises Production Co. v. United States*, 381 F.3d 1360, 1366 (Fed. Cir. 2004) (citing *Tahoe-Sierra*, 535 U.S. at 333, 337-38). “Instead of such an easy guidepost, courts must evaluate a number of factors to determine whether the delay is extraordinary,’ including the reasons for the delay and whether the delay is proportionate to the nature of the government process.” *David Hill Dev., Ltd. Liab. Co.*, 2012 U.S. Dist. LEXIS 156028, at *59-60 (quoting *Bass Enterprises*, 381 F.3d at 1366). It is a fact-intensive question. *Reoforce, Inc. v. United States*, No. 11-884L, 2012 U.S. Claims LEXIS 2256, at *18 (Fed. Cl. Dec. 11, 2012). So, while in *Tahoe-Sierra* the Court concluded that a 32-month development moratorium did not constitute a *categorical* taking⁹ and deferred to the trial court’s (unappealed) determination that the delay was reasonable under the circumstances of that case, delays of as little as a year have been found to be takings in other cases, based on their specific circumstances. See *David Hill Dev., Ltd. Liab. Co.*, 2012 U.S. Dist. LEXIS 156028, at *59 (declining to overturn jury’s determination that a year-long delay was “extraordinary” under the circumstances); *Ecogen, LLC v. Town of Italy*, 438 F. Supp. 2d 149, 162 (W.D.N.Y. 2006) (denying a preliminary injunction, but ordering a town to either end its moratorium with 90 days or render a decision on the plaintiff’s hardship application, because “to pass constitutional muster, a moratorium must be of reasonable duration” and “[u]nder the circumstances here, it does seem

⁹ Importantly, *Tahoe-Sierra* did not hold that the 32-month delay was not a regulatory taking under *Penn Central*, “both because petitioners expressly disavowed that theory, and because they did not appeal from the District Court’s conclusion that the evidence would not support it.” 535 U.S. at 334.

curious and suspicious that a two-year period is needed to adopt a zoning plan for wind turbines.”). *See also Tahoe-Sierra*, 535 U.S. at 341 (“It may well be true that any moratorium that lasts for more than one year should be viewed with special skepticism.”).

44. In this case, the delay that the Moratorium imposed on the use of Plaintiff’s property was “extraordinary” under the circumstances. The COUNTY’s COVID-19 Moratorium was one of the longest-running in the Nation,¹⁰ and one of the most restrictive. It was in place more than twice as long as the federal eviction moratorium (to the extent that moratorium was applicable in California in light of AB 3088). State law only barred eviction for complete nonpayment of rent for six months (March 2020 to August 2020) and it only barred eviction where the tenant paid at least some of the rent for 13 more months (September 2020 to September 2021), for a total of 19 months in all. The COUNTY’s Moratorium barred eviction of any tenant for virtually any reason for 37 months—again, twice as long. An additional circumstance enhancing the “extraordinariness” is the breadth of the COUNTY’s Moratorium as opposed to state law. State law only prohibited the eviction of tenants who attested under penalty of perjury that they had suffered “COVID-19-related financial distress”; after the first six months it required that tenants make at least partial payment; and it permitted evictions on other “for cause” grounds, such as damaging the property (*i.e.*, waste or nuisance), breach of the lease, etc. The COUNTY’s Moratorium, by contrast, did not contain these protections for property-

¹⁰ Compare *Gallo v. District of Columbia*, 659 F. Supp. 3d 21, 22 (D.D.C. 2023) (“landlords who had used the District[of Columbia]’s rental-assistance program could begin filing eviction lawsuits in October of [2021]”); *Stuart Mills Props, LLC v. City of Burbank*, No. 2:22-cv-04246-RGK-AGR, 2022 U.S. Dist. LEXIS 180191 (C.D. Cal. Sep. 19, 2022) (Burbank’s commercial eviction moratorium expired in September 2021); *Jevons v. Inslee*, No. 22-35050, 2023 U.S. App. LEXIS 20453, at *2 (9th Cir. Aug. 8, 2023) (Washington’s eviction moratorium “expired in October 2021”); *S. Cal. Rental Hous. Ass’n v. Cty. of San Diego*, 550 F. Supp. 3d 853, 859 (S.D. Cal. 2021) (noting San Diego County’s eviction moratorium ordinance set to expire August 14, 2021).

1 owners.

2 45. In particular, the continued maintenance of the Moratorium after
 3 September 2021 was extraordinary. By that time, vaccines were widely available,¹¹
 4 businesses and schools were re-opened, the federal eviction moratorium had expired,
 5 and the State’s partial moratorium under AB 3088—which was already more
 6 permissive than the County’s—had begun phasing out. By that time, demand for rent
 7 relief funds was already beginning to exceed supply, so the harm to property owners
 8 continued to grow. And the unemployment rate in Alameda County, which peaked at
 9 14.8% in April 2020, had fallen to 5.2% by September 2021—less than a point higher
 10 than in March 2020 (4.4%)—and it continued to fall, matching the March 2020 rate by
 11 November of that year.¹² Yet the COUNTY BOARD still persisted in maintaining the
 12 Moratorium for another year-and-a-half. The Moratorium may have initially begun as
 13 a response to COVID-19, particularly in the early months when residents were
 14 ordered to “shelter-in-place” and most businesses were closed, but the continued
 15 maintenance of it when virtually all of the other restrictions were long-since repealed
 16 belies the notion that the “extraordinary delay” in question can be justified on that
 17 basis.¹³ In circumstances involving “an acute risk to public health ... judicial scrutiny
 18 may recede to its lowest ebb, leaving room for an energetic response by the political
 19 branches to the many uncertainties accompanying the onset of a public health crisis.
 20 But when a crisis stops being temporary, and as days and weeks turn to months and
 21

22 ¹¹ See Ala. Ass’n of Realtors, 594 U.S. at 763 (August 2021 ruling agreeing with
 23 district court decision that equitable principles did not support leaving the federal
 24 eviction moratorium in place any longer where “Vaccine and rental-assistance
 25 distribution had improved since the stay was entered, while the harm to landlords
 had continued to increase.”).

