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**FILED**  
Superior Court of California  
County of San Francisco  
NOV 26 2024  
CLERK OF THE COURT  
BY: *[Signature]*  
Deputy Clerk

11 *Attorneys for Plaintiffs*

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

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

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

25 *Plaintiffs,*

26 vs.

27 CITY & COUNTY OF SAN FRANCISCO;  
28 BEN ROSENFELD, in his official capacity as  
the Auditor-Controller of 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.*

JOSÉ CISNEROS, in his official capacity as  
the Tax Collector of the City & County of San  
Francisco,

*Real Party in Interest.*

Case No. CGC-23-604600

**[Proposed] FINAL JUDGMENT**

Hearing Date: October 31, 2024

Time: 9:30 a.m.

Department: 501

Action Filed: February 9, 2023

Amended Complaint: Sept. 12, 2023

Answer Filed: Jan. 12, 2024

Trial Date: December 9, 2024

1 On October 31, 2024, this Court heard argument on Plaintiffs' and Defendants'  
2 cross-motions for summary judgment in this case. Following the hearing, the Court  
3 adopted its tentative ruling granting Plaintiffs' motion for summary judgment on all  
4 causes of action in the First Amended Complaint and denying Defendants' cross-motion  
5 accordingly. A formal order to that effect has since been entered. Consequently,

6 **IT IS HEREBY ADJUDGED, ORDERED, AND DECREED THAT:**

7 1. Judgment is hereby granted in favor of Plaintiffs ERIC DEBBANE;  
8 ANDREW DEBBANE; ROBERT FRIEDLAND; NATASA ZEC; SAN FRANCISCO  
9 APARTMENT ASSOCIATION; SMALL PROPERTY OWNERS OF SAN FRANCISCO  
10 INSTITUTE; SAN FRANCISCO ASSOCIATION OF REALTORS, and against  
11 Defendants CITY & COUNTY OF SAN FRANCISCO; BEN ROSENFELD, in his  
12 official capacity as the Auditor-Controller of the City & County of San Francisco; ALL  
13 PERSONS INTERESTED IN THE MATTER OF Proposition M on the November 8,  
14 2022 ballot, imposing a "vacancy tax" on residential properties, and other matters  
15 related thereto; and DOES 1-100, inclusive, and Real Party in Interest JOSÉ  
16 CISNEROS, in his official capacity as the Tax Collector of the City & County of San  
17 Francisco, on all five causes of action set forth in the First Amended Complaint, filed  
18 on September 12, 2023.

19 2. Defendants and Real Party in Interest, and all of Defendants' and Real  
20 Party's officers, agents, employees, service providers, and all others acting by, through,  
21 or in concert with Defendants and Real Party, or at the direction of Defendants and  
22 Real Party, are prohibited from enforcing or administering Proposition M.

23 3. Per the request of Defendants, and without objection from Plaintiffs, the  
24 effective date of this judgment is stayed for 10 days from its entry.

25 IT IS SO ORDERED.

26  
27 Dated: 11/24, 2024

28 SEE EXHIBIT "A" RE  
COMPLIANCE WITH CRC 3.1312

  
HONORABLE RONALD E. QUIDACHAY  
Judge of the Superior Court

1 APPROVED AS TO FORM:

2 Dated: November \_\_, 2024

3 \_\_\_\_\_  
4 THOMAS S. LAKRITZ  
5 Deputy City Attorney

6 Attorneys for Defendants CITY & COUNTY  
7 OF SAN FRANCISCO; BEN ROSENFELD, in  
8 his official capacity as the Auditor-Controller  
9 of the City & County of San Francisco; and for  
10 Real Party in Interest JOSÉ CISNEROS, in  
11 his official capacity as the Tax Collector of the  
12 City & County of San Francisco  
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28

November 12, 2024

Hon. Charles F. Haines, Judge  
San Francisco Superior Court  
400 McAllister Street  
San Francisco, CA 94102

VIA ELECTRONIC FILING

Re: Proposed Form of Order Granting Summary Judgment  
and Form of Judgment (CRC 3.1312(b))  
Debbane v. City & Cty. of San Francisco, Case No. CGC-23-  
604600

Dear Judge Haines:

Submitted with this letter, please find a proposed order granting Plaintiff's motion for summary judgment and denying Defendants' motion for summary judgment, prepared pursuant to the Court's minute order of October 31, 2024, and pursuant to California Rule of Court 3.1312(b). Also submitted herewith is a proposed form of judgment.

Attached hereto is as Exhibit A is correspondence from the City setting forth its comments on the two proposed forms.

**SUMMARY OF COMMENTS FROM DEFENDANTS/REAL PARTY  
(Cal. R. Ct. 3.1312(b))**

**A. Proposed Form of Judgment.**

Regarding the proposed form of judgment, the City provided five comments, numbered LT(1) to LT(5), as reflected in the redline attached to its letter of November 6, 2024 (Exhibit A). The final form of proposed judgment submitted herewith:

- Accepts and incorporates the proposed change labeled "LT(1)," deleting the language on the caption page reading, "Calendar Preference Required by Statute (Code Civ. Proc. § 867)." While we disagree with the City's assertion that this Court previously ruled the case is not a validation action—there is no ruling in this case that says any such thing—the statement's inclusion on the caption page is immaterial to the form and effect of the judgment.

[CES1933.080]

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**EXHIBIT "A"**

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Hon. Charles F. Haines  
Judge, San Francisco Superior Court  
November 12, 2024  
Page 2

- Accepts and incorporates the proposed change labeled “LT(5),” correcting the City Attorney’s signature bloc to reflect the fact that the City Attorney’s office does not represent 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” or the Doe defendants.

With respect to comments LT(2) and LT(3), which are identical, Plaintiffs disagree with the City’s position that it is improper for the Court to enter judgment against the “All Persons” defendants or Does. Those defendants were properly served with the summons in this action by publication in accordance with this Court’s orders of March 30, 2023, and April 4, 2023, and did not file an answer contesting the complaint by the deadline prescribed therein. Therefore, judgment against them is appropriate.

With respect to comment LT(4), Plaintiffs disagree with the City’s contention that the injunctive relief ordered by the judgment should not reach Defendants’ and Real Party’s agents, employees, etc. That is typical of injunctive relief, and the Prayer contained in the First Amended Complaint, upon which summary judgment is being granted in full, specifically requested “a permanent injunction prohibiting Defendants *and others acting pursuant to their authority or control* from enforcing the Proposition [M].”

