

1 NIELSEN MERKSAMER  
2 PARRINELLO GROSS & LEONI LLP  
3 Christopher E. Skinnell, Esq. (S.B. No. 227093)  
4 Hilary J. Gibson, Esq. (S.B. No. 287862)  
5 2350 Kerner Boulevard, Suite 250  
6 San Rafael, California 94901  
7 Telephone: (415) 389-6800  
8 Facsimile: (415) 388-6874  
9 E-mail: [cskinnell@nmgovlaw.com](mailto:cskinnell@nmgovlaw.com)  
10 E-mail: [hgibson@nmgovlaw.com](mailto:hgibson@nmgovlaw.com)

11 *Attorneys for Plaintiffs*

12 ERIC DEBBANE; ANDREW DEBBANE;  
13 ROBERT FRIEDLAND; NATASA ZEC; SAN  
14 FRANCISCO APARTMENT ASSOCIATION;  
15 SMALL PROPERTY OWNERS OF SAN  
16 FRANCISCO INSTITUTE; SAN FRANCISCO  
17 ASSOCIATION OF REALTORS

18 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
19 IN AND FOR THE COUNTY OF SAN FRANCISCO

20 ERIC DEBBANE; ANDREW DEBBANE;  
21 ROBERT FRIEDLAND; NATASA ZEC; SAN  
22 FRANCISCO APARTMENT ASSOCIATION;  
23 SMALL PROPERTY OWNERS OF SAN  
24 FRANCISCO INSTITUTE; SAN  
25 FRANCISCO ASSOCIATION OF  
26 REALTORS,

27 *Plaintiffs,*

28 vs.

CITY & COUNTY OF SAN FRANCISCO;  
JOSÉ CISNEROS, in his official capacity as  
the Tax Collector or the City & County of  
San Francisco; ALL PERSONS  
INTERESTED IN THE MATTER OF  
Proposition M on the November 8, 2022  
ballot, imposing a “vacancy tax” on  
residential properties, and other matters  
related thereto; and DOES 1-100, inclusive,

*Defendants.*

Case No.

**VERIFIED COMPLAINT TO  
INVALIDATE ILLEGAL  
SPECIAL TAX (CODE CIV.  
PROC. § 863; GOVT. CODE §  
50077.5)**

**CALENDAR PREFERENCE  
REQUIRED BY STATUTE  
(CODE CIV. PROC. § 867)**

1 **INTRODUCTION**

2 1. This lawsuit is brought in the public interest to challenge the City &  
3 County of San Francisco (“City” or “San Francisco”)’s planned enforcement of  
4 Proposition M, a residential “vacancy tax” measure that received a narrow majority of  
5 the votes cast on the Proposition by the City’s voters at the November 2022 election.  
6 True and correct copies of the relevant pages of the November 2022 ballot pamphlet  
7 related to Proposition M, including the text of the measure, are attached hereto as  
8 Exhibit 1.

9 2. The United States Supreme Court has repeatedly held that property-  
10 owners’ “power to exclude [others from the property] has traditionally been considered  
11 one of the most treasured strands in an owner’s bundle of property rights,” and is  
12 protected by the Takings Clause of the U.S. Constitution. *Loretto v. Teleprompter*  
13 *Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982). As a necessary corollary of that  
14 holding, the Court has also, in *Yee v. City of Escondido*, 503 U.S. 519 (1992), and other  
15 cases, held that the government cannot compel a property-owner to rent his or her  
16 property to third parties without violating that Clause. *Id.* at 528 (state could regulate  
17 the economic relationship between a property-owner and the tenant that the owner  
18 voluntarily agreed to lease property to, but “[a] different case would be presented were  
19 the statute, on its face or as applied, to compel a landowner over objection to rent his  
20 property or to refrain in perpetuity from terminating a tenancy” (emphasis added)).

21 3. Relying on *Yee*, California’s First Appellate District has likewise held that  
22 property-owners cannot be compelled to continue renting property that they no longer  
23 wished to rent. *Cwynar v. City & Cty. of S.F.*, 90 Cal. App. 4th 637, 658 (2001) (plaintiffs  
24 stated a physical takings claim against a San Francisco regulation that precluded them  
25 from evicting tenants so that they could use the property). And the New York Court of  
26 Appeals (that State’s highest court) has squarely addressed, and struck down as an  
27 unlawful physical taking, a New York law that was substantively identical to the one  
28 challenged in this case—an “anti-warehousing” law that required landlords to “rent up”

1 vacant apartments or face stiff penalties. *Seawall Associates v. City of New York*, 74  
2 N.Y.2d 92, 104, 542 N.E.2d 1059 (N.Y. 1989), *cert. denied*, 493 U.S. 976 (1989) (“the loss  
3 of possessory interests, including the right to exclude, resulting from tenancies coerced  
4 by the government would constitute a per se physical taking”).

5 4. The right not to offer residential units for rent is also enshrined in  
6 preemptive state law, specifically the Ellis Act, which provides, “No public entity, as  
7 defined in [Government] Section 811.2,<sup>1</sup> shall, by statute, ordinance, or regulation, or  
8 by administrative action implementing any statute, ordinance or regulation, compel  
9 the owner of any residential real property to offer, or to continue to offer,  
10 accommodations in the property for rent or lease, except for guestrooms or efficiency  
11 units within a residential hotel” if said hotel guest rooms meet certain criteria not at  
12 issue here. *See* Govt. Code § 7060(a).