26 ¹² See Fed. Reserve Bank of St. Louis, “Unemployment Rate in Alameda County,
 CA: Dec. 2019 to Feb. 2025,” *available online at*
 27 <https://alfred.stlouisfed.org/graph/?g=1E27I> (last visited Feb. 27, 2025).

28 ¹³ Plaintiffs do not mean to concede that application of the Moratorium prior to
 September 2021 was not a taking, but the invasion became especially egregious after
 that time.

1 years, the slack in the leash eventually runs out. ‘While the law may take periodic
 2 naps during a pandemic, we will not let it sleep through one.’”
 3 Capitol Hill Baptist Church v. Bowser, 496 F. Supp. 3d 284, 297 (D.D.C. 2020)
 4 (quoting Roberts v. Neace, 958 F.3d 409, 414-15 (6th Cir. 2020) (per curiam)).

5 46. The Moratorium also interfered with Plaintiffs’ distinct investment-
 6 backed expectations. “To form the basis for a taking claim, a purported distinct
 7 investment-backed expectation must be objectively reasonable.” Colony Cove, 888
 8 F.3d at 452; see also Bridge Aina Le’a, LLC v. State Land Use Comm’n, 950 F.3d 610,
 9 633 (9th Cir. 2020). The reasonableness of a plaintiff’s expectations must be evaluated
 10 against “the regulatory environment at the time of the acquisition of the property.”
 11 Bridge Aina Le’a, 950 F.3d at 634. “[T]he purpose [of this *Penn Central* factor] is to
 12 limit recovery to owners who could demonstrate that they bought their property in
 13 reliance on a state of affairs that did not include the challenged regulatory regime.”
 14 Allen v. Cuomo, 100 F.3d 253, 262 (2d Cir. 1996).

15 47. While landlords operate in a regulated field, and might have anticipated
 16 some future limits on their relationships with their tenants, “no amount of prior
 17 regulation could have led landlords to expect anything like the blanket Moratorium,”
 18 Apartment Ass’n of L.A. Cty., Inc. v. City of L.A., 500 F. Supp. 3d 1088, 1096 (C.D. Cal.
 19 2020), much less one that lasted over three full years. See also Baptiste v. Kennealy,
 20 490 F. Supp. 3d 353, 384 (D. Mass. 2020) (“the court finds that a reasonable landlord
 21 would not have anticipated a virtually unprecedented event such as the COVID-19
 22 pandemic that would generate a ban on even initiating eviction actions against
 23 tenants who do not pay rent and on replacing them with tenants who do pay rent.”);
 24 Heights Apartments, LLC v. Walz, 30 F.4th 720, 734 (8th Cir. 2022) (“no landlord
 25 could have reasonably expected regulations of the duration and extent present in”
 26 Minnesota); GHP Mgmt. Corp. v. City of L.A., No. CV 21-06311 DDP (JEMx), 2022
 27 U.S. Dist. LEXIS 209157, at *15 (C.D. Cal. Nov. 17, 2022) (“The regulatory
 28 environment existing prior to the pandemic, however, gave Plaintiffs little reason to

1 expect that they might be barred from evicting tenants for nonpayment of rent.
 2 *Bridge Aina Le'a*, 950 F.3d at 634. “Distinct investment-backed expectations” implies
 3 reasonable probability, *like expecting rent to be paid*, not starry eyed hope of winning
 4 the jackpot if the law changes. *A landlord buys land burdened by lease-holds in order*
 5 *to acquire a stream of income* from rents and the possibility of increased rents or
 6 resale value in the future.”) (quoting [Guggenheim v. City of Goleta](#), 638 F.3d 1111,
 7 [1120 \(9th Cir. 2010\)](#)) (italics added by *GHP Mgmt.* court).

8 48. The Moratorium worked a regulatory takings with respect to Plaintiffs’
 9 property. This is especially so when applied in light of “the purpose of the Takings
 10 Clause, which is to prevent the government from ‘forcing some people alone to bear
 11 public burdens which, in all fairness and justice, should be borne by the public as a
 12 whole.’ [Citation.]” [Palazzolo](#), 533 U.S. at 617-18.

13 **FIRST CLAIM FOR RELIEF**

14 **(Violation of the 5th Amendment to the U.S. Constitution (Regulatory** 15 **Takings) by Alison Mitchell Against All Defendants (42 U.S.C. § 1983))**¹⁴

16 49. The allegations contained in Paragraphs 1 through 48 of this First
 17 Amended Complaint are hereby incorporated by reference.

18 50. By enacting the Moratorium and, especially, continuing to maintain it
 19 after September 2021, when state law eviction restrictions began to phase out
 20 altogether, the COUNTY violated the Fifth Amendment of the United States
 21 Constitution, which prohibits the taking of private property for public use without
 22 just compensation. The Moratorium effected a regulatory taking of Plaintiff ALISON
 23

24 ¹⁴ Because this Court previously dismissed Plaintiffs’ claims for a physical takings,
 25 both facial and as-applied; for impairment of contract; for due process; and for
 26 preemption with prejudice, the omission of those causes of action from this First
 27 Amended Complaint does not waive Plaintiffs’ right to appeal those claims in the
 28 future, as appropriate. See [Lacey v. Maricopa Cty.](#), 693 F.3d 896, 928 (9th Cir. 2012)
 (en banc) (“For claims dismissed with prejudice and without leave to amend, we will
 not require that they be repled in a subsequent amended complaint to preserve them
 for appeal.”).