**B. Proposed Form of Order.**

Regarding the proposed form of order, upon receiving the City’s comments on November 6, Plaintiffs’ counsel realized that the City had been sent an incorrect, superseded draft version of the proposed order, whereupon counsel immediately sent a corrected version of the draft to the City Attorney’s office for review. A true and correct copy of Plaintiffs’ e-mail conveying the corrected version on November 6 is attached hereto as Exhibit B.<sup>1</sup> That corrected version accepted six of the City’s ten comments on the initial version (Items LT(1) to LT(10)) as reflected in the letter of November 6, 2024:

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<sup>1</sup> The attachment is omitted from Exhibit B as duplicative, because a copy of that attachment with the City’s comments thereon is included in Exhibit C.

- Two of those changes (LT(1) and LT(10)) are identical to the ones discussed above, which Plaintiffs accepted in connection with the proposed form of judgment.
- At the City's suggestion, Plaintiffs struck the statement that "Plaintiffs motion for summary judgment is granted" on page 2, lines 17-18 (LT(2)). While that statement included in the original version to conform to the Local Rules directing that the tentative ruling be repeated verbatim, Defendants are correct that the preceding paragraph also states that the motion is granted and that this sentence is therefore not necessary.
- Plaintiffs accepted the City's suggestion to strike the references to Local Rules 8.3(G) and 8.7(B) on page 2 of the original version (LT(3)).
- Plaintiffs corrected the typographical error identified by the Defendants on page 3, line 27 (LT(5)).
- Plaintiffs accepted the notation on page 5 (LT(9)) to the effect that "Proposition M violates property owners' constitutional right to privacy under the California Constitution..." (underlined text added).

Exhibit C is a letter from the City Attorneys' office providing comments on the corrected version of the proposed order pursuant to Rule of Court 3.1312(a). Plaintiffs disagree with Defendants' comments on the corrected proposed order. Virtually all of them amount to nothing more than an attempt by Defendants to re-argue their summary judgment motion. Plaintiffs won't respond to all 31 comments, but a few specific examples are warranted:

- In many cases, Defendants object that that they disputed various "facts" in Plaintiffs' separate statement of undisputed facts when, in truth, what Defendants "disputed" is the *legal conclusions* to be drawn from those facts—not the facts themselves, as evidenced by the fact that they cite case law rather than evidence in support of their position.
- Defendants also object that a number of statements in the proposed order rely on facts that were not included in Plaintiffs'

separate statement. Most of these (LT(11)-LT(13), LT(16)-LT(17) & LT(22)) merely summarize the text of Proposition M itself—with citations to that text. Defendants cite no authority that supports the proposition that Plaintiffs were required to recite the language of the Proposition itself in the PUMF, any more than they would be required to recite the terms of a pertinent statute. The separate statement is about *facts*, and it is black-letter law that “interpreting city ordinances ... is a question of law, not fact[.]” *KB Salt Lake III, LLC v. Fitness Internat., LLC*, 95 Cal. App. 5th 1032, 1049 (2023). And even were that not the case, contrary to the City’s comments the law is that a Court *may* disregard facts not contained in the separate statement—not that it *must* disregard them.<sup>2</sup>

- A number of Defendants’ other comments (LT(3),(9)-(10), (14)-(15), (29)-(30)) contend there is a “factual” dispute regarding the effective date of Proposition M. That is not the case. Again, the Court is perfectly capable of construing the measure to determine its effective date, which is a question of law.
- The City objects that the Court’s tentative ruling did not specifically find that the Court is to draw all reasonable inferences from uncontested declarations on summary judgment (LT(8)), but (1) Defendants have not contested that is the law, and (2) it is a natural deduction from the Court’s ruling that Plaintiffs “shifted their burden as to all causes of action.”
- The City objects (LT(30)) that the Court’s tentative ruling did not expressly state that Plaintiffs have standing to bring this action and that it is not premature or barred by the “pay first, litigate later” rule. But, of course, this holding is necessary to the Court granting judgment in Plaintiffs’ favor, and the Court did hold as much in denying the demurrer to the First Amended Complaint.

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<sup>2</sup> See, e.g., *San Diego Watercrafts, Inc. v. Wells Fargo Bank*, 102 Cal. App. 4th 308, 315 (2002) (“in ruling on a motion for summary judgment, a trial court must consider all the evidence submitted, except the court *may* ignore evidence not disclosed in moving party’s separate statement of undisputed facts. But we also reject the absolute prohibition against consideration of nonreferenced evidence” (emphasis added)); *King v. United Parcel Serv., Inc.*, 152 Cal. App. 4th 426, 437-38 (2007) (affirming trial court’s reliance on facts omitted from defendant’s separate statement in granting summary judgment to defendant).


Hon. Charles F. Haines  
Judge, San Francisco Superior Court  
November 12, 2024  
Page 5

(as the Court and the parties discussed at the summary judgment hearing on October 31, 2024).

- The City objections (LT(8)) that the Court's tentative ruling did not expressly hold that Proposition M imposes a "penalty" rather than a tax. But that was the underlying allegation of the First Cause of Action upon which the Court granted summary judgment.

Simply put, Defendants' objections are not well-taken.

Respectfully submitted,



Christopher E. Skinnell

Enclosures and Attachments  
cc: Tom Lakritz, Deputy City Attorney



Hon. Charles F. Haines  
Judge, San Francisco Superior Court  
November 12, 2024  
Exhibit A

**EXHIBIT A**

CITY AND COUNTY OF SAN FRANCISCO



DAVID CHIU  
City Attorney

OFFICE OF THE CITY ATTORNEY

THOMAS S. LAKRITZ  
Deputy City Attorney

Direct Dial: (415) 554-4628  
Email: tom.lakritz@sfcityatty.org

November 6, 2024

Christopher E. Skinnell  
Nielsen Merksamer Parrinello Gross & Leoni LLP  
2350 Kerner Boulevard, Suite 250  
San Rafael, CA 94901

Re: *Eric Debbane, et al. vs. City & County of San Francisco, et al.*  
SF Superior Court No. CGC-23-604600

Dear Chris:

Thank you for sending your proposed order and judgment. Pursuant to California Rules of Court, rule 3.1312, subdivision (a), the City provides the attached comments and proposed edits to both documents. You can consider the attached comments and proposed edits as the City's disapproval of your proposed order and judgment, as required by rule 3.1312, subdivision (a).

If you decide not to accept the City's proposed edits, we request that you provide the Court with this letter and the attached comments and proposed edits for both documents. See California Rules of Court, rule 3.1312, subdivision (b).

Please let me know if you have any questions.

Very truly yours,

DAVID CHIU  
City Attorney

*/s/ Thomas S. Lakritz*

THOMAS S. LAKRITZ  
Deputy City Attorney

Attachments

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  
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9 E-mail: cskinnell@nmgovlaw.com  
10 E-mail: hgibson@nmgovlaw.com

11 *Attorneys for Plaintiffs*  
12 ERIC DEBBANE; ANDREW DEBBANE; ROBERT  
13 FRIEDLAND; NATASA ZEC; SAN FRANCISCO  
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16 FRANCISCO ASSOCIATION OF REALTORS

17 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
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24 ASSOCIATION OF REALTORS,

25 *Plaintiffs,*  
26 vs.

