

1 PAUL J. BEARD II (State Bar No. 210563)
ALSTON & BIRD LLP
2 333 South Hope Street, 16th Floor
Los Angeles, CA 90071-1410
3 Telephone: 213-576-1000
Facsimile: 213-576-1100
4 E-mail: paul.beard@alston.com

5 Counsel for Plaintiffs
BETTER HOUSING FOR LONG BEACH;
6 JOANI WEIR

7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 BETTER HOUSING FOR LONG BEACH;
JOANI WEIR, an individual,

12 Plaintiffs,

13 v.

14 CITY OF LONG BEACH; GAVIN
15 NEWSOM, in his official capacity as
Governor of the State of California,

16 Defendants.

Case No.: 2:19-CV-08861

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

17
18
19 Plaintiffs BETTER HOUSING FOR LONG BEACH and JOANI WEIR, by and
20 through the undersigned counsel, bring this Complaint for Declaratory and Injunctive Relief
21 against Defendant CITY OF LONG BEACH and Defendant GAVIN NEWSOM, in his
22 official capacity as the Governor of the State of California, and allege as follows:

23 **INTRODUCTION**

24 1. On July 11, 2019, Defendant CITY OF LONG BEACH passed the “Tenant
25 Relocation Assistance Ordinance” (hereinafter, the “Ordinance”). With limited exceptions
26 not applicable to Plaintiffs, the Ordinance requires an Owner to pay to a tenant the
27 equivalent of two months’ rent for a unit of similar size in the City (up to \$4,500) as the
28 condition of exercising her right to terminate a tenancy and repossess her property. The

1 payment must be made without regard to the tenant’s income, actual relocation costs, or
2 proof that the payment is actually applied to relocation expenses.

3 2. Shortly thereafter, the California Legislature passed, and Defendant GAVIN
4 NEWSOM signed into law, the so-called “Tenant Protection Act of 2019” (hereinafter,
5 “Assembly Bill 1482” or “AB 1482”). With limited exceptions not applicable here, AB
6 1482 requires (among other things) that an Owner pay a tenant one month’s rent—
7 characterized by the law as “relocation assistance”—as the condition of exercising her right
8 to terminate a tenancy and repossess her property. Like the City Ordinance, AB 1482
9 requires that payment be made without regard to the tenant’s income, actual relocation
10 costs, or proof that the payment is actually applied to relocation expenses.

11 3. The relocation-payment provisions of both the Ordinance and AB 1482 apply
12 to Owners within the City’s jurisdiction, including Plaintiffs. AB 1482 applies to more
13 tenants in the City than the Ordinance. But the Ordinance requires higher relocation
14 payments when it does apply.

15 4. As explained in greater detail below, the relocation-payment provisions of
16 both the Ordinance and AB 1482 violate the state and federal constitutional rights of
17 Plaintiffs and similarly situated rental-housing owners in the City, and should therefore be
18 declared as such and enjoined from enforcement.

19 **JURISDICTION AND VENUE**

20 5. The claims in this action arise from unconstitutional actions taken by
21 Defendants under color of state law, in violation of (a) the Fourth and Fifth Amendments
22 to the United States Constitution, as incorporated against state and local governments by
23 the Fourteenth Amendment, and (b) the Due Process Clause of the Fourteenth Amendment.
24 Consequently, this Court has original jurisdiction over this action under 42 U.S.C. § 1983,
25 28 U.S.C. § 1331, and 28 U.S.C. § 1343. The Court also has supplemental jurisdiction over
26 related California-law claims under 28 U.S.C § 1367.

27 6. The Court may grant declaratory relief under 28 U.S.C. § 2201.

28 7. Venue is proper in this Court, because the claims concern the actions and

1 omissions of Defendant CITY OF LONG BEACH, and because Plaintiffs (including
2 members of Plaintiff BETTER HOUSING FOR LONG BEACH) own properties in the City
3 that are subject to the City ordinance and AB 1482.

4 **PARTIES**

5 8. Plaintiff BETTER HOUSING FOR LONG BEACH (“Better Housing”) is a
6 grass-roots, nonprofit, member organization incorporated under the laws of California, and
7 representing the interests of rental-housing owners in the City of Long Beach. Its mission
8 includes advocating for, and vigorously defending, the rights of individuals who own rental-
9 housing properties in the City of Long Beach. Members of Better Housing own rental-
10 housing properties that are not exempt from the relocation-payment mandates of the
11 Ordinance and AB 1482 (hereinafter referred to as “nonexempt Owners”). The Ordinance
12 and AB 1482 have affected some members’ ability to plan for the management and
13 disposition of their units, because they must now consider the financial penalty (i.e.,
14 relocation payment) that they must pay for the right to repossess those units.