1 MITCHELL's property.

2 51. Ms. MITCHELL was prevented from evicting her tenant for the entirety
3 of the 37-month Moratorium.

4 52. Throughout the duration of the Moratorium, Ms. MITCHELL and her
5 husband owned a condominium located at 5855 Horton Street, #524, Emeryville, CA.
6 They bought the property in 2003 as a place to eventually "age in place"—a place to
7 move into when remaining in their two-story suburban home becomes infeasible—
8 because it is on a single level in a secured building right next to the train station with
9 free local public transport and access to most of their needs without driving. In the
10 meantime, though, the income from the rental was intended to help fund the
11 MITCHELLS' retirement.

12 53. However, their tenant stopped paying rent in March 2020 and paid no
13 rent thereafter. The tenant lived rent free throughout the entire life of the
14 Moratorium, and the MITCHELLS were unable to evict her until November 2023.
15 The MITCHELLS submitted an application to the COUNTY's ERAP program in May
16 2021, and their property manager submitted all the documents that the program
17 requested of them by way of documentation. However, the tenant failed to respond to
18 requests from the COUNTY's ERAP program for additional documents to support her
19 eligibility for the payments, so the MITCHELLS never received any rent relief funds
20 to offset their losses.

21 54. In total, the MITCHELLS lost approximately \$135,000 in uncollected
22 rent in total, not even taking into account rent increases that they were entitled to
23 impose and interest that they would have been able to earn on that rental income.
24 Those rent increases and interest likely represent an additional \$30,000 to \$35,000 in
25 lost income or more. Just considering the period after September 2021, the
26 MITCHELLS lost approximately \$75,000 in uncollected rent, again not taking into
27 account rent increases and interest, which would likely represent an additional
28 \$15,000 or more.

1 55. Nor was lost income the only detrimental economic impact. Had the
2 MITCHELLS not had a squatter living in their unit in September 2021, they estimate
3 they would have been able to sell it for \$800,000 or more, but they could not do so
4 with the tenant present. Indeed, the MITCHELLS tried to sell the condo, at a steep
5 discount and with an offer to assign the rights to the unpaid back rent (to the extent
6 permitted by state law, *see* [Cal. Civ. Code § 1788.66](#)), but they received virtually no
7 interest from potential buyers, and their broker advised them that they would be
8 unable to be able to sell the property as long as the tenant remained in possession.
9 When they ultimately were able to sell the property, after regaining possession in
10 November 2023, they sold at \$695,000, meaning that they lost approximately
11 \$100,000 dollars in equity as well. At the same time, they lost their “grandfathered-
12 in” property tax base under Proposition 13, which will surely cost them tens of
13 thousands of dollars more in property taxes for a comparably priced unit in the
14 future.

15 56. The MITCHELLS, of course, continued to bear substantial costs for the
16 unit, however, including property taxes, insurance, homeowners’ association dues,
17 repairs and maintenance, and property management, and those costs ate into the
18 MITCHELLS’ retirement savings. The financial effects became so burdensome that
19 the MITCHELLS consulted an attorney about removing the condominium from the
20 rental market under the Ellis Act eviction process, so that they could regain
21 possession for sale, but because the property is a condominium the MITCHELLS were
22 unable to pursue that option. *See* [Valnes v. Santa Monica Rent Control Bd., 221 Cal.](#)
23 [App. 3d 1116 \(1990\)](#) (Ellis Act does not apply to condominiums). In the end, Ms.
24 MITCHELL ended up having to sell her interests in three income-producing limited
25 partnerships at a significant discount to enable the MITCHELLS to have sufficient
26 cash to offset the costs attributable to the Moratorium.

27 57. When the MITCHELLS finally did regain possession of their unit, they
28 discovered that the tenant had significantly damaged the property, necessitating

1 substantial repairs, which took nearly a year to complete. Among other things, all of
2 the flooring had to be replaced, as did the appliances and window coverings. One of
3 the windows had BB gun holes through the glass. The garbage disposal and heaters
4 were non-functional. Restoring the unit to a livable condition necessitated repairs
5 costing in excess of \$30,000.

6 58. Factoring in the lost equity, lost rental income¹⁵ and interest,
7 discounted sale of other investments, and significant repair costs (to say nothing of
8 substantial legal fees), the Moratorium likely cost the MITCHELLS several hundred
9 thousands of dollars overall, just in the post-September 2021 period alone—and more
10 over the course of the entire Moratorium. (The precise amount is to be further
11 determined based on the evidence to be presented at trial.)

12 59. The Moratorium also interfered with the MITCHELLS' investment-
13 backed expectations. At the time the MITCHELLS acquired and began renting their
14 property, in 2003, residential units in Emeryville weren't even subject to plain-vanilla
15 rent control laws, much less a regulatory system that permitted a tenant to hold over
16 for three years without paying any rent whatsoever. So while landlords operate in a
17 regulated field, and might have anticipated *some* future limits on their relationships
18 with their tenants, "no amount of prior regulation could have led landlords to expect
19 anything like the blanket Moratorium," *Apartment Ass'n of L.A. Cty., Inc. v. City of*
20 *L.A.*, 500 F. Supp. 3d 1088, 1096 (C.D. Cal. 2020), much less one that lasted over
21 three full years.

22 60. Finally, the MITCHELLS each suffered significant physical effects and
23 emotional distress from the effects of the Moratorium and the economic hardship that
24 it caused them.

25 61. For the foregoing reasons, the COUNTY's Moratorium constituted a
26 takings without just compensation and thus violated Plaintiffs' rights protected by the

27
28 ¹⁵ See *Colony Cove*, 888 F.3d at 451 ("Projected income streams can contribute to a
method for determining the post-deprivation value of property...").