27 CITY & COUNTY OF SAN FRANCISCO;  
28 BEN ROSENFELD, in his official capacity as  
the Auditor-Controller of 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.*

JOSÉ CISNEROS, in his official capacity as  
the Tax Collector of the City & County of San  
Francisco,

*Real Party in Interest.*

Case No. CGC-23-604600  
**[Proposed] ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT AND  
DENYING DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT**

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

Hearing Date: October 31, 2024  
Time: 9:30 a.m.  
Department: 501

Action Filed: February 9, 2023  
Amended Complaint: Sept. 12, 2023  
Answer Filed: Jan. 12, 2024  
Trial Date: December 9, 2024

Commented [LT(1)]: The Court already decided that this matter is not a validation action; therefore the section a any preference does not apply to the CCP 526a matter.

1 The cross-motions for summary judgment filed by Plaintiffs Eric Debbane, *et al.*,  
2 and Defendants City & County of San Francisco, *et al.*, in the above-captioned case  
3 came on regularly for hearing at 9:30 a.m. on October 31, 2024, in Courtroom 501 of the  
4 above-captioned Court, the Honorable Charles F. Haines, presiding. Plaintiffs were  
5 represented by Christopher E. Skinnell, Esq., of Nielsen Merksamer Parrinello Gross  
6 & Leoni, LLP. Defendants and Real Party in Interest were represented by San  
7 Francisco Deputy City Attorney Thomas S. Lakritz, Esq., and San Francisco's Chief  
8 Tax Attorney, Scott M. Reiber, Esq.

9 Having considered the papers filed and the argument presented at the hearing,  
10 the Court adopts its tentative rulings: Plaintiff Eric Debbane, Andrew Debbane, Robert  
11 Friedland, Natasa Zec, San Francisco Apartment Association, Small Property Owners  
12 of San Francisco Institute, San Francisco Association of Realtors Motion for Summary  
13 Judgment/Summary Adjudication is GRANTED. The moving party shifted their  
14 burden as to all causes of action in the First Amended Complaint and opposing party  
15 failed to create any triable issues of fact with competent admissible evidence.

16 Defendant City & County of San Francisco, Ben Rosenfeld, Jose Cisneros Motion  
17 for Summary Judgment or in the Alternative Summary Adjudication is moot. Plaintiffs  
18 motion for summary judgment granted.

Commented [L7(2): This is stated in the previous paragraph.

19 **The following findings of fact and conclusions of law are set forth as**  
20 **required by Code of Civil Procedure § 437c(g) and Local Rules 8.3(G) and**  
21 **8.7(B):**

Commented [L7(3): You did not comply with the term L.R. 8.3(G) or 8.7(B).

22 Plaintiffs' Statement of Undisputed Material Facts, filed in support of their  
23 motion on May 23, 2024 ("PUMF"), contained 66 proposed undisputed facts. Defendants  
24 concede thirteen are "Undisputed" (PUMF Nos. 1, 3, 13-16, 19-20, 27, 35-38), and they  
25 have identified an additional thirteen (PUMF Nos. 17-18, 22-23, 25, 28-30, 32, 40-43)  
26 as "Immaterial," but without disputing them either. Defendants purport to dispute 38  
27 others (PUMF Nos. 2, 4-11, 24, 26, 31, 33-34, 39, 44-47, 49-66), but the disputes  
28 Defendants raise are disputes of law, not disputes of fact. *See Hayman v. Block*, 176

1 the same issue regarding the Debbanes' compliance with the Ellis Act as PUMF No. 21.

2 ~~Again, the Court finds this is not a material dispute that warrants a [sic].~~

3 The parties' respective statements of undisputed material facts filed in  
4 connection with Defendants' motion for summary judgment essentially duplicated the  
5 statements filed in connection with Plaintiffs' motion.

6 The Court concludes that there are no triable issues of material fact that  
7 preclude summary judgment in Plaintiffs' favor, Code Civ. Proc. § 437c(g), and based  
8 on the undisputed facts set forth in the parties' respective separate statements, the  
9 Court further finds as follows:

10 ~~1. Plaintiffs have standing to bring this action, and their action is not~~  
11 ~~premature or barred by the "pay first, litigate later" rule, because the vacancy tax~~  
12 ~~challenged herein is not yet "due." No payment will be required until April of 2025 at~~  
13 ~~the earliest. (See PUMF No. 4; Proposition M, S.F. Bus. & Tax. Reg. § 2953 ("Imposition~~  
14 ~~of Tax") (Plaintiffs' Appx. 49); Request for Judicial Notice in Support of Defendants'~~  
15 ~~Motion for Summary Judgment/Adjudication, filed May 24, 2024, Ex. H (Ord. 224-23),~~  
16 ~~p. 7 (§ 6.9-1(i)(1)); Defendants' Opposition to Plaintiffs' Motion for Summary~~  
17 ~~Judgment/Adjudication, filed July 26, 2024, p. 15, lines 1-3; see also Order Overruling~~  
18 ~~Defendants' Demurrer to the First Amended Complaint, filed Jan. 5, 2024.)~~

19 2. The Proposition M vacancy tax violates the Takings Clause of the Fifth  
20 Amendment as alleged in the First Cause of Action in the First Amended Complaint.

21 3. The Proposition M vacancy tax is also preempted by the Ellis Act, Govt.  
22 Code § 7060(a), as alleged in the Second Cause of Action in the First Amended  
23 Complaint.

24 4. Proposition M violates property owners' fundamental liberty interests in  
familial living arrangements, protected by the due process and equal protection  
clauses,

25 insofar as it taxes (actually, penalizes) units that are rented to family members of the  
26 owner while exempting units that are leased to strangers, as alleged in the Third and  
27 Fourth Causes of Action in the First Amended Complaint.

Commented [LT(6)]: This is redundant. See p. 2, ll 13-14; p. 4, ll 6-9.

Commented [LT(7)]: The Court made no such finding in its tentative ruling or from the bench. You did not raise the issue during the hearing, except to agree with Judge Hall that this issue was the same as he addressed in the City's second demurrer. Moreover, this statement misrepresents the City's argument. The City's argument is based on the holding of *Chiatello*, which states that CCP 526a cannot be used to challenge the collection of taxes Plaintiffs believe are illegal.

Commented [LT(8)]: The Court made no finding in the tentative ruling that Prop M "penalizes" anyone. The Court simply found that Plaintiffs had produced undisputed facts that Prop M violated Plaintiffs' rights under the due process and equal protections clauses of the 14th Amendment.