15 9. Plaintiff JOANI WEIR is the founder and President of Better Housing, and a
16 member thereof. She owns multiple rental properties in the City of Long Beach, including
17 two four-unit buildings at 421 St. Louis Avenue and 4620 E. 4th Street that are subject to
18 the relocation-payment provisions of the Ordinance and AB 1482. In direct response to the
19 unconstitutional burdens imposed by those laws, Ms. Weir has been forced to incur
20 significant costs to change her rental-business model, including by converting one of her
21 rental units (at 4620 E. 4th Street) into a furnished, extended-stay apartment. Further, the
22 application and enforcement of the Ordinance, and the imminent application and
23 enforcement of AB 1482, have chilled her present ability to plan for the management and
24 disposition of remaining affected units, because she must now consider the financial penalty
25 (i.e., the relocation payment) she must pay for the right to repossess one of those units.

26 10. Defendant CITY OF LONG BEACH is a municipal corporation incorporated
27 under the laws of the State of California. The City enacted the Ordinance, and is responsible
28 for its administration and enforcement.

1 16. The payment mandated by the Ordinance must be made regardless of the fact
2 that an existing lease or rental agreement may not contemplate or allow it. It must be made
3 regardless of the tenant's income or ability to afford relocation costs. Further, the relocation-
4 payment amount set by the Ordinance is arbitrary, as it is not tied to the costs of relocation.
5 Finally, the tenant need not use the payment for relocation expenses. The tenant may use
6 the payment for any private purpose whatsoever.

7 17. There are limited exceptions to the "relocation payment" requirement": "A.
8 Landlord seeks to recover possession of the unit for the sole purpose of making the unit
9 available for occupancy by: (1) landlord, if landlord is a natural person, or (2) a family
10 member of landlord, and such unit is actually thereafter occupied by landlord or a family
11 member. B. Landlord seeks to recover possession of the unit in order to comply with a
12 governmental agency's order to vacate the building housing the unit due to a natural disaster
13 or other act of God. C. The unit is subject to recorded rental affordability restrictions. D.
14 Landlord is a natural person and occupies a unit as landlord's primary residence in the same
15 building as tenant's unit. E. Landlord owns only one (1) residential rental housing building
16 in the City of Long Beach, and that building consists of exactly four (4) units. F. The unit
17 received its certificate of occupancy after February 1, 1995." (LBMC § 8.97.040).

18 18. Failure to make the required "relocation payment" exposes the Owner to civil
19 liability, including damages in the amount of the relocation payment, a civil penalty in the
20 amount of \$1,000, and/or attorneys' fees and costs as determined by a court. Further, failure
21 to make the required "relocation payment" provides the tenant with an affirmative defense
22 in any legal action brought by the Owner to recover possession of the unit. (LBMC §
23 8.97.060).

24 19. Owners must notify the City on required forms when a relocation payment is
25 made and when an entire building is vacated.

26 20. Plaintiffs submitted timely written and oral comments opposing the
27 Ordinance, on constitutional and other grounds, before the City Council adopted it. The
28 Ordinance became effective on August 1, 2019.

1 21. The California State Senate and Assembly followed suit and passed AB 1482
2 on September 10 and 11, 2019, respectively. On October 8, 2019, Defendant GAVIN
3 NEWSOM signed the bill into law. The law goes into effect on January 1. The bill adds §§
4 1946.2, 1947.12, and 1947.13 to the California Civil Code. The bill can be accessed at:
5 https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1482.

6 22. AB 1482 imposes requirements on Owners intended to make it more difficult
7 for them to exercise their right to repossess their properties, and to penalize them when they
8 do. The bill provides that, “after a tenant has continuously and lawfully occupied a
9 residential real property for 12 months, the owner of the residential real property shall not
10 terminate the tenancy without just cause.” The bill defines “just cause” as either “at-fault
11 just cause” or “no-fault just cause.”

12 23. “At-fault just cause” arises when, among other things, a tenant defaults on the
13 payment of rent; breaches a material term of his lease; maintains, commits, or permits a
14 nuisance; or engages in criminal activity on the property.

15 24. Relevantly to this case, “no-fault just cause” arises under the following
16 circumstances: (A) the Owner’s “[i]ntent to occupy the residential real property by the
17 owner or their spouse, domestic partner, children, grandchildren, parents, or grandparents”;
18 (B) the Owner’s “[w]ithdrawal of the residential real property from the rental market”; (C)
19 “[t]he owner complying with” any government or court order to vacate the unit (where the
20 tenant is not at fault for creating the condition(s) necessitating such order), or with any local
21 ordinance requiring that the unit be vacated; and (D) the Owner’s “[i]ntent to demolish or
22 to substantially remodel the residential real property.”