United States Constitution.

SECOND CLAIM FOR RELIEF

**(Violation of Article I, Section 19, of the California Constitution (Inverse
Condemnation) by Alison Mitchell Against All Defendants)**

62. The allegations contained in Paragraphs 1 through 61 of this First Amended Complaint are hereby incorporated by reference.

63. The COUNTY's Moratorium violated [Article I, Section 19, of the California Constitution](#) on its face and as applied to ALISON MITCHELL, for all the reasons alleged herein.

64. The COUNTY's Moratorium therefore constituted a takings without just compensation and thus violated Plaintiff's rights protected by the California Constitution.

65. As a result of Defendants' actions, Plaintiff, as alleged herein, has suffered out of pocket expenses, loss of property value, loss of opportunity value, and loss of income in an amount that is yet to be ascertained to be further determined at trial.

THIRD CLAIM FOR RELIEF

**(Violation of the 5th Amendment to the U.S. Constitution (Regulatory
Takings) by Michael Hagerty Against All Defendants (42 U.S.C. § 1983))**

66. The allegations contained in Paragraphs 1 through 48 of this First Amended Complaint are hereby incorporated by reference.

67. By enacting the Moratorium and, especially, continuing to maintain it after September 2021, when state law eviction restrictions began to phase out altogether, the COUNTY violated the Fifth Amendment of the United States Constitution, which prohibits the taking of private property for public use without just compensation. The Moratorium effected a regulatory taking of Plaintiff MICHAEL HAGERTY's property.

68. Mr. HAGERTY was prevented from evicting his tenant for the entirety of

1 the 37-month Moratorium.

2 69. Throughout the duration of the Moratorium, Mr. HAGERTY owned a
3 condominium located at 6 Commodore Drive, #334, Emeryville, CA. He bought the
4 property approximately 10 years earlier as an investment property. Mr. HAGERTY is
5 retired and relies on the income from this rental property to help fund his retirement.
6 Mr. HAGERTY's tenant during the Moratorium did not pay any rent for most months
7 over the three-year duration of the Moratorium, and Mr. HAGERTY was forced to
8 withdraw money from his Individual Retirement Account ("IRA") to pay the costs of
9 maintaining the condominium.

10 70. Mr. HAGERTY's property manager applied to the COUNTY's ERAP
11 program approximately in 2021, but the application was denied because the tenant
12 was deemed ineligible.

13 71. The tenant also rented a room of the condominium out through Airbnb
14 during the Moratorium, in violation of the lease, allowing him to profit from Mr.
15 HAGERTY's property at Mr. HAGERTY's expense.

16 72. When the Moratorium expired at the end of April 2023, the tenant owed
17 approximately \$73,000 in back rent, not even taking into account rent increases that
18 he was entitled to impose and interest that he would have been able to earn on that
19 rental income. Those rent increases and interest likely represent an additional
20 \$20,000 to \$30,000 in lost income or more. Just considering the period after
21 September 2021, Mr. HAGERTY lost approximately \$45,000 in uncollected rent,
22 again not taking into account rent increases and interest, which would likely
23 represent an additional \$15,000 or more.

24 73. In May 2023, in an effort to avoid eviction proceedings, Mr. HAGERTY
25 offered the tenant \$2,400 to cover moving expenses if he moved out immediately, and
26 a payment plan to pay back the balance owed. The tenant agreed, and took the
27 money, then promptly refused to make payments in accordance with their agreement.
28 Mr. HAGERTY filed suit, and the tenant paid \$4,000, but Mr. HAGERTY can no

1 longer locate the tenant. In other words, Mr. HAGERTY was able to recover, on net,
2 \$1,600 of the \$73,000 that the tenant owed him, further demonstrating that the
3 ability to collect back-rent as consumer debt is an illusory remedy.

4 74. Nor was lost income the only detrimental economic impact. Had Mr.
5 HAGERTY not had a squatter living in his unit in September 2021, he likely would
6 have been able to sell it for \$800,000 or more, but he could not do so with the tenant
7 present. If he had tried selling it at the end of the Moratorium, he would likely have
8 only been able to sell it for approximately \$550,000 meaning that he lost
9 approximately \$200,000 to \$250,000 in equity as well.

10 75. Mr. HAGERTY, of course, continued to bear substantial costs for the
11 unit, including property taxes, insurance, homeowners' association dues, repairs and
12 maintenance, and property management, and those costs ate into Mr. HAGERTY's
13 savings.

14 76. When Mr. HAGERTY finally did regain possession of the unit, he
15 discovered that the tenant had significantly damaged the property, necessitating
16 substantial repairs. Restoring the unit to a livable condition necessitated repairs
17 costing thousands of dollars.

18 77. Factoring in the lost equity, lost rental income and interest, withdrawals
19 from his IRA, and significant repair costs (to say nothing of legal fees), the
20 Moratorium likely cost Mr. HAGERTY several hundred thousands of dollars overall,
21 just in the post-September 2021 period alone—and more over the course of the entire
22 Moratorium. (The precise amount is to be further determined based on the evidence to
23 be presented at trial.)

24 78. The Moratorium also interfered with Mr. HAGERTY's investment-
25 backed expectations. At the time Mr. HAGERTY acquired and began renting his
26 property, almost 15 years ago, residential units in Emeryville weren't even subject to
27 plain-vanilla rent control laws, much less a regulatory system that permitted a tenant
28 to hold over for three years without paying any rent whatsoever. So while landlords

operate in a regulated field, and might have anticipated *some* future limits on their relationships with their tenants, “no amount of prior regulation could have led landlords to expect anything like the blanket Moratorium,” [*Apartment Ass’n of L.A. Cty., Inc. v. City of L.A.*, 500 F. Supp. 3d 1088, 1096 \(C.D. Cal. 2020\)](#), much less one that lasted over three full years.