1 5. Proposition M violates property owners' constitutional right to privacy  
under the California Constitution.

Commented [LT(9)]: Plaintiffs' fifth cause of action was limited to the rights under the California Constitution. See FAC ¶ 90.

2 insofar as it seeks to compel them to share the property on which they reside with  
3 others, against their will, as alleged in the Fifth Cause of Action in the First Amended  
4 Complaint.

5  
6 Dated: \_\_\_\_\_, 2024

7 \_\_\_\_\_  
8 HONORABLE CHARLES F. HAINES  
9 Judge of the Superior Court

10 APPROVED AS TO FORM:

11 Dated: November , 2024

12 \_\_\_\_\_  
13 THOMAS S. LAKRITZ  
14 Deputy City Attorney

15 Attorneys for Defendants CITY & COUNTY  
16 OF SAN FRANCISCO; BEN ROSENFELD, in  
17 his official capacity as the Auditor-Controller  
18 of the City & County of San Francisco; ALL  
19 PERSONS INTERESTED IN THE MATTER  
20 OF Proposition M on the November 8, 2022  
21 ballot, imposing a "vacancy tax" on residential  
22 properties, and other matters related thereto;  
23 and DOES 1-100, inclusive, and for Real Party  
24 in Interest JOSÉ CISNEROS, in his official  
25 capacity as the Tax Collector of the City &  
26 County of San Francisco  
27  
28

Commented [LT(10)]: The City Attorney's Office does not represent these defendants and Plaintiffs did not move for summary judgment against these defendants.

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18 *Plaintiffs,*  
19 vs.

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22 San Francisco; ALL PERSONS INTERESTED  
IN THE MATTER OF Proposition M on the  
23 November 8, 2022 ballot, imposing a "vacancy  
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matters related thereto; and DOES 1-100,  
25 inclusive,

26 *Defendants.*

27 JOSÉ CISNEROS, in his official capacity as  
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28 Francisco,

*Real Party in Interest.*

Case No. CGC-23-604600

**[Proposed] FINAL JUDGMENT**

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

Hearing Date: October 31, 2024  
Time: 9:30 a.m.  
Department: 501

Action Filed: February 9, 2023  
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Answer Filed: Jan. 12, 2024  
Trial Date: December 9, 2024

Commented [LT(1)]: The Court already decided that this matter is not a validation action; therefore the section 526a preference does not apply to the CCP 526a matter.

1 On October 31, 2024, this Court heard argument on Plaintiffs' and Defendants'  
2 cross-motions for summary judgment in this case. Following the hearing, the Court  
3 adopted its tentative ruling granting Plaintiffs' motion for summary judgment on all  
4 causes of action in the First Amended Complaint and denying Defendants' cross-motion  
5 accordingly. A formal order to that effect has since been entered. Consequently,

6 **IT IS HEREBY ADJUDGED, ORDERED, AND DECREED THAT:**

7 1. Judgment is hereby granted in favor of Plaintiffs ERIC DEBBANE;  
8 ANDREW DEBBANE; ROBERT FRIEDLAND; NATASA ZEC; SAN FRANCISCO  
9 APARTMENT ASSOCIATION; SMALL PROPERTY OWNERS OF SAN FRANCISCO  
10 INSTITUTE; SAN FRANCISCO ASSOCIATION OF REALTORS, and against  
11 Defendants CITY & COUNTY OF SAN FRANCISCO; BEN ROSENFELD, in his  
12 official capacity as the Auditor-Controller of the City & County of San Francisco; ~~ALL~~  
13 ~~PERSONS INTERESTED IN THE MATTER OF Proposition M on the November 8,~~  
14 ~~2022 ballot, imposing a "vacancy tax" on residential properties, and other matters~~  
15 ~~related thereto; and DOES 1-100, inclusive, and Real Party in Interest JOSÉ~~  
16 ~~CISNEROS, in his official capacity as the Tax Collector of the City & County of San~~  
17 ~~Francisco, on all five causes of action set forth in the First Amended Complaint, filed~~  
18 ~~on September 12, 2023.~~

Commented [LT(2)]: Plaintiffs did not move for summary judgment against these Defendants.

19 2. Defendants and Real Party in Interest, ~~and all of Defendants' and Real~~  
20 ~~Party's officers, agents, employees, service providers, and all others acting by, through,~~  
21 ~~or in concert with Defendants and Real Party, or at the direction of Defendants and~~  
22 ~~Real Party, are prohibited from enforcing or administering Proposition M.~~

Commented [LT(3)]: See previous comment.

23 3 Per the request of Defendants, and without objection from Plaintiffs, the  
24 effective date of this judgment is stayed for 10 days from its entry.

Commented [LT(4)]: Plaintiffs motion for summary judgment only sought an injunction under CCP 526a against Defendants. Plaintiffs' motion for summary judgment did not seek an injunction beyond the named Defendants.

25 IT IS SO ORDERED.

26  
27 Dated: \_\_\_\_\_, 2024  
28 \_\_\_\_\_  
HONORABLE CHARLES F. HAINES  
Judge of the Superior Court



1 APPROVED AS TO FORM:

2 Dated: November , 2024

3 THOMAS S. LAKRITZ  
4 Deputy City Attorney

5 Attorneys for Defendants CITY & COUNTY  
6 OF SAN FRANCISCO; BEN ROSENFELD, in  
7 his official capacity as the Auditor-Controller  
8 of the City & County of San Francisco; ~~ALL~~  
9 ~~PERSONS INTERESTED IN THE MATTER~~  
10 ~~OF Proposition M on the November 8, 2022~~  
11 ~~ballet, imposing a "vacancy tax" on residential~~  
12 ~~properties, and other matters related thereto,~~  
13 ~~and DOES 1-100, inclusive, and for Real Party~~  
14 ~~in Interest JOSÉ CISNEROS, in his official~~  
15 ~~capacity as the Tax Collector of the City &~~  
16 ~~County of San Francisco~~

Commented [LT(5): The City Attorney's Office does not  
represent these defendants and Plaintiffs did not move for  
summary judgment against these defendants.

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Hon. Charles F. Haines  
Judge, San Francisco Superior Court  
November 12, 2024  
Exhibit B

**EXHIBIT B**

## Christopher Skinnell

---

**From:** Christopher Skinnell  
**Sent:** Wednesday, November 6, 2024 6:06 PM  
**To:** Lakritz, Tom (CAT)  
**Subject:** RE: Case No. CGC-23-604600 Debbane v. CCSF  
**Attachments:** Prop M - Proposed Order (rev).pdf

Dear Tom,

In reviewing these comments, I realized that I sent you an incorrect, superseded draft version of the proposed order. The version I meant to send you, which is attached, includes a summary of undisputed facts to comply with the requirement of CCP 437c(g) that the order “specifically refer to the evidence proffered in support of and, if applicable, in opposition to the motion that indicates no triable issue exists.” That summary begins under the heading “UNDISPUTED MATERIAL FACTS,” on page 4, and ends on page 10.