13 5. For various reasons, a number of property-owners in San Francisco own  
14 residential units that are vacant. In some cases, this is by choice. For decades, the City  
15 has imposed a series of ever-more restrictive constraints on the owners of residential  
16 rental properties. These include, of course, rent control; increasingly stringent just  
17 cause for eviction laws; registration requirements; elaborate notice requirements;  
18 relocation payment requirements; relocation demands in the tens—or even hundreds—  
19 of thousands of dollars; severe restrictions on an owner being able to live in, or allow  
20 an immediate family member to live in, a unit they own if it is occupied by a tenant;  
21 and innumerable other requirements. And over the past few years, during the COVID-  
22 19 pandemic, property-owners’ ability to even collect rent has been narrowly  
23 constrained at times, while the burdens of being a landlord remained in full effect. In  
24 response to these ever-increasing burdens, a number of property-owners in the City  
25 have understandably determined not to subject themselves to these burdens, declining  
26

---

27 <sup>1</sup> Government Code § 811.2 provides, “Public entity’ includes the state, the  
28 Regents of the University of California, the Trustees of the California State University  
and the California State University, a county, city, district, public authority, public  
agency, and any other political subdivision or public corporation in the State.”

1 to rent out the units that they own. Some owners choose to keep units vacant for other  
2 reasons—for example, small property-owners who reside on the property and don’t wish  
3 to share the property they live on with a stranger, or those who wish to hold a unit open  
4 and available for a son or daughter or other close relative to move into at a future point,  
5 without the hassle and often-considerable expense of evicting a tenant (if such an  
6 eviction is even possible under San Francisco’s strict rules).

7         6. In other cases, despite the burdens, property-owners may be perfectly  
8 willing to participate in the rental market generally, but they nevertheless have  
9 individual units that remain vacant for an extended period for a variety of reasons. For  
10 some, despite diligent marketing of available units by the property-owner, recent  
11 changes in the real estate market (the COVID-19 pandemic’s effect on jobs in San  
12 Francisco, inflation, etc.) have made it considerably more difficult to rent out units in  
13 some parts of the City, and drastically slashing the rents in an attempt to fill such units  
14 often would mean—given San Francisco’s strict rent control laws—accepting  
15 submarket rents indefinitely. They have no obligation to do so—the Constitution and  
16 the Ellis Act protect their right not to rent the units until they are ready to do so.<sup>2</sup>

17         7. In other cases, the difficulty in renting is due to circumstances beyond the  
18 owners’ control, for example, deteriorating circumstances in the surrounding  
19 neighborhood due to crime, homelessness, and trash; or long delays in making needed  
20

---

21  
22         <sup>2</sup> Constitutionally, there is no distinction to be made between property-owners  
23 who wish to keep their units vacant indefinitely, such as those who don’t want to be  
24 landlords at all, and those who may wish to (or have to) keep their units vacant in the  
25 short term with the intention of eventually renting them out again when circumstances  
26 permit. The Supreme Court has held that a government-compelled invasion of the right  
27 to exclude strangers from one’s property is a compensable physical takings even if is  
28 only compelled for a limited time, *see Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063,  
2075 (2021), and it has further held that a property-owner cannot be forced to give up  
the right to rent his or her property in the future as a condition of avoiding a  
government-compelled occupation of the property now. *Yee*, 503 U.S. at 531 (“a  
landlord’s ability to rent his property may not be conditioned on his forfeiting the right  
to compensation for a physical occupation” (quoting *Loretto*, 458 U.S. at 439 n.17)).

1 repairs or renovations to the units they own due to municipal bureaucracy,<sup>3</sup> supply  
2 chain issues, labor shortages, etc.

3 8. Despite property-owners’ constitutional and statutory rights to keep their  
4 units vacant if they so choose, and despite the legal, administrative, practical and  
5 economic impediments to renting that many property-owners face, beginning January  
6 1, 2024, Proposition M would seek to achieve indirectly the very result that the  
7 Constitution and state law prohibit the City from doing directly. The measure seeks to  
8 coerce owners to rent their units by severely penalizing those who exercise their rights  
9 to keep units vacant (or even those who are trying but are unable to rent a unit for any  
10 reason). It does so by imposing a substantial charge—purportedly a “tax,” but really a  
11 regulatory penalty—on residential units that are “vacant” for more than 182 days,  
12 whether consecutive or nonconsecutive, in a given year. This, the City may not lawfully  
13 do. “[I]f the Constitution forbids the prohibition of [particular activities, like keeping a  
14 property vacant], then that result cannot be achieved indirectly by imposing a  
15 destructive tax upon them.” *Fox Bakersfield Theatre Corp. v. Bakersfield*, 36 Cal. 2d  
16 136, 139-40 (1950).

17 9. Proposition M violates the Takings Clause of the Fifth Amendment, and  
18 it violates the state Ellis Act, by taxing owners for exercising their rights under those  
19 provisions.

20 10. Proposition M also violates landlords’ fundamental liberty interests and  
21 equal protection, insofar as it exempts units that are leased to strangers, but not units  
22 that are leased to the property-owners’ family members, from taxation. And it violates  
23

---

24 <sup>3</sup> For example, Proposition M exempts units from the vacancy tax for time spent  
25 waiting for a building permit, but it limits that exemption to a single year. Yet getting  
26 building permits often takes far longer than a year in San Francisco. According to a  
27 recent article in the *San Francisco Chronicle*, “San Francisco has the slowest permit  
28 approval time of any large city in the state, according to a database compiled by the  
state Department of Housing and Community Development.” Gardiner & Neilson, “627  
Days, Just for a Permit—Why S.F. Building Is Sluggish,” S.F. CHRON. (Dec. 15, 2022),  
p. A1 (available on Lexis-Nexis).

1 the constitutional right to privacy as applied to property-owners who reside on the  
2 property subject to taxation and do not wish to share their property with others.

3 11. For all these reasons, Proposition M is void and unenforceable.

4 **JURISDICTION AND VENUE**

5 12. This Court has jurisdiction over this action pursuant to Government Code  
6 § 50077.5 and Code of Civil Procedure § 860.