79. For the foregoing reasons, the COUNTY’s Moratorium constituted a takings without just compensation and thus violated Plaintiffs’ rights protected by the United States Constitution.

FOURTH CLAIM FOR RELIEF

(Violation of Article I, Section 19, of the California Constitution (Inverse Condemnation) by Michael Hagerty Against All Defendants)

80. The allegations contained in Paragraphs 1 through 48 and 66 to 79 of this First Amended Complaint are hereby incorporated by reference.

81. The COUNTY’s Moratorium violated [Article I, Section 19, of the California Constitution](#) on its face and as applied to MICHAEL HAGERTY, for all the reasons alleged herein.

82. The COUNTY’s Moratorium therefore constituted a takings without just compensation and thus violated Plaintiff’s rights protected by the California Constitution.

83. As a result of Defendants’ actions, Plaintiff, as alleged herein, has suffered out of pocket expenses, loss of property value, loss of opportunity value, and loss of income in an amount that is yet to be ascertained to be further determined at trial.

FIFTH CLAIM FOR RELIEF

(Violation of the 5th Amendment to the U.S. Constitution (Regulatory Takings) by Rakesh and Tripti Jain Against All Defendants)

84. The allegations contained in Paragraphs 1 through 48 of this First Amended Complaint are hereby incorporated by reference.

1 85. By enacting the Moratorium and, especially, continuing to maintain it
2 after September 2021, when state law eviction restrictions began to phase out
3 altogether, the COUNTY violated the Fifth Amendment of the United States
4 Constitution, which prohibits the taking of private property for public use without
5 just compensation. The Moratorium effected a regulatory taking of Plaintiffs
6 RAKESH and TRIPTI JAIN's property.

7 86. Since 2012, Plaintiffs RAKESH and TRIPTI JAIN owned a three-
8 bedroom house located at 336 Escobar Street, Fremont, CA, which they rented out.
9 The rent proceeds were intended to fund college educations for their children.
10 However, their tenant stopped paying rent immediately upon taking possession in
11 January 2020—before the pandemic even began. In fact, he never paid a cent. His
12 deposit check and check for the first month's rent both bounced within three days of
13 him taking possession, and he never paid anything thereafter. The JAINS are
14 informed and believe, and on that basis allege, that the District Attorney lodged a
15 criminal complaint against the tenant in 2020 based on his provision of a fraudulent
16 W-2, credit report and a bad check to the JAINS in connection with his lease
17 application, but even now that case remains pending. *See People v. Singh*, Case No.
18 20-CR-015044 (Alameda Cty. Super. Court filed Nov. 17, 2020). The JAINS are also
19 informed and believe, based on conversations with staff in the District Attorney's
20 office, that the tenant had previously engaged in similar activity with previous
21 landlords and that the office was on the lookout for him.

22 87. Yet he remained protected from eviction by the COUNTY's Moratorium
23 and could not be evicted until November 2022, when the Court ruled that Ellis Act
24 evictions were permitted by the COUNTY's Moratorium, contrary to the previous
25 public pronouncements of the COUNTY itself. The JAINS, faced with the inability to
26 collect any rent for their property, had filed an unlawful detainer complaint under the
27 Ellis Act in the Alameda County Superior Court in October 2021, but the Superior
28 Court took no action on the complaint until November 2022.

1 88. While the City of Fremont's ERAP program paid the JAINS \$43,500 in
2 rental assistance, that was far shy of the amount the tenant owed and failed to pay.
3 When the tenant was finally evicted, he had failed to pay approximately \$125,000 in
4 rent during his time of possession, not even taking into account rent increases that
5 the JAINS were entitled to impose and interest that they would have been able to
6 earn on that rental income. Those rent increases and interest likely represent an
7 additional \$20,000 to \$30,000 in lost income or more. Just considering the period after
8 September 2021, the JAINS lost more than \$50,000 in uncollected rent, again not
9 taking into account rent increases and interest, which would likely represent an
10 additional \$15,000 or more.

11 89. The JAINS, of course, continued to bear substantial costs for the house,
12 including property taxes, insurance, repairs and maintenance, and property
13 management, and those costs ate into their savings.

14 90. Furthermore, the JAINS are informed and believe, and on that basis
15 allege, that the tenant engaged in numerous lease violations, including (1) having
16 four German Shepherds on the property when the lease forbids pets, (2) subletting
17 portions of the unit without permission, and (3) making modifications to the unit
18 without permission or appropriate permits. The tenant also denied the JAINS entry
19 to the unit. Following their tenant's eviction, when they were finally able to regain
20 possession, the JAINS had to spend approximately \$50,000 to repair the damage to
21 the property incurred during the extended period during which the Moratorium
22 prevented them from seeking to recover possession over the course of nearly three
23 years.

24 91. Nor was lost income and repair costs the only detrimental economic
25 impacts. Had the JAINS not had a squatter living in their unit in September 2021,
26 they likely would have been able to sell it for \$1,700,000 or more, but they could not
27 do so with the tenant present. If they had tried sell it in the months following the
28 ultimate eviction—November, December, January, or February of 2022-2023—they

1 would likely have only been able to sell it for approximately \$1,500,000 meaning that
2 they lost approximately \$200,000 in equity as well.

3 92. The situation was extremely stressful for the JAINS, causing Mrs. JAIN
4 major anxiety and emotional distress, including panic attacks, and causing her to
5 require occasional medication to treat the effects of the stress and anxiety.