Otherwise, the attached version is identical to the version you already reviewed except that, in response to your comments:

- We have deleted the notice from the caption page that reads, “CALENDAR PREFERENCE REQUIRED BY STATUTE (CODE CIV. PROC. § 867).” While we disagree with the City’s statement that this Court previously ruled the case is not a validation action—there is no ruling in this case to that effect—the statement’s inclusion on the caption page is immaterial to the form of judgment and order.
- We have corrected the City Attorney’s signature blocs to reflect the fact that the City Attorney’s office does not represent 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” or the Doe defendants.
- We have struck the statement that “Plaintiffs motion for summary judgment is granted” on page 2, lines 17-18. While we included it in the original to conform to the Court rules directing that the tentative ruling be repeated verbatim, the Defendants are correct that the prior paragraph also states that the motion is granted.
- We struck the references to Local Rules 8.3(G) and 8.7(B) on page 2.
- We corrected the typographical error identified by the Defendants on page 3, line 27.
- We accepted the notation on page 5 that states “Proposition M violates property owners’ constitutional right to privacy under the California Constitution...”

Of course, I will postpone submitting any documents to the Court until you have had five days to review this corrected version pursuant to CRC 3.1312.

Sincerely,

**Chris Skinnell, Partner**

**NIELSEN MERKSAMER  
PARRINELLO GROSS & LEONI LLP**

2350 Kerner Boulevard, Suite 250  
San Rafael, California 94901  
t: 415.389.6800 • f: 415.388.6874  
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Please visit [www.nmgovlaw.com](http://www.nmgovlaw.com) for more information about our firm

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---

**From:** Skellen, Lauren (CAT) <[Lauren.Skellen@sfcityatty.org](mailto:Lauren.Skellen@sfcityatty.org)>  
**Sent:** Wednesday, November 6, 2024 4:45 PM  
**To:** Christopher Skinnell <[CSkinnell@nmgovlaw.com](mailto:CSkinnell@nmgovlaw.com)>  
**Cc:** Lakritz, Tom (CAT) <[Tom.Lakritz@sfcityatty.org](mailto:Tom.Lakritz@sfcityatty.org)>  
**Subject:** Case No. CGC-23-604600 Debbane v. CCSF

**Security Notice: This is an external email. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Good Afternoon,

Please see attached correspondence from DCA Tom Lakritz. Thank you.

**Lauren Skellen**  
Legal Secretary  
Office of City Attorney David Chiu  
(415) 554-4761 Direct  
[www.sfcityattorney.org](http://www.sfcityattorney.org)  
Find us on: [Facebook](#) [Twitter](#) [Instagram](#)



Hon. Charles F. Haines  
Judge, San Francisco Superior Court  
November 12, 2024  
Exhibit C

**EXHIBIT C**

CITY AND COUNTY OF SAN FRANCISCO



DAVID CHIU  
City Attorney

OFFICE OF THE CITY ATTORNEY

THOMAS S. LAKRITZ  
Deputy City Attorney

Direct Dial: (415) 554-4628  
Email: tom.lakritz@sfcityatty.org

November 11, 2024

Christopher E. Skinnell  
Nielsen Merksamer Parrinello Gross & Leoni LLP  
2350 Kerner Boulevard, Suite 250  
San Rafael, CA 94901

Re: *Eric Debbane, et al. vs. City & County of San Francisco, et al.*  
SF Superior Court No. CGC-23-604600

Dear Chris:

Thank you for sending your revised proposed order. Pursuant to California Rules of Court, rule 3.1312, subdivision (a), the City provides the attached comments and proposed edits. You can consider the attached comments and edits as the City's disapproval of your revised proposed order, as required by rule 3.1312, subdivision (a).

If you decide not to accept the City's proposed edits, we request that you provide the Court with this letter and the attached comments and proposed edits to your revised proposed order. See California Rules of Court, rule 3.1312, subdivision (b).

Please let me know if you have any questions.

Very truly yours,

DAVID CHIU  
City Attorney

*/s/ Thomas S. Lakritz*

THOMAS S. LAKRITZ  
Deputy City Attorney

Attachment

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

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

12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 IN AND FOR THE COUNTY OF SAN FRANCISCO

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

18 *Plaintiffs,*

19 vs.

20 CITY & COUNTY OF SAN FRANCISCO;  
BEN ROSENFELD, in his official capacity as  
21 the Auditor-Controller of the City & County of  
San Francisco; ALL PERSONS INTERESTED  
22 IN THE MATTER OF Proposition M on the  
23 November 8, 2022 ballot, imposing a "vacancy  
tax" on residential properties, and other  
24 matters related thereto; and DOES 1-100,  
25 inclusive,

26 *Defendants.*

27 JOSÉ CISNEROS, in his official capacity as  
the Tax Collector of the City & County of San  
28 Francisco,

*Real Party in Interest.*

Case No. CGC-23-604600

**[Proposed] ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT AND  
DENYING DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT**

Hearing Date: October 31, 2024  
Time: 9:30 a.m.  
Department: 501

Action Filed: February 9, 2023  
Amended Complaint: Sept. 12, 2023  
Answer Filed: Jan. 12, 2024  
Trial Date: December 9, 2024

1 The cross-motions for summary judgment filed by Plaintiffs Eric Debbane, *et al.*,  
2 and Defendants City & County of San Francisco, *et al.*, in the above-captioned case  
3 came on regularly for hearing at 9:30 a.m. on October 31, 2024, in Courtroom 501 of the  
4 above-captioned Court, the Honorable Charles F. Haines, presiding. Plaintiffs were  
5 represented by Christopher E. Skinnell, Esq., of Nielsen Merksamer Parrinello Gross  
6 & Leoni, LLP. Defendants and Real Party in Interest were represented by San  
7 Francisco Deputy City Attorney Thomas S. Lakritz, Esq., and San Francisco's Chief  
8 Tax Attorney, Scott M. Reiber, Esq. Having considered the papers filed and the  
9 argument presented at the hearing, the Court adopts its tentative rulings.

10 The Motion for Summary Judgment/Summary Adjudication of Plaintiffs Eric  
11 Debbane, Andrew Debbane, Robert Friedland, Natasa Zec, San Francisco Apartment  
12 Association, Small Property Owners of San Francisco Institute, San Francisco  
13 Association of Realtors is GRANTED. The moving party shifted their burden as to all  
14 causes of action in the First Amended Complaint and opposing party failed to create  
15 any triable issues of fact with competent admissible evidence.