7 13. Venue for this action properly lies within this Court pursuant to Code of  
8 Civil Procedure §§ 393, subd. (b), 394, 860 and 863.

9 **PARTIES**

10 14. **Plaintiffs Eric Debbane and Andrew Debbane** are brothers who co-  
11 own several small residential buildings in various parts of the City, which they rent  
12 out. To the extent that the market and other conditions enable them to keep those units  
13 rented, they will not be subject to the tax. However, one of the buildings that the  
14 Debbanes co-own is a five-unit building in Russian Hill that they live in, along with  
15 Andrew's wife and Eric's girlfriend. They have co-owned this building since 1984, and  
16 they removed it from the market pursuant to the Ellis Act in 1998 so that they could  
17 move their aging mother into the building with them. (The could not avail themselves  
18 of an "owner move-in" eviction.) Their mother has since passed away, and the Debbanes  
19 have kept the building vacant for their own personal use. They have no desire to share  
20 the property that they own with persons other than those already living on the property  
21 with them. However, under Proposition M they will be taxed a minimum of \$7,500 in  
22 2024; \$15,000 in 2025; and \$30,000 per year thereafter. (The three smallest units on  
23 the property are 700, 750, and 800 square feet, respectively.)

24 15. **Plaintiff Robert Friedland** is the owner of a four-unit apartment  
25 building in the Western Addition/NOPA area. Each unit is approximately 850 square  
26 feet. He has owned the building since the early 1980s and has lived in one of the units  
27 himself during that time. For much of that time Mr. Friedland rented out the other  
28 three units, but he is 70 years old and has significant health issues. Thus, when he

1 recently retired he determined that he no longer wishes to bear the physical and mental  
2 burdens of being a landlord for the rest of his life. Accordingly, as each unit has come  
3 vacant over the last 2-3 years, he has declined to re-rent them. He has no wish to leave  
4 his decades-old home, but he would be forced to sell his building and move if the tax  
5 were to be applied to him, because his sole remaining sources of income—Social  
6 Security and some modest savings—would not be sufficient to cover the taxes plus his  
7 other living expenses. He would effectively be evicted from his home. If Proposition M  
8 were enforced against him, he would be forced to pay \$7,500 for 2024 (\$2,500 x three  
9 vacant units of less than 1,000 square feet); \$15,000 for 2025; and \$30,000 annually  
10 thereafter.

11           16. Prior to her retirement three years ago, **Plaintiff Natasa Zec** worked for  
12 approximately 20 years as a “locum tenens” anesthesiologist, *i.e.*, one working on  
13 temporary contracts at various sites across the nation, including in San Francisco. In  
14 connection with the itinerant nature of her career, since 2008 Ms. Zec has owned a  
15 “micro-condominium” of exactly 300 square feet in a multi-unit building on Divisadero,  
16 where, however, she has never claimed the homeowner's exemption. She has also  
17 owned a comparably-sized micro-condominium (350 square feet) in Boston since 2000,  
18 where she has been claiming the homeowner's exemption. Neither of those units have  
19 ever been rented out, and Ms. Zec has never intended to rent them out. She maintains  
20 them for her personal use. Following her retirement, Ms. Zec has continued to maintain  
21 both abodes, splitting time between the two, and she wishes to continue to do so, as she  
22 has for decades. In 2022, she spent 126 days in San Francisco, and more than 183 days  
23 in Boston, an approximate number of days per year that she wishes to spend,  
24 respectively, in each place in the future. Going forward, if she continues to divide her  
25 time between the two small abodes as she historically has, she would be subject to a  
26 tax of \$2,500 in 2024; \$5,000 in 2025; and \$10,000 annually thereafter. The latter figure  
27 is approximately double what she pays in *ad valorem* property taxes on the Divisadero  
28 micro-condo each year. If Proposition M were enforced against her, she could not afford

1 to pay the taxes and would have little choice but to sell her long-time home. In light of  
2 the burdensome restrictions that San Francisco places on landlords, and based on her  
3 negative experiences as a landlord in the past, e.g., in the Bronx (where tenants  
4 severely damaged a studio apartment that she owned to the point that it became  
5 essentially impossible to either rent or sell), Ms. Zec has no interest in renting out her  
6 micro-condominium on Divisadero Street and becoming a landlord in San Francisco.

7       **17. Plaintiff San Francisco Apartment Association (“SFAA”)**, founded  
8 in 1917, is a full-service, non-profit trade association of persons and entities who own  
9 residential rental properties in San Francisco. SFAA currently has more than 2,800  
10 active members who own more than 65,000 residential units in San Francisco; members  
11 include hundreds of “mom and pop” owners who own buildings with as few as three  
12 residential units, which are subject to Proposition M. SFAA is dedicated to educating,  
13 advocating for and supporting the rental housing community and preserving the  
14 property rights of all residential property providers in San Francisco. SFAA fields  
15 hundreds of calls each month from property owners with questions about their rights  
16 and duties under state law and San Francisco’s very complicated and lengthy laws and  
17 regulations governing residential property and owners. Proposition M applies to SFAA  
18 members who own, but choose—for a variety of reasons—not to rent out residential  
19 units in San Francisco, and subjects them to severe taxation. Proposition M also applies  
20 to SFAA members who are attempting to rent out residential units but are unable to  
21 do so for an extended period of time due to adverse market conditions or for other  
22 reasons, as discussed above. The ability of residential property owners to exercise their  
23 rights free from the constraints of Proposition M is germane to SFAA’s organizational  
24 purpose, and this challenge does not require the participation of individual members of  
25 SFAA. SFAA and its members are adversely and directly affected by Proposition M.  
26 The measure harms SFAA and its members by adversely affecting their ability to  
27 manage and otherwise control real property, and to exercise their statutory rights with  
28 respect to residential property they own in San Francisco. SFAA has standing because



1 (i) individual members of SFAA by virtue of their property ownership are subject to  
2 Proposition M and could have challenged it in their own right; (ii) the ability of  
3 residential property owners to exercise their constitutional and statutory rights free  
4 from punitive consequences is germane to SFAA’s organizational purpose; and (iii) this  
5 challenge to Proposition M does not require participation of individual members of  
6 SFAA.