6 93. Factoring in the lost equity, lost rental income and interest, and
7 significant repair costs (to say nothing of legal fees), the Moratorium likely cost the
8 JAINS several hundred thousands of dollars overall, just in the post-September 2021
9 period alone—and more over the course of the entire Moratorium. (The precise
10 amount is to be further determined based on the evidence to be presented at trial.)

11 94. The Moratorium also interfered with the JAINS' investment-backed
12 expectations. At the time the JAINS acquired and began renting their property, in
13 2012, residential units in Fremont weren't even subject to plain-vanilla rent control
14 laws, much less a regulatory system that permitted a tenant to hold over for three
15 years without paying any rent whatsoever. So while landlords operate in a regulated
16 field, and might have anticipated *some* future limits on their relationships with their
17 tenants, "no amount of prior regulation could have led landlords to expect anything
18 like the blanket Moratorium," [*Apartment Ass'n of L.A. Cty., Inc. v. City of L.A.*, 500 F.
19 Supp. 3d 1088, 1096 \(C.D. Cal. 2020\)](#), much less one that lasted over three full years.

20 95. For the foregoing reasons, the COUNTY's Moratorium constituted a
21 takings without just compensation and thus violated Plaintiffs' rights protected by the
22 United States Constitution.

23 **SIXTH CLAIM FOR RELIEF**

24 **(Violation of Article I, Section 19, of the California Constitution (Inverse 25 Condemnation) by Rakesh and Tripti Jain Against All Defendants)**

26 96. The allegations contained in Paragraphs 1 through 48 and 84 to 95 of
27 this First Amended Complaint are hereby incorporated by reference.

28 97. The COUNTY's Moratorium violated [Article I, Section 19, of the](#)

1 [California Constitution](#) on its face and as applied to RAKESH and TRIPTI JAIN, for
2 all the reasons alleged herein.

3 98. The COUNTY's Moratorium therefore constituted a takings without just
4 compensation and thus violated Plaintiffs' rights protected by the California
5 Constitution.

6 99. As a result of Defendants' actions, Plaintiffs, as alleged herein, have
7 suffered out of pocket expenses, loss of property value, loss of opportunity value, and
8 loss of income in an amount that is yet to be ascertained to be further determined at
9 trial.

10 **SEVENTH CLAIM FOR RELIEF**

11 **(Violation of the 5th Amendment to the U.S. Constitution (Regulatory** 12 **Takings) by H. Alex and Dannie Alvarez Against All Defendants)**

13 100. The allegations contained in Paragraphs 1 through 48 of this First
14 Amended Complaint are hereby incorporated by reference.

15 101. By enacting the Moratorium and, especially, continuing to maintain it
16 after September 2021, when state law eviction restrictions began to phase out
17 altogether, the COUNTY violated the Fifth Amendment of the United States
18 Constitution, which prohibits the taking of private property for public use without
19 just compensation. The Moratorium effected a regulatory taking of Plaintiffs H. ALEX
20 and DANNIE ALVAREZ'S property.

21 102. For approximately 35 years, from 1989 and up to and including
22 throughout the duration of the Moratorium, Plaintiffs H. ALEX ALVAREZ and
23 DANNIE ALVAREZ (the ALVAREZES) owned a single-family home located at 2919
24 Liberty Drive, Pleasanton, CA, which they had long rented out. However, in 2016 they
25 completely renovated the house with the intention of downsizing and moving into the
26 home in Pleasanton in their retirement, and in 2019 the ALVAREZES sold their
27 primary residence to pursue that goal. They spoke with their tenant about this plan
28 at the time, and he asked if he could stay in the property until May 2020, when his

1 son would graduate. The ALVAREZES agreed, because they knew they would be
2 spending several months in Texas—where they care for Dannie’s elderly parents—
3 before moving into the Pleasanton home.

4 103. Once the COUNTY’s Moratorium took effect in early 2020, however, the
5 situation changed. The tenant stopped paying rent altogether, citing financial
6 hardship. The ALVAREZES are informed and believe, and on that basis allege, that
7 the tenant’s financial hardship was not attributable to the COVID-19 pandemic; it is
8 attributable to his decision to leave his six-figure salary job *prior to the pandemic* to
9 start his own business, which proved to be less successful than he anticipated, and to
10 his unwillingness to look for a new job. The ALVAREZES even tried to help him find
11 employment, but he told them he was unwilling to work for anyone else. Essentially,
12 he used the rent money that he owed the ALVAREZES to subsidize his business.

13 104. The ALVAREZES filed an unlawful detainer action under the Ellis Act
14 in April 2022, but they were not able to get any action on it until December of that
15 year. Ultimately, the tenant agreed to leave the property as of March 2023. Upon
16 recovering possession, the ALVAREZES discovered that the property had been
17 damaged by the tenant, and he left piles of personal belongings and furniture. It cost
18 the ALVAREZES nearly \$10,000 to repair the unit and dispose of the refuse that was
19 left behind.

20 105. By the time the ALVAREZES regained possession, the tenant had failed
21 to pay almost \$85,000 in rent, not even taking into account rent increases that the
22 ALVAREZES were entitled to impose and interest that they would have been able to
23 earn on that rental income. Those rent increases and interest likely represent an
24 additional \$10,000 to \$15,000 in lost income or more. Though the ALVAREZES were
25 able to get a rent relief payment for a portion of the outstanding amount, the tenant
26 still ultimately ended up approximately \$40,000 in arrears, almost all of which was
27 attributable to the period after September 2021. Again, that does not take into
28 account rent increases and interest, which would likely represent an additional

1 \$5,000 to \$10,000 more.

2 106. The ALVAREZES, of course, continued to bear substantial costs for the
3 house, including property taxes, insurance, repairs and maintenance, and property
4 management, and those costs ate into their savings. As a result, Dannie was forced to
5 postpone her planned retirement for several years.