16 The Motion for Summary Judgment or in the Alternative Summary Adjudication  
17 of Defendants City & County of San Francisco and Ben Rosenfeld, and Real Party in  
18 Interest Jose Cisneros, is denied as moot.

19 **The following findings of fact and conclusions of law are set forth as**  
20 **required by Code of Civil Procedure § 437c(g):**

21 Plaintiffs' Statement of Undisputed Material Facts, filed in support of their  
22 motion on May 23, 2024 ("PUMF"), contained 66 proposed undisputed facts. Defendants  
23 concede thirteen are "Undisputed" (PUMF Nos. 1, 3, 13-16, 19-20, 27, 35-38), and they  
24 have identified an additional thirteen (PUMF Nos. 17-18, 22-23, 25, 28-30, 32, 40-43)  
25 as "Immaterial," but without disputing them either. Defendants purport to dispute 38  
26 others (PUMF Nos. 2, 4, 11, 24, 26, 31, 33-34, 39, 44-47, 49-66), but the disputes  
27 Defendants raise are disputes of law, not disputes of fact. *See Hayman v. Block*, 176  
28 Cal. App. 3d 629, 639 (1986) (the statement of undisputed material facts "must cite

**Commented [LT(1):** The City disputed this "fact" (PUMF 25) and said it was immaterial. The City explained why it doesn't matter that the Debbanes paid taxes with in the and County of San Francisco within one year prior to commencing this action.

**Commented [LT(2):** The City disputed that Plaintiffs' Appx 37-47 is material to this action, as these pages are the text of the Prop M or the Empty Homes Tax ("EHT"). Because Plaintiffs did not claim that any portion of the E is vague or ambiguous, the only thing the Court can review is the EHT text. (See *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084.)

**Commented [LT(3):** The City raised a material dispute with PUMF 4, which Plaintiffs claim that under the EHT v begin in 2025. As stated in the City's response, the text of the EHT expressly states that the EHT became operative 1/1/2024, subjecting certain taxpayers to tax liability for 2024.

**Commented [LT(4):** PUMF 24 misstated the operative consumer price index. The City's opposition disputed the fact because it misstated the EHT and the correct and applicable consumer price index. It is a dispute about a that Plaintiffs claim is material. You cannot gloss over your mistake by claiming the fact is not material.

**Commented [LT(5):** The City disputed the factual basis for the Small Property Owners of San Francisco Institute's claim of "associational standing" in this action. See DUMF 26.

This applies to PUMF 33-34; 39, 44-47, and 49-66.

**Commented [LT(6):** PUMF 31 misstated the operative consumer price index. The City's opposition disputed PUMF 31 because it misstated the EHT and the correct and applicable consumer price index. It is a dispute about a that Plaintiffs claim is material. You cannot gloss over your mistake by claiming the fact is not material.



1 evidentiary facts, not legal conclusions or 'ultimate' facts."). PUMF No. 12 is disputed,  
2 but the "dispute" is merely a clarification of exactly which "Consumer Price Index" is to  
3 be used to adjust the amount of the Proposition M tax upward in future years. It is not  
4 a material dispute.

5 Finally, Defendants dispute PUMF No. 21, supported by the Declaration of Eric  
6 Debbane, which states, "In 1998, the Debbanes removed the building that they now live  
7 in from the market pursuant to the Ellis Act so that they could move their aging mother  
8 into the building with them. They could not avail themselves of an 'owner move-in'  
9 eviction under San Francisco law." The City disputes this claim on the ground that  
10 "Neither Eric nor Andrew [Debbane] declared that they have complied with San  
11 Francisco Administrative Code, Article 37.9A when they removed the building from the  
12 market." This, too, is insufficient to create a triable issue of fact. The City submitted no  
13 evidence to contradict Mr. Debbane's affirmative claim to have removed the building  
14 pursuant to the Ellis Act, and "[i]f the moving party's declarations are not controverted,  
15 the court must accept them as true for summary judgment purposes." Weil & Brown,  
16 et al., *Cal. Prac. Guide: Civ. Proc. Before Trial* (Rutter Group 2024), § 10:317. That  
17 includes "all inferences reasonably deducible from the" declarations, Code Civ. Proc. §  
18 437e(e); *Binder v. Aetna Life Ins. Co.*, 75 Cal. App. 4th 832, 840 (1999), which would  
19 include the inference wholly uncontradicted in the record that the Debbanes  
20 complied with all procedures adopted to implement the Act. See S.F. Admin. Code §  
21 37.9A(i) ("This Section 37.9A is enacted principally to exercise specific authority  
22 provided for by [the Ellis Act]").

23 On July 26, 2024, in opposition to Plaintiffs' motion, Defendants submitted an  
24 additional 40 proposed undisputed material facts ("DUMF"). Plaintiffs raised minor  
25 factual disputes as to a handful of them, but those disputes are not material either. For  
26 the most part, to the extent Plaintiffs' "disputed" Defendants' additional material facts,  
27 they did so on legal, rather than factual grounds. The one exception was No. 24, which  
28 raised the same issue regarding the Debbanes' compliance with the Ellis Act as PUMF

**Commented [LT(7):** As noted above, the City disputes a portion of the claimed undisputed fact in PUMF 12. Plaintiffs alleged that a certain consumer price index applied and Plaintiffs cited the incorrect consumer price index and misstated/misrepresented the text of the EHT. Thus, his alleged material fact is disputed. Plaintiffs cannot now claim the fact is not material, as it was included in the PUMF.

**Commented [LT(8):** The City's dispute to PUMF 21 is insufficient to show the he or his brother complied with Admin. Code § 37.9A, which is required step to remove residential building from the rental market in San Francisco. The point of the City's factual dispute is that PUMF 21 did not establish that the Debbanes did everything required demonstrate protection under the Ellis Act.

1 No. 21. Again, the Court finds this is not a material dispute that warrants a trial.

2 The parties' respective statements of undisputed material facts filed in  
3 connection with Defendants' motion for summary judgment essentially duplicated the  
4 statements filed in connection with Plaintiffs' motion.

5 The Court concludes that there are no triable issues of material fact that  
6 preclude summary judgment in Plaintiffs' favor, Code Civ. Proc. § 437c(g), and based  
7 on the undisputed facts set forth in the parties' respective separate statements, the  
8 Court further concludes as follows:

9 **UNDISPUTED MATERIAL FACTS**

10 1. Proposition M was submitted to the City's voters at the November 2022  
11 general election, pursuant to the initiative process. It received 54.51% of the vote. The  
12 Board of Supervisors declared the results of the election on December 13, 2022, and  
13 Proposition M became effective ten days later. (PUMF Nos. 1 & 3.)