7       **18. Plaintiff Small Property Owners of San Francisco Institute**  
8 **(“SPOSFI”)** is a California nonprofit corporation and organization of small property  
9 owners that advocates for home ownership and the rights of property owners in San  
10 Francisco. SPOSFI’s members range from young families to the elderly on fixed  
11 incomes, and its membership cuts across all racial, ethnic, and socio-economic strata.  
12 SPOSFI’s members own residential real property subject to Proposition M and are  
13 subject to the tax imposed thereby. SPOSFI is also involved in education, outreach and  
14 research. Through education, it helps owners better understand their rights and learn  
15 how to deal with local government; through outreach to community groups and to the  
16 public, it demonstrates how restrictive San Francisco regulations harm both tenants  
17 and landlords, and through research projects, it aims to separate hyperbole from fact  
18 on the effect of rent control on housing stock. Through legal advocacy, SPOSFI seeks to  
19 protect the rights of small property owners against unfair and burdensome regulations  
20 and taxation. The ability of residential property owners to exercise their rights free  
21 from Proposition M’s severe penalties is germane to SPOSFI’s organizational purpose,  
22 and this challenge does not require the participation of individual members of SPOSFI.  
23 The Ordinance harms SPOSFI and its members by adversely affecting their ability to  
24 manage and otherwise control their real property and to exercise their constitutional  
25 and statutory rights, and subjecting them to significant financial penalties for  
26 exercising those rights. SPOSFI has standing because (i) individual members of  
27 SPOSFI by virtue of their property ownership are subject to Proposition M and could  
28 have challenged it in their own right; (ii) the ability of residential property owners to

1 exercise their constitutional and statutory rights free from punitive consequences is  
2 germane to SPOSFT's organizational purpose; and (iii) this challenge to Proposition M  
3 does not require participation of individual members of SPOSFI.

4       **19. Plaintiff San Francisco Association of Realtors ("SFAR")** is the  
5 official association of licensed real estate brokers and real estate agents in San  
6 Francisco. SFAR has over 4,300 members who are dependent for their livelihood upon  
7 the sale and management of real property in San Francisco. The great majority of SFAR  
8 member brokers and agents are involved in purchases, sales and/or management of San  
9 Francisco residential properties, including ones that are subject to Proposition M. The  
10 objective and mission of SFAR is to provide programs, products and services to its  
11 member brokers and agents that will assist them in increasing productivity and  
12 realizing success. Through legal advocacy, SFAR seeks to protect the rights of small  
13 property owners against unfair and burdensome regulations. The ability of residential  
14 property owners to exercise their rights, free from the constraints of Proposition M, is  
15 germane to SFAR's organizational purpose, as the Proposition adversely affects the  
16 ability of SFAR's members to market, sell and manage real property. It discourages the  
17 purchase and sale of residential property because existing and prospective owners who  
18 would otherwise exercise their constitutional and statutory rights are discouraged from  
19 doing so. SFAR has standing because (i) individual members of SFAR by virtue of their  
20 property management and/or sales are affected by Proposition M and could have  
21 challenged it in their own right; (ii) the ability of SFAR members to make a living  
22 unfettered by excessive and illegal regulation and punitive consequences is germane to  
23 SFAR's organizational purpose; and (iii) this challenge to Proposition M does not  
24 require participation of individual members of SFAR.

25       **20. Defendant City & County of San Francisco** is a charter city. As such,  
26 it and its officers, employees and agents, are responsible for the anticipated  
27 implementation of Proposition M. The City may sue and be sued under Government  
28 Code § 34501 and is named as a defendant pursuant to Code of Civil Procedure § 863.



1 primarily by travelers, vacationers, or other transient occupants” but excluding certain  
2 nursing homes and care facilities. Prop. M (Ex. 1), Proposed Bus. & Tax. Reg. § 2952  
3 (“Definitions”).<sup>4</sup> An “owner is deemed to have kept the Residential Unit” “vacant”—and  
4 therefore subject to the Proposition M penalty—if it is “unoccupied, uninhabited, or  
5 unused, for more than 182 days, whether consecutive or nonconsecutive, in a tax year,”  
6 with certain narrow exceptions. *Id.*

7         26. The charge for a unit that is “vacant” in 2024 is between \$2,500 for a  
8 Residential Unit of less than 1,000 square feet;<sup>5</sup> \$3,500 for a Residential Unit from  
9 1,000 to 2,000 square feet; and \$5,000 for a Residential Unit over 2,000 square feet. The  
10 amount escalates each subsequent year that the unit remains vacant, reaching \$10,000  
11 for the smallest units in 2026 and \$20,000 for units exceeding 2,000 square feet. In  
12 subsequent years, the charge is adjusted upwards in accordance with the Consumer  
13 Price Index. The owner of a multi-unit structure is charged the foregoing amounts for  
14 each unit in the building that is “vacant” during the year in question, without  
15 limitation.