6 107. More importantly, though, the ALVAREZES were prevented from
7 moving back into their own home, as they had long planned. And because they had
8 sold their prior home in anticipation of moving into the Pleasanton home, they ended
9 up spending the entire three years of the Moratorium living out of their RV, which
10 they had intended to leave in Texas during those periods where they went check in on
11 Dannie's parents. The need to drive the RV back and forth so they had somewhere to
12 live while in California, and the need to rent space to park it in California, likely cost
13 the ALVAREZES tens of thousands of dollars in added costs and depreciation of the
14 RV itself.

15 108. The ALVAREZES made attempts to sell the home during the
16 Moratorium, but they were unable to do so while a non-paying tenant remained in
17 possession. They were ultimately able to sell the property after the Moratorium ended
18 for \$1,300,000, which may have exceeded what they could have received in October
19 2021, but the result was that they were unable to afford a new home in California at
20 the "stepped-up" property tax rates of thousands of dollars more per month that a
21 new home would be subject to under Proposition 13. And to avoid \$300,000 in capital
22 gains taxes on the sale, they engaged in a Section 1031 exchange, meaning they had
23 to use the proceeds of the sale to purchase a new rental property, rather than a place
24 that they could move into.¹⁶ Ultimately, they ended up buying a small condominium

25
26 ¹⁶ See U.S. Internal Rev. Serv., "Fact Sheet: Like-Kind Exchanges Under IRC
27 Section 1031" (Feb. 2008), *available online at* <https://www.irs.gov/pub/irs-news/fs-08-18.pdf> (last visited Mar. 3, 2025), p. 2 ("Both the relinquished property you sell and
28 the replacement property you buy must meet certain requirements. [¶] Both
properties must be held for use in a trade or business or for investment. *Property used*

1 in Texas to have a place to live that was not the RV.

2 109. The situation was extremely stressful for the ALVAREZES, causing
3 significant health issues for both of them, and requiring them to both start taking
4 medication to treat the effects of the stress and anxiety.

5 110. Factoring in the lost rental income and interest, and significant repair
6 costs (to say nothing of legal fees), the Moratorium likely cost the ALVAREZES a
7 hundred thousand dollars overall, just in the post-September 2021 period alone. (The
8 precise amount is to be further determined based on the evidence to be presented at
9 trial.)

10 111. The Moratorium also interfered with the ALVAREZ' investment-backed
11 expectations. At the time the ALVAREZES acquired and began renting their
12 property, in 1989, residential units in Pleasanton weren't even subject to plain-vanilla
13 rent control laws, much less a regulatory system that permitted a tenant to hold over
14 for three years without paying any rent whatsoever. So while landlords operate in a
15 regulated field, and might have anticipated *some* future limits on their relationships
16 with their tenants, "no amount of prior regulation could have led landlords to expect
17 anything like the blanket Moratorium," [*Apartment Ass'n of L.A. Cty., Inc. v. City of*](#)
18 [*L.A., 500 F. Supp. 3d 1088, 1096 \(C.D. Cal. 2020\)*](#), much less one that lasted over
19 three full years.

20 112. For the foregoing reasons, the COUNTY's Moratorium constituted a
21 takings without just compensation and thus violated Plaintiffs' rights protected by the
22 United States Constitution.

23 **EIGHTH CLAIM FOR RELIEF**

24 **(Violation of Article I, Section 19, of the California Constitution (Inverse** 25 **Condemnation) by H. Alex and Dannie Alvarez Against All Defendants)**

26 113. The allegations contained in Paragraphs 1 through 48 and 100 to 112 of
27
28 *primarily for personal use, like a primary residence or a second home or vacation*
home, does not qualify for like-kind exchange treatment" (emphasis added)).

1 this First Amended Complaint are hereby incorporated by reference.

2 114. The COUNTY's Moratorium violated [Article I, Section 19, of the](#)
3 [California Constitution](#) on its face and as applied to H. ALEX and DANNIE
4 ALVAREZ, for all the reasons alleged herein.

5 115. The COUNTY's Moratorium therefore constituted a takings without just
6 compensation and thus violated Plaintiffs' rights protected by the California
7 Constitution.

8 116. As a result of Defendants' actions, Plaintiffs, as alleged herein, have
9 suffered out of pocket expenses, loss of property value, loss of opportunity value, and
10 loss of income in an amount that is yet to be ascertained to be further determined at
11 trial.

12 **NINTH CLAIM FOR RELIEF**

13 **(Violation of the 5th Amendment to the U.S. Constitution (Regulatory**
14 **Takings) by Stephen Lin Against All Defendants)**

15 117. The allegations contained in Paragraphs 1 through 48 of this First
16 Amended Complaint are hereby incorporated by reference.

17 118. By enacting the Moratorium and, especially, continuing to maintain it
18 after September 2021, when state law eviction restrictions began to phase out
19 altogether, the COUNTY violated the Fifth Amendment of the United States
20 Constitution, which prohibits the taking of private property for public use without
21 just compensation. The Moratorium effected a regulatory taking of Plaintiff
22 STEPHEN LIN's property.

23 119. Since 2012, Plaintiff STEPHEN LIN and his wife have owned a
24 condominium located at 39901 Lindsay McDermott Lane, Fremont, CA 94538, which
25 they have long rented out. In July 2021, the LINS' tenant stopped paying rent and did
26 not pay anything thereafter for the remainder of the Moratorium. While the City of
27 Fremont's ERAP program paid five months of rent covering July 2021 to November
28 2021, the rent from December 2021 through the end of the Moratorium was not paid.