14 2. Beginning in 2025, Proposition M will result in property owners being  
15 charged an escalating amount for each "Residential Unit" that is "vacant" during the  
16 preceding calendar year. (PUMF Nos. 4-12.)

17 3. A "Residential Unit" is broadly defined to include a "house, an apartment,  
18 a mobile home, a group of homes, or a single room that is designed as separate living  
19 quarters [i.e., quarters in which the occupants live and eat separately from any other  
20 persons in the building and which have a kitchen and direct access from the outside of  
21 the building or through a common hall], other than units occupied or intended for  
22 occupancy primarily by travelers, vacationers, or other transient occupants" but  
23 excluding certain nursing homes and care facilities. (Prop. M § 2952 ("Definitions").)

24 4. A building with two or fewer Units is exempt from the tax. (Prop. M §  
25 2955(d); DUMF No. 9.)

26 5. An "owner is deemed to have kept the Residential Unit" "vacant"—and  
27 therefore subject to the Prop. M penalty—if it is "unoccupied, uninhabited, or unused,  
28 for more than 182 days, whether consecutive or nonconsecutive, in a tax year," with

**Commented [LT(9):** As noted in DUMF, the City disputed this fact. The undisputed fact is that the EHT expressly states it became operative on January 1, 2024.

**Commented [LT(10):** Again, the City disputed PUMF 4. The EHT imposes a tax on certain owners of residential property that keep certain units vacant for a specified period of time.

**Commented [LT(11):** The City objects to this paragraph for three reasons. (1) This statement is not included in the PUMF (there is no citation to the PUMF). "Facts not contained in the separate statements do not exist." *Lew County of Sacramento* (2001) 93 Cal.App.4th 107, 112. Moreover, "when a fact upon which plaintiff relies is not mentioned in the separate statement, it is irrelevant that such fact might be buried in the mound of paperwork filed with the trial court; the court does not have the burden to conduct a search for facts that counsel failed to bring out." *Id.* at p. 116. (2) Neither the definition of "Residential Unit" (nor any other part of the EHT) uses the term "broadly." It does not contain the entire text of the definition.

**Commented [LT(12):** See comment above about Paragraph 3. This was not included in the PUMF. Because it was not raised in the PUMF, Plaintiffs did not shift the burden to the City as to any of the causes of action that are on the PUMF.

1 narrow exceptions. (Prop. M § 2953(j).)

2 6. No payment will be due under Proposition M until April of 2025, for  
3 "vacancies" during the preceding calendar year, i.e., 2024. (See PUMF No. 4;  
4 Proposition M, S.F. Bus. & Tax. Reg. § 2953 ("Imposition of Tax") (Appx. 49); Request  
5 for Judicial Notice in Support of Defendants' Motion for Summary  
6 Judgment/Adjudication, filed May 24, 2024, Ex. H (Ord. 224-23), p. 7 (§ 6.9-1(k)(1));  
7 Defendants' Opposition to Plaintiffs' Motion for Summary Judgment/Adjudication, filed  
8 July 26, 2024, p. 15, lines 1-3; Order Overruling Defendants' Demurrer to the First  
9 Amended Complaint, filed Jan. 5, 2024.)

10 7. The charge for a unit that is "vacant" in 2024 will be \$2,500 for a  
11 Residential Unit of less than 1,000 square feet; \$3,500 for a Unit from 1,000 to 2,000  
12 square feet; and \$5,000 for a Unit over 2,000 square feet. (PUMF Nos. 5-7.)

13 8. The amount escalates each year that the Unit remains vacant, reaching  
14 \$10,000 for the smallest units for vacancies in 2026 (payable in 2027) and \$20,000 for  
15 units exceeding 2,000 square feet; in subsequent years, the charge adjusts upwards in  
16 accordance with the Consumer Price Index. (PUMF Nos. 8-12.)

17 9. An owner of multiple units is charged the foregoing amounts for each unit  
18 owned that is "vacant" during the year, without any limitation whatsoever. (PUMF No.  
19 13.)

20 [10.] Proposition M provides for certain exemptions from the definition of  
21 "vacancy"—specified periods during which the unit is not treated as "vacant," despite  
22 being unoccupied, such as, for example, during the period (not to exceed a year) while  
23 an application for a building permit is pending to allow repair, rehabilitation, or  
24 construction with respect to the Unit; the period (not to exceed a year) where such  
25 repair, rehabilitation, or construction is underway; the first year after the Unit is built;  
26 periods during which the owner is in a medical care facility or immediately following  
27 the owner's death; or during the two years after a "catastrophic" disaster damages the  
28 Unit to the point of uninhabitability. Also excluded is any period during which the Unit

**Commented [LT(13):** See comments above for Paragraphs 2 and 3.

Moreover, there is nothing the EHT text or Plaintiffs' motion claiming that the EHT exemptions are narrow. Had Plaintiff properly raised this issue in the motion, the City would have argued that the EHT text includes exceptions that are quite broad.

**Commented [LT(14):** PUMF 4 states "Beginning in 2025, Proposition M will result in property owners being charged a specified amount for each "Residential Unit" that was vacant during the preceding calendar year." PUMF 4. Nothing in PUMF 4 supports that statement that "No payment will be due under Proposition M until April of 2025, for "vacancies" during the preceding calendar year, i.e., 2024." Moreover, S.F. Bus. and Tax Regs. Code § 6.9-1(k)(1) states the filing of a return and payment of the tax could be required before 1/1/2025; "in the event the Residential Unit is sold or transferred."

**Commented [LT(15):** See comment above about Paragraph 2.

**Commented [LT(16):** See comment above for Paragraph 3. None of these statements are included in PUMF.

Moreover, these statements misrepresent the EHT. For example, this list does not contain all of the exemptions listed, like the Homeowners Exemption; it misrepresents the Construction Period exemption; and, it misstates the Disaster Period exemption, which applies when a unit is "uninhabitable or unusable."

1 is leased to a bona fide tenant, but a lease to a co-owner, spouse, domestic partner,  
2 child, parent, or sibling does not exempt the Unit from the charge. (Prop. M §§ 2952  
3 (“Definitions”) & 2953(j).) Nor, apparently, does it exempt a Unit whose owner is  
4 actively marketing it but is unable to rent it out, despite the fact that the measure  
5 purports to tax those who “kept” the Unit vacant for half a year.

6 [11.] Any proceeds derived from the Proposition M charge—at least those that  
7 are left over after paying the costs of administering the tax and paying refunds and  
8 related interest—are to be spent on (1) rent subsidies for individuals 60 and older or  
9 low-income households or (2) acquiring, rehabilitating, and operating multi-unit  
10 buildings for affordable housing. (Prop. M § 2958.)