16         27. Proposition M provides for certain exemptions from the definition of  
17 “vacancy”—specified periods during which the unit is not treated as “vacant,” despite  
18 being unoccupied, such as, for example, during the period (not to exceed a year) while  
19 an application for a building permit is pending to allow repair, rehabilitation, or  
20 construction with respect to the Unit;<sup>6</sup> the period (not to exceed a year) where such  
21 repair, rehabilitation, or construction is underway; the first year after the Unit is built;  
22 periods during which the owner is in a medical care facility or immediately following  
23

---

24         <sup>4</sup> A Residential Unit located in a building with two or fewer Units is exempt from  
25 the tax. Prop. M (Ex. 1), Proposed Bus. & Tax. Reg. § 2955(d).

26         <sup>5</sup> According to the rental website ApartmentList.com, the median rent for a one-  
27 bedroom apartment in San Francisco for February 2023 is \$2,241, so, essentially, San  
28 Francisco is demanding that the owner of a such a unit pay a month’s rent to the City  
initially, and up to four months’ rent eventually, for the “privilege”—which is actually  
a right, protected by the Constitution—of keeping the unit vacant.

<sup>6</sup> See note 3 above.

1 the owner’s death; or during the two years after a “catastrophic” disaster damages the  
2 Unit to the point of uninhabitability. Also excluded is any period during which the Unit  
3 is leased to a bona fide tenant, but a lease to a co-owner, spouse, domestic partner,  
4 child, parent, or sibling does not exempt the Unit from the charge. Prop. M (Ex. 1),  
5 Proposed Bus. & Tax. Reg. § 2952 (“Definitions”). Nor, apparently, does it exempt a  
6 Unit whose owner is actively marketing it but is unable to rent it out, despite the fact  
7 that the measure purports to tax those who “kept” the Unit vacant for half a year.

8 28. Any proceeds derived from the Proposition M charge—that are left over  
9 after paying the costs of administering the tax and paying refunds and related penalties  
10 and interest—are to be spent on (1) rent subsidies for individuals 60 and older or low-  
11 income households or (2) acquiring, rehabilitating, and operating multi-unit buildings  
12 for affordable housing.

13 **B. By Its Proponents’ Own Admission, the Primary Purpose of**  
14 **Proposition M is to Compel Property-Owners to Rent Their Units.**

15 29. However, the proponents of the measure have made clear that any such  
16 revenues are not the main objective of the Proposition. The real goal of the measure is  
17 to force property-owners to rent their vacant units by imposing charges that are so  
18 burdensome that there is no other choice. The measure’s proponents expressly told the  
19 voters, in their rebuttal argument in support of the Proposition, sent to all the City’s  
20 voters in advance of the election: “*We hope no one pays this tax. We want every vacant*  
21 *unit filled with people who need homes.*” Exhibit 1, p. 5 (emphasis added). Further  
22 reinforcing this point, the proponents’ main argument is headed (in all-bold type), “Prop  
23 M will help fix San Francisco’s Hidden Housing Crisis: 40,000 Vacant Homes.” *Id.* at 4.  
24 The rest of the proponents’ main argument and rebuttal likewise stress the fact that  
25 the goal of the measure is to “reduce vacancies [so that] we will have more housing”;  
26 that “[i]n the first year alone, it is expected that 4,500 new units will return on [sic] the  
27 market—more than our annual goals”; and that voters should support Proposition M  
28 to “fix our hidden housing vacancy crisis.” *Id.* The “Yes” campaign’s website, printed at

1 the end of the main argument in favor, is “fillemptyhomes.com.” *Id.* The collection of  
2 revenue under the measure is essentially an afterthought—a single bullet point in the  
3 main argument in favor, and not even mentioned in the proponents’ rebuttal. *Id.* at 4-  
4 5.

5 30. Also consistent with this understanding of the purpose of the measure, the  
6 official Controller’s Statement on Proposition M, likewise contained in the ballot  
7 pamphlet sent to all voters, advised that the measure could raise as much as \$20 million  
8 in the first year, but that “if the tax achieves *its stated purpose of reducing the number*  
9 *of residential vacancies*, it will result in lower revenue.” Exhibit 1, p. 2 (emphasis  
10 added).

11 31. Even the Proposition’s own “Findings,” codified in Business & Taxation  
12 Regulations § 2951, stress the perceived evils of vacant units and stress that the  
13 measure “is intended to disincentivize prolonged vacancies, thereby increasing the  
14 number of housing units available for occupancy...” Exhibit 1, p. 12. Again, the revenue  
15 raising function of the tax is mentioned largely as an afterthought.

16 32. While the charge imposed by Proposition M is denominated a tax, that  
17 label is not conclusive; in determining whether a charge imposed by an ordinance is  
18 revenue-raising or regulatory—is a tax or a penalty—“the court will look to the  
19 substantive provisions of the ordinance and not merely its title and form.” *United Bus.*  
20 *Comm’n v. City of San Diego*, 91 Cal. App. 3d 156, 165-66 (1979). Proposition M is, in  
21 fact, a penalty with a predominantly regulatory purpose, and that regulatory purpose—  
22 compelling property-owners to rent out their real property—runs afoul of the Takings  
23 Clause and the Ellis Act.

24 **C. Even If Viewed as a Tax, Proposition M Is Still Illegal.**

25 33. Nor could the measure be sustained even if the Court were to conclude  
26 that Proposition M does, in fact, impose a “tax.” That would not save it. For one thing,  
27 a property-owners’ right to keep their property vacant—to exclude others—is an  
28 essential element of the property rights protected by the Takings Clause of the Fifth

1 Amendment, and the government may not “impose a charge for the enjoyment of a right  
2 granted by the federal constitution,” *Murdock v. Comm’n of Penn.*, 319 U.S. 105, 113  
3 (1943). In other words, the government may not single out a constitutional right for  
4 special taxation or condition the exercise of that right on a payment to the government.  
5 *Levin v. City & Cty. of S.F.*, 71 F. Supp. 3d 1072 (N.D. Cal. 2014) (enjoining charge  
6 imposed by San Francisco as condition of evicting tenants to remove rented units from  
7 the market as an unconstitutional taking of private property).