23 25. With few exceptions not applicable here, an Owner must pay a significant
24 sum of money for the right to repossess a unit for “no-fault just cause.” The Owner has the
25 choice of either (a) “[a]ssist[ing] the tenant to relocate by providing a direct payment to the
26 tenant” in the amount of “one month of the tenant’s rent that was in effect when the owner
27 issued the notice to terminate the tenancy,” or (b) [w]aiv[ing] in writing the payment of rent
28 for the final month of the tenancy, prior to the rent becoming due.”

1 governments by the Fourteenth Amendment. (*Chicago, B. & Q.R. Co. v. Chicago* (1897)
2 166 U.S. 226, 17 S. Ct. 581, 41 L. Ed. 979 (1897)).

3 **A. *The Ordinance Violates the Public Use and Just Compensation Clauses of the***
4 ***Takings Clause***

5 33. The Takings Clause prohibits the government from taking private property
6 unless (a) it is for a “public use” and (b) “just compensation” is paid to the owner. (U.S.
7 Const. amend. V & XIV; *see also Brown v. Legal Foundation of Wash.* (2003) 538 U.S.
8 216, 231-232 (making clear the Clause’s two separate requirements)). If the government
9 “fails to meet the ‘public use’ requirement,” then “that is the end of the inquiry”— “[n]o
10 amount of compensation can authorize such action.” (*Lingle v. Chevron U.S.A. Inc.* (2005)
11 544 U.S. 528)). As the United States Supreme Court has explained: “it has long been
12 accepted that the sovereign” (the government) “may not take the property of A for the sole
13 purpose of transferring it to another private party B.” (*Kelo v. City of New London* (2005)
14 545 U.S. 477). “Nor would the [government] be allowed to take property under the mere
15 pretext of a public purpose, when its actual purpose was to bestow a private benefit.” (*Id.*
16 at 478). If a taking is designed simply “to benefit a particular class of identifiable
17 individuals”—here, tenants whose units are lawfully repossessed by Owners—then the
18 taking is not for a “public use” and is therefore unconstitutional. (*Id.*) Significantly, takings
19 with only an “incidental” public benefit “are forbidden by the Public Use Clause.” (*Id.* at
20 490 (Kennedy, J., concurring)).

21 34. Unconstitutional takings commonly arise in the context of the government
22 attempting to take land or other real-property interests. But that is not the extent of the
23 Takings Clause’s reach. When “the demand for money . . . operate[s] upon . . . an identified
24 property interest by directing the owner of a particular piece of property to make a monetary
25 payment,” the Takings Clause applies. (*Koontz v. St. Johns River Water Mngmt. Distr.*
26 (2013) 570 U.S. 595, 613; *see also Horne v. Dep’t of Agriculture*, 135 S.Ct. 2419, 2425-26
27 (2015) (holding that Takings Clause protects against uncompensated takings of personal, as
28 well as real, property)).

1 35. The Ordinance in this case violates the Public Use Clause of the Takings
2 Clause. It requires the payment of money from one private party (a nonexempt Owner) to
3 another private party (a tenant). It allows the recipient tenant to use the money for any
4 private purpose. And it does so, not as part of any general public-benefit program, but to
5 financially benefit a select class of individuals, including tenants who are financially better
6 off than Owners. The Ordinance effectuates a purely private taking for a private purpose,
7 thereby violating the Public Use Clause.

8 36. The Ordinance also violates the Just Compensation Clause, because it
9 contains no provision for compensating or otherwise mitigating the impacts to Owners of
10 the forced relocation payments.

11 ***B. The Ordinance Imposes an Unconstitutional Condition***

12 37. Even if the Ordinance effected a taking of private property for a public use or
13 purpose, it still is unconstitutional under the “unconstitutional conditions” doctrine, as
14 applied in the context of the Takings Clause. Under that doctrine, the City may not condition
15 a person’s right or privilege to repossess a unit on the relinquishment of money payable to
16 the affected tenant unless the City is able to demonstrate that the public’s need for that
17 property bears an “essential nexus” and “rough proportionality” to actual, **public** impacts
18 associated with exercise of that right or privilege; if the condition fails either standard, it
19 effects an unconstitutional taking of private property—or, in the words of the United States
20 Supreme Court, an “out-and-out plan of extortion.” (*Nollan v. California Coastal Comm’n*
21 (1987) 483 U.S. 825, 837 (if a condition does not meet the “essential nexus” test, it
22 constitutes an “out-and-out plan of extortion”); *Dolan v. City of Tigard* (1994) 512 U.S.
23 374, 391 (articulating the “rough proportionality” test); *see also Koontz*, 570 U.S. 595
24 (applying the unconstitutional-conditions doctrine to takings of money)).