1 The tenant incurred nearly \$70,000 in unpaid rent, not even taking into account rent
2 increases that the LINS were entitled to impose and interest that they would have
3 been able to earn on that rental income. Those rent increases and interest likely
4 represent an additional \$10,000 to \$15,000 in lost income or more. And, of course, all
5 of that accrued after September 2021. And while the City of Fremont's ERAP program
6 eventually ended up paying \$36,600, that still fell far short of the total loss of income.

7 120. The non-payment has caused substantial hardship for the LINS, because
8 Mrs. LIN lost her job as a result of the pandemic, and they rent the home they are
9 living in, so they were forced to pay their own rent plus the expenses of a mortgage,
10 property taxes, and repairs and maintenance for the condominium in Fremont. They
11 rely on the rent from the condominium to meet those expenses.

12 121. Even more detrimental, however, is that the tenants caused substantial
13 damage to the Fremont property and caused a nuisance to the neighbors. For one
14 thing, the lease agreement permitted two small dogs. Instead, since at least mid-2021,
15 the tenants have had three large German Shepherds and a Huskie. Those dogs
16 barked constantly, resulting in neighbors complaining to the homeowners' association
17 and County animal control. The tenants ignored repeated requests to address the
18 barking.

19 122. The dogs also defecated and urinated all over the patio and garage,
20 which the tenants addressed by hosing those two areas down at least three times a
21 day. The water bill for the unit more than doubled as a result, and it caused moisture
22 to build up outside on the stucco, resulting in algae growth outside and black mold in
23 the garage from the constant water exposure. Mr. LIN repeatedly asked the tenants
24 to stop hosing down the patio and garage, but they refused, and they also refused to
25 grant Mr. LIN or his agents' entry to the property to abate the mold.

26 123. Mr. LIN also received a public health notice from the CITY informing
27 him that the home had become infested with cockroaches.

28 124. The LINS' homeowners' association complained to Mr. LIN repeatedly

1 about the conditions at the unit, and Mr. LIN attended numerous HOA meetings to
2 apologize to his neighbors for the conditions caused by his tenants, but which the
3 LINS had no ability to address due to the COUNTY's Moratorium. In sum, not only
4 were the LINS' tenants failing to pay rent, thereby causing financial hardship to the
5 LINS, the eviction Moratorium also permitted the tenants to violate other material
6 terms of the lease and damage the LINS' property without any means of protecting it.
7 Upon recovering possession of the unit, the LINS had to pay approximately \$25,000
8 more to repair the property to a livable standard. They had to replace the moisture
9 damaged sheetrock, carpets, and tile flooring; paint the whole house; and more.

10 125. Nor was lost income and repair costs the only detrimental economic
11 impacts. Had the LINS not had a squatter living in their unit in in the first few
12 months of 2023, they likely would have been able to sell it for as much as \$800,000,
13 but they could not do so with the tenant present. If they had tried selling it in the
14 summer of 2023, following the end of the Moratorium, they would likely have been
15 able to sell it for less than \$700,000 meaning that they lost approximately \$100,000 of
16 more in equity as well.

17 126. Factoring in the lost equity, lost rental income and interest, and
18 significant repair costs (to say nothing of legal fees), the Moratorium likely cost the
19 LINS one- to two-hundred thousand dollars overall, all in the post-September 2021
20 period. (The precise amount is to be further determined based on the evidence to be
21 presented at trial.)

22 127. The Moratorium also interfered with the LINS' investment-backed
23 expectations. At the time the LINS acquired and began renting their property in
24 2012, residential units in Fremont weren't even subject to plain-vanilla rent control
25 laws, much less a regulatory system that permitted a tenant to hold over for three
26 years without paying any rent whatsoever. So while landlords operate in a regulated
27 field, and might have anticipated *some* future limits on their relationships with their
28 tenants, "no amount of prior regulation could have led landlords to expect anything

like the blanket Moratorium,” [*Apartment Ass’n of L.A. Cty., Inc. v. City of L.A.*, 500 F. Supp. 3d 1088, 1096 \(C.D. Cal. 2020\)](#), much less one that lasted over three full years.

128. For the foregoing reasons, the COUNTY’s Moratorium constituted a takings without just compensation and thus violated Plaintiff’s rights protected by the United States Constitution.

TENTH CLAIM FOR RELIEF

(Violation of Article I, Section 19, of the California Constitution (Inverse Condemnation) by H. Alex and Dannie Alvarez Against All Defendants)

129. The allegations contained in Paragraphs 1 through 48 and 117 to 128 of this First Amended Complaint are hereby incorporated by reference.

130. The COUNTY’s Moratorium violated [Article I, Section 19, of the California Constitution](#) on its face and as applied to STEPHEN LIN, for all the reasons alleged herein.

131. The COUNTY’s Moratorium therefore constituted a takings without just compensation and thus violated Plaintiffs’ rights protected by the California Constitution.

132. As a result of Defendants’ actions, Plaintiffs, as alleged herein, have suffered out of pocket expenses, loss of property value, loss of opportunity value, and loss of income in an amount that is yet to be ascertained to be further determined at trial.

PRAYER

WHEREFORE, Plaintiffs pray for relief as follows:

1. For a judgment that the Moratorium worked an unlawful taking of Plaintiffs’ property in violation of Plaintiffs’ rights under the Fifth Amendment of the United States Constitution, which prohibits the taking of private property for public use without just compensation.
2. For special damages for out-of-pocket expenses, loss of property value, and loss of opportunity costs in an amount that is yet to be ascertained.

3. For general damages according to proof, in an amount that is yet to be ascertained.
4. For costs of suit herein, including attorneys' fees.
5. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: March 3, 2025

NIELSEN MERKSAMER LLP

By:



Christopher E. Skinnell

Attorneys for Plaintiffs

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