8 34. Likewise, the City may not penalize property-owners, financially or  
9 otherwise, for exercising their right under the Ellis Act to refuse to offer units for rent.  
10 *See Coyne v. City & Cty. of S.F.*, 9 Cal. App. 5th 1215 (2017); *S.F. Apartment Ass’n v.*  
11 *City & Cty. of S.F.*, 3 Cal. App. 5th 463 (2016). But Proposition M does just that.

12 **D. Proposition M Also Unlawfully Burdens Constitutionally**  
13 **Protected Liberty and Privacy Interests.**

14 35. Proposition M threatens property-owners’ fundamental liberty interests  
15 in close familial relationships, protected by the due process clause, and equal protection  
16 by taxing (actually penalizing) units that are rented to close family members of the  
17 owner while exempting units that are leased to strangers from taxation. This illegal  
18 differential treatment is further exemplified by the fact that rent received by an owner  
19 from renting a unit to a family member is still deemed taxable income for state and  
20 federal income tax purposes, but Proposition M nevertheless deems the unit “vacant”  
21 and penalizes it heavily.

22 36. And finally, Proposition M violates the constitutional right to privacy, Cal.  
23 Const. art. I, § 1, as applied to property-owners who reside on the property in question  
24 and who do not wish to share the property with others.

25 37. Unless this Court grants relief to prohibit Defendants from enforcing  
26 Proposition M, Plaintiffs will suffer irreparable injury and damage in that they will be  
27 subjected to an illegal charge on their real property that violates their constitutional  
28 and statutory rights.

1 38. Plaintiffs have no speedy or adequate remedy at law if a writ of mandate  
2 and/or injunction does not issue preventing the enforcement of Proposition M.

3 39. An actual controversy has arisen and now exists between Plaintiffs and  
4 Defendants as to the validity and enforceability of Proposition M. Plaintiffs contend  
5 that the Proposition is void and unenforceable. Some or all of Defendants contend that  
6 it is valid and enforceable.

7 40. Plaintiffs desire a judicial determination of the invalidity of Proposition  
8 M, and a determination as to whether the Proposition is enforceable.

9 41. A judicial declaration is necessary and appropriate at this time in order  
10 for Plaintiffs to ascertain their rights and duties under the Proposition.

11 **FIRST CAUSE OF ACTION**

12 **Violation of the 5th Amendment to the U.S. Constitution (Takings Clause)**

13 **(Against All Defendants)**

14 42. Plaintiffs incorporate by reference each and every allegation made in  
15 Paragraphs 1 through 41 of this Complaint as though fully set forth herein.

16 43. Property-owners in San Francisco, including the individual plaintiffs  
17 herein and the members of the associational plaintiffs, have a constitutional right  
18 under the Takings Clause of the Fifth Amendment to not be coerced by the government  
19 into renting out their property, whether they desire to keep it unoccupied temporarily  
20 or indefinitely. *See Yee*, 503 U.S. at 528; *Loretto*, 458 U.S. at 435-40; *Cwynar*, 90 Cal.  
21 App. 4th at 658; *Seawall Associates*, 74 N.Y.2d at 104, 542 N.E.2d 1059; note 2 above.

22 44. Through Proposition M, San Francisco nevertheless seeks to compel  
23 property-owners to rent the residential units that they own by imposing a significant  
24 monetary penalty on vacant units. That it does so by imposing substantial monetary  
25 penalties, rather than by direct fiat makes no difference, whether that charge is treated  
26 as a tax or a penalty. *See Levin*, 71 F. Supp. 3d at 1072 (enjoining charge imposed by  
27 San Francisco as condition of evicting tenants to remove rented units from the market  
28 as an unconstitutional taking of private property). Again, “if the Constitution forbids



1 the prohibition of [given activities], then that result cannot be achieved indirectly by  
2 imposing a destructive tax upon them,” *Fox Bakersfield Theatre Corp.*, 36 Cal. 2d at  
3 139-40, and “[a] state may not impose a charge for the enjoyment of a right granted by  
4 the federal constitution.” *Murdock*, 319 U.S. at 113. In other words, while governments  
5 may impose generally-applicable taxes that incidentally affect constitutional rights,  
6 those governments may not single out a constitutionally guaranteed right for  
7 differential taxation, as Proposition M seeks to do. *See also Minneapolis Star & Tribune*  
8 *v. Minn. Comm’r of Revenue*, 460 U.S. 575, 591-93 (1983). And it does not matter  
9 whether the owner’s desire (or need) is to keep the unit vacant on a temporary basis or  
10 an indefinite one. *See note 2 above.*

11 45. Proposition M seeks to compel property-owners to forfeit their  
12 constitutional “power to exclude,” *Loretto*, 458 U.S. at 435, by imposing substantial  
13 charges on the exercise of that right. As such, the Proposition M constitutes a taking  
14 without just compensation, and thus violates Plaintiffs’ rights protected by the United  
15 States Constitution.

16 46. An actual controversy has arisen and now exists between the parties  
17 relating to these legal rights and duties for which Plaintiffs desire a declaration of  
18 rights, therefore making a declaratory judgment necessary. Cal. Code Civ. Proc. § 1060.

19 47. Moreover, unless this Court enjoins the enforcement of Proposition M by  
20 defendants, Plaintiffs and other citizens similarly-situated will suffer irreparable  
21 injury and damage. 42 U.S.C. § 1983; Cal. Code Civ. Proc. § 526.