25 38. Requiring a nonexempt Owner to make a significant payment to a displaced
26 tenant under the Ordinance bears no essential nexus or rough proportionality to any
27 conceivable public impacts caused by the Owner.

28

1 class of private interests; is arbitrary and capricious; and, therefore, violates the substantive
2 due process rights of Plaintiffs and similarly situated property owners.

3 **FIFTH CLAIM FOR RELIEF**

4 **(AB 1482's Violation of the Takings Clause of the Fifth Amendment to the U.S.**
5 **Constitution)**

6 56. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

7 ***A. AB 1482 Violates the Public Use and Just Compensation Clauses of the Takings***
8 ***Clause***

9 57. AB 1482 violates the federal Public Use Clause of the Takings Clause of the
10 Fifth Amendment to the U.S. Constitution, made applicable to the states by the Fourteenth
11 Amendment.

12 58. AB 1482 requires the payment of money from one private party (a rental-
13 housing Owner) to another private party (a tenant). It allows the recipient tenant to use the
14 money for any private purpose. And it does so, not as part of any general public-benefit
15 program, but to financially benefit a select class of individuals, including tenants who are
16 financially better off than Owners. In sum, AB 1482 effectuates a purely private taking for
17 a private purpose, thereby violating the Public Use Clause.

18 59. AB 1482 also violates the Just Compensation Clause of the Takings Clause,
19 because it contains no provision for compensating or otherwise mitigating the impacts to
20 Owners of the forced relocation payments.

21 ***B. AB 1482 Imposes an Unconstitutional Condition***

22 60. The unconstitutional-conditions doctrine prohibits the government from
23 conditioning a person's right or privilege on the relinquishment of her property, including
24 money, unless the government establishes an essential nexus and rough proportionality
25 between the condition and the public impacts caused by the person's exercise of said right
26 or privilege. (U.S. Const. amends. V, XIV; *see also Nollan*, 483 U.S. 825; *Dolan*, 512 U.S.
27 374).

28

1 interests; is arbitrary and capricious; and, therefore, violates the substantive due process
2 rights of Plaintiffs and similarly situated property owners.

3 **RELIEF SOUGHT**

4 WHEREFORE, Plaintiffs pray for judgment as follows

5 77. A declaration that the Ordinance is unconstitutional under the Takings Clause
6 of the Fifth Amendment to the U.S. Constitution, because it effects a *per se* taking and/or
7 an unconstitutional condition;

8 78. A declaration that the Ordinance is unconstitutional, because it violates the
9 Takings Clause of the California Constitution;

10 79. A declaration that the Ordinance is unconstitutional, because it violates the
11 right to be free from unlawful seizures under the Fourth Amendment to the U.S.
12 Constitution;

13 80. A declaration that the Ordinance is unconstitutional, because it violates the
14 Due Process Clause of the Fourteenth Amendment.

15 81. A declaration that AB 1482's relocation-payment mandate is unconstitutional
16 under the Takings Clause of the Fifth Amendment to the U.S. Constitution, because it
17 effects a *per se* taking and/or an unconstitutional condition;

18 82. A declaration that AB 1482's relocation-payment mandate is
19 unconstitutional, because it violates the Takings Clause of the California Constitution;

20 83. A declaration that AB 1482's relocation-payment mandate is
21 unconstitutional, because it violates the right to be free from unlawful seizures under the
22 Fourth Amendment to the U.S. Constitution;

23 84. A declaration that AB 1482's relocation-payment mandate is
24 unconstitutional, because it violates the Due Process Clause of the Fourteenth Amendment;

25 85. An order permanently enjoining and prohibiting Defendant CITY OF LONG
26 BEACH from enforcing the Ordinance;

27 86. An order permanently enjoining and prohibiting Defendant GAVIN
28 NEWSOM from enforcing AB 1482;

1 87. An order awarding attorneys' fees and costs incurred by Plaintiffs, including
2 under 42 U.S.C. § 1988;

3 88. An order retaining jurisdiction over this action to ensure full compliance with
4 the Court's orders and judgment; and

5 89. Such other and further relief as the Court deems appropriate and just.

6
7 Dated: October 15, 2019

Respectfully submitted,

8 **ALSTON & BIRD LLP**

9 By: /s/ Paul J. Beard II

PAUL J. BEARD II

10 Counsel for Plaintiffs
11 BETTER HOUSING FOR LONG BEACH;
12 JOANI WEIR

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28