22 **SECOND CAUSE OF ACTION**

23 **Violation of Article XI, § 7, of the California Constitution**

24 **(State Law Preemption by the Ellis Act, Cal. Govt. Code § 7060(a))**

25 **(Against All Defendants)**

26 48. Plaintiffs incorporate by reference each and every allegation made in  
27 Paragraphs 1 through 47 of this Complaint as though fully set forth herein.

28 49. Under Article XI, § 7, of the California Constitution, a city or county can

1 only “make and enforce within its limits all local, police, sanitary, and other ordinances  
2 and regulations *not in conflict with general laws.*” (Emphasis added.) In other words,  
3 local governments—including charter cities like San Francisco—remain subject to  
4 superior state law. That includes the Ellis Act. *See, e.g., S.F. Apartment Ass’n*, 3 Cal.  
5 App. 5th at 463 (enjoining San Francisco’s condominium “merger ban” as preempted by  
6 the Ellis Act).

7       50. Section 7060(a) of the Ellis Act (Govt. Code § 7060(a)) provides that, “No  
8 public entity ... shall, by statute, ordinance, or regulation, or by administrative action  
9 implementing any statute, ordinance or regulation, compel the owner of any residential  
10 real property to offer, or to continue to offer, accommodations in the property for rent  
11 or lease, except for guestrooms or efficiency units within a residential hotel” if said hotel  
12 guest rooms meet certain criteria.

13       51. Here again, it makes no difference that the compulsion imposed by  
14 Proposition M comes in the form of a financial penalty rather than a direct order to  
15 make a property-owners’ unit available for rent. *See, e.g., Coyne*, 9 Cal. App. 5th at  
16 1215. “The Ellis Act does not permit the City to condition plaintiff’s departure [from the  
17 rental market] upon the payment of ransom.” *Bullock v. City & Cty. of S.F.*, 221 Cal.  
18 App. 3d 1072, 1101 (1990).

19       52. An actual controversy has arisen and now exists between the parties  
20 relating to these legal rights and duties for which Plaintiffs desire a declaration of  
21 rights, therefore making a declaratory judgment necessary. Cal. Code Civ. Proc. § 1060.

22       53. Moreover, unless this Court enjoins the enforcement of Proposition M by  
23 defendants, Plaintiffs and other citizens similarly-situated will suffer irreparable  
24 injury and damage. Cal. Code Civ. Proc. § 526.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**THIRD CAUSE OF ACTION**  
**Violation of Fourteenth Amendment of the U.S. Constitution**  
**& Cal. Const. art. I, § 7 (Substantive Due Process)**  
**(Against All Defendants)**

54. Plaintiffs incorporate by reference each and every allegation made in Paragraphs 1 through 53 of this Complaint as though fully set forth herein.

55. As discussed above, Proposition M provides that a Residential Unit is not deemed to be “vacant” at any time during which the Unit is subject to a bona fide lease to a tenant—during the so-called “Lease Period.” Prop. M (Ex. 1), Proposed Bus. & Tax. Regs. § 2952 (“Definitions”). However, the “Lease Period’ means the period during which any owner of a Residential Unit or any person in the Owner’s Group of that owner leases that Residential Unit to one or more tenants under a bona fide lease intended for occupancy, *but not including any lease or rental of that Residential Unit to anyone in the Owner’s Group* or to travelers, vacationers, or other transient occupants.” *Id.* (emphasis added). “Owner’s Group’ means for each owner of a Residential Unit, with respect to each Residential Unit, the owner, any current or former co-owner, and any *Related Person* or Affiliate of the owner or any current or former co-owner.” *Id.* (emphasis added). And a “Related Person’ means a spouse, domestic partner, child, parent, or sibling.” *Id.*

56. In other words, a lease to these close family members is not treated as an exemption from the definition of “vacancy.” As the opponents of Proposition M noted in their main argument against the measure, the consequence of this exception to the exemption is that “The measure is even written so that intergenerational households and relatives living under one roof would be fined in a building that isn’t vacant at all.” Exhibit 1, p. 5. Tellingly, in their rebuttal, the Proposition’s proponents did not deny that fact. *Id.*

57. The Supreme Court has held that the protection of close familial relationships is a fundamental liberty interest protected by the due process clause. *See,*

1 *e.g., Moore v. E. Cleveland*, 431 U.S. 494, 495 (1977) (striking down local ordinance that  
2 limited the right of extended family members to reside in a single home); *Cwynar*, 90  
3 Cal. App. 4th at 643-44 (upholding claim that ordinance barring landlords from evicting  
4 tenants to use the unit for a close family member violated the Constitution). Proposition  
5 M unlawfully burdens this fundamental liberty interest in violation of due process.

6 58. An actual controversy has arisen and now exists between the parties  
7 relating to these legal rights and duties for which Plaintiffs desire a declaration of  
8 rights, therefore making a declaratory judgment necessary. Cal. Code Civ. Proc. § 1060.

9 59. Moreover, unless this Court enjoins the enforcement of Proposition M by  
10 defendants, Plaintiffs and other citizens similarly-situated will suffer irreparable  
11 injury and damage. 42 U.S.C. § 1983; Cal. Code Civ. Proc. § 526.

12 **FOURTH CAUSE OF ACTION**

13 **Violation of Fourteenth Amendment of the U.S. Constitution**

14 **& Cal. Const. art. I, § 7 (Equal Protection)**

15 **(Against All Defendants)**

16 60. Plaintiffs incorporate by reference each and every allegation made in  
17 Paragraphs 1 through 59 of this Complaint as though fully set forth herein.

18 61. By exempting residential units that are leased to strangers from taxation  
19 but subjecting residential units leased to close family members to taxation, Proposition  
20 M violates equal protection. Because, as discussed above, the familial interests  
21 implicated are a fundamental liberty interests, strict scrutiny applies to laws that  
22 impose thereon. *See In re Santos Y.*, 92 Cal. App. 4th 1274, 1314-17 (2001).

23 62. An actual controversy has arisen and now exists between the parties  
24 relating to these legal rights and duties for which Plaintiffs desire a declaration of  
25 rights, therefore making a declaratory judgment necessary. Cal. Code Civ. Proc. § 1060.

26 63. Moreover, unless this Court enjoins the enforcement of Proposition M by  
27 defendants, Plaintiffs and other citizens similarly-situated will suffer irreparable  
28 injury and damage. 42 U.S.C. § 1983; Cal. Code Civ. Proc. § 526.

1 **FIFTH CAUSE OF ACTION**

2 **Violation of Cal. Const. art. I, § 1 (Right of Privacy)**

3 **(Against All Defendants)**

4 64. Plaintiffs incorporate by reference each and every allegation made in  
5 Paragraphs 1 through 63 of this Complaint as though fully set forth herein.

6 65. Proposition M's efforts to compel property-owners to allow units they own  
7 to be occupied are unconstitutional as applied to owners who reside on the property to  
8 be taxed, such as Plaintiffs Debbane and Friedland, who do not wish to share their  
9 homes with others. This application of the Proposition violates the fundamental  
10 constitutional right of privacy, protected by Article I, § 1, of the California Constitution.  
11 *Cf. Tom v. City & County of San Francisco*, 120 Cal. App. 4th 674 (2004) (City's  
12 ordinance prohibiting tenants-in-common from entering exclusive occupancy  
13 agreements violated right of privacy).

14 66. An actual controversy has arisen and now exists between the parties  
15 relating to these legal rights and duties for which Plaintiffs desire a declaration of  
16 rights, therefore making a declaratory judgment necessary. Cal. Code Civ. Proc. § 1060.

17 67. Moreover, unless this Court enjoins the enforcement of Proposition M by  
18 defendants, Plaintiffs and other citizens similarly-situated will suffer irreparable  
19 injury and damage. Cal. Code Civ. Proc. § 526.

20 **PRAYER**

21 WHEREFORE, Plaintiffs pray for Judgment as follows:

22 1. For a declaration that Proposition M is unenforceable.

23 2. For issuance of a writ of mandate or other appropriate relief directing and  
24 commanding that Defendants and others acting pursuant to their authority or control  
25 refrain from enforcing the Proposition;

26 3. For an injunction, both temporary and permanent, prohibiting Defendants  
27 and others acting pursuant to their authority or control from enforcing the Proposition;

28 4. For the refund to appropriate taxpayers of any amounts collected

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

pursuant to Proposition M;

5. For an award to Plaintiffs of their costs of this action;

6. For an award to Plaintiffs of their attorneys' fees pursuant to Code of Civil Procedure § 1021.5 or any other appropriate provision of the law; and

7. For such other relief as this Court deems just and proper.

Respectfully submitted,

Dated: February 9, 2023

NIELSEN MERKSAMER  
PARRINELLO GROSS & LEONI LLP

By: 

Christopher E. Skinnell

*Attorneys for Plaintiffs*  
ERIC DEBBANE; ANDREW  
DEBBANE; ROBERT FRIEDLAND;  
NATASA ZEC; SAN FRANCISCO  
APARTMENT ASSOCIATION;  
SMALL PROPERTY OWNERS OF  
SAN FRANCISCO INSTITUTE; SAN  
FRANCISCO ASSOCIATION OF  
REALTORS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**VERIFICATION**

I am a plaintiff in the above-titled matter. I have read the foregoing VERIFIED COMPLAINT TO INVALIDATE ILLEGAL SPECIAL TAX (CODE CIV. PROC. § 863; GOVT. CODE § 50077.5). I know the contents thereof, and the same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters, I believe them to be true.

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

Executed on February \_\_, 2023, at San Francisco, California.

 2/17/23.  
ERIC DEBBANE

**VERIFICATION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I am a plaintiff in the above-titled matter. I have read the foregoing VERIFIED COMPLAINT TO INVALIDATE ILLEGAL SPECIAL TAX (CODE CIV. PROC. § 863; GOVT. CODE § 50077.5). I know the contents thereof, and the same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters, I believe them to be true.

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

Executed on February \_\_, 2023, at San Francisco, California.

 2/7/23  
ANDREW DEBBANE



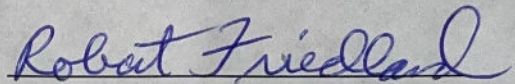
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**VERIFICATION**

I am a plaintiff in the above-titled matter. I have read the foregoing VERIFIED COMPLAINT TO INVALIDATE ILLEGAL SPECIAL TAX (CODE CIV. PROC. § 863; GOVT. CODE § 50077.5). I know the contents thereof, and the same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters, I believe them to be true.

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

Executed on February 7, 2023, at San Francisco, California.

  
ROBERT FRIEDLAND

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**VERIFICATION**

I am a plaintiff in the above-titled matter. I have read the foregoing VERIFIED COMPLAINT TO INVALIDATE ILLEGAL SPECIAL TAX (CODE CIV. PROC. § 863; GOVT. CODE § 50077.5). I know the contents thereof, and the same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters, I believe them to be true.

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

Executed on February 7, 2023, at San Francisco, California.

  
\_\_\_\_\_  
NATASA ZEC

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**VERIFICATION**

I am the Executive Director of the San Francisco Apartment Association, a plaintiff in the above-titled matter. I have read the foregoing VERIFIED COMPLAINT TO INVALIDATE ILLEGAL SPECIAL TAX (CODE CIV. PROC. § 863; GOVT. CODE § 50077.5). I know the contents thereof, and the same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters, I believe them to be true.

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

Executed on February 1<sup>st</sup>, 2023, at San Francisco, California.

  
JANAN NEW