11 [12.] The proponents of Proposition M published a ballot argument in the  
12 official voter pamphlet, sent to all voters in San Francisco prior to the 2022 election.  
13 That argument was headed (in all-bold type), “Prop M will help fix San Francisco’s  
14 Hidden Housing Crisis: 40,000 Vacant Homes.” (Plaintiffs’ Appendix of Evidence in  
15 Support of Motion for Summary Judgment/Adjudication, filed on May 24, 2024  
16 [hereafter “Appx.”] at 40.)

17 [13.] The proponents of Proposition M also published a rebuttal to the ballot  
18 argument of the measure’s opponents, in the official voter pamphlet. That rebuttal told  
19 the voters, “We hope no one pays this tax. We want every vacant unit filled with people  
20 who need homes.” (Appx. 41.)

21 [14.] The proponents’ main argument and rebuttal likewise state that the goal  
22 of the measure is to “reduce vacancies [so that] we will have more housing”; that “[i]n  
23 the first year alone, it is expected that 4,500 new units will return on [sic] the market—  
24 more than our annual goals”; and that voters should support Prop. M to “fix our hidden  
25 housing vacancy crisis.” (*Id.*) The “Yes” campaign’s website, printed at the end of the  
26 main argument in favor, is “fillemptyhomes.com.” (*Id.*) The collection of revenue under  
27 the measure is limited to a single bullet point in the main argument in favor, and absent  
28 from the rebuttal entirely. (Appx. 40-41.)

Commented [LT(17): See comment above about Paragraph 3.

Commented [LT(18): See comment above about Paragraph 3.

Commented [LT(19): See comment above about Paragraph 3.

Commented [LT(20): See comment above about Paragraph 3.

1 [15.] The official Controller's Statement on Proposition M, likewise contained  
2 in the ballot pamphlet sent to all voters, advised that the measure could raise as much  
3 as \$20 million in the first year, but that "if the tax achieves its stated purpose of  
4 reducing the number of residential vacancies, it will result in lower revenue." (Appx.  
5 38.)

6 [16.] The Proposition's "Findings," codified in § 2951, note that the measure "is  
7 intended to disincentivize prolonged vacancies, thereby increasing the number of  
8 housing units available for occupancy..." (Appx. 48.)

9 17. Plaintiffs Eric Debbane and Andrew Debbane are brothers who co-own  
10 several small residential buildings in various parts of the City, which they rent out. To  
11 the extent that the market and other conditions enable them to keep those units rented,  
12 they will not be subject to the tax. However, one of the buildings that the Debbanes co-  
13 own is a five-unit building in Russian Hill that they live in, along with Andrew's wife  
14 and Eric's girlfriend. They have co-owned this building since 1984, and they removed it  
15 from the market pursuant to the Ellis Act in 1998 so that they could move their aging  
16 mother into the building with them. Their mother has since passed away, and the  
17 Debbanes have kept the building vacant for their own personal use. They have no desire  
18 to share the property they live on with people other than those living with them already.  
19 However, under Proposition M they will be taxed a minimum of \$7,500 in 2024; \$15,000  
20 in 2025; and \$30,000+ per year thereafter. (PUMF Nos. 19-24.)

21 18. Plaintiff Robert Friedland is the owner of a four-unit apartment building  
22 in the Western Addition/NOPA area. Each unit is approximately 850 square feet. He  
23 has owned the building since the early 1980s and has lived in one of the units himself  
24 during that time. Until recently, Mr. Friedland rented out the other three units, but he  
25 is 71 years old and has significant health issues. Thus, when he recently retired, he  
26 decided that he no longer wants to bear the physical and mental burdens of being a  
27 landlord for the rest of his life, so, as each unit has come vacant over the last 3-4 years,  
28 he has declined to re-rent them. He has no wish to leave his decades-old home, but he

Commented [LT(21)]: See comment above about Paragraph 3

Commented [LT(22)]: See comment above about Paragraph 3

Commented [LT(23)]: The City disputed PUMF 24. More importantly, nothing in PUMF 24 establishes that the Debbanes will be subject to the EHT in 2024, 2025, or thereafter. PUMF 19-24 provide facts about the Debbanes and the EHT. Nothing in PUMF 19-24 establishes that the Debbanes will be subject to the EHT.

As the City established in its DUMF and briefing, the Debbanes' "use" of their vacant unit might mean that they are not subject to the EHT for that unit.

1 would be forced to sell his building and move if the tax were to be applied to him,  
2 because his sole remaining sources of income—Social Security and some modest  
3 savings—would not be sufficient to cover the taxes plus his other living expenses. He  
4 would effectively be evicted from his home. [If Proposition M were enforced against him,  
5 he would be forced to pay \$7,500 for 2024 (\$2,500 x three vacant units of less than 1,000  
6 square feet); \$15,000 for 2025; and \$30,000+ annually thereafter. (PUMF Nos. 27-32.)

7 19. Plaintiff Natasa Zec, prior to her retirement four years ago, worked for  
8 approximately 20 years as a “locum tenens” anesthesiologist, i.e., one working on  
9 temporary contracts at various sites across the nation, including San Francisco. In  
10 connection with the itinerant nature of her career, since 2008 Ms. Zec has owned a  
11 “micro-condominium” of exactly 300 square feet in a multi-unit building on Divisadero,  
12 where, however, she has never claimed the homeowner’s exemption. She has also  
13 owned a comparably sized micro-condominium (350 square feet) in Boston since 2000,  
14 where she has claimed a homeowner’s exemption. Neither of those units have ever been  
15 rented out, and Ms. Zec has never intended to rent them out. She maintains them for  
16 her personal use. Following her retirement, Ms. Zec has continued to maintain both  
17 abodes, splitting time between the two, and she wishes to continue to do so, as she has  
18 for decades. In 2022, she spent 126 days in San Francisco, and more than 183 days in  
19 Boston, an approximate number of days per year that she wishes to spend, respectively,  
20 in each place in the future. Going forward, if she continues to divide her time between  
21 the two small abodes as she historically has, she would be subject to a tax of \$2,500 in  
22 2024; \$5,000 in 2025; and \$10,000+ annually thereafter. The latter figure is  
23 approximately double what she pays in *ad valorem* property taxes on the Divisadero  
24 micro-condo each year. If Proposition M were enforced against her, Ms. Zec could not  
25 afford to pay the taxes and would have no choice but to sell her long-time home. [In light  
26 of the burdensome restrictions San Francisco places on landlords, and based on her  
27 negative experiences as a landlord in the past (for example, in the Bronx, where tenants  
28 severely damaged a studio apartment that she owned to the point that it became

Commented [LT(24)]: See comment above for Paragra  
17. PUMF 27-32 do not establish that Mr. Friedland wo  
be “effectively [] evicted from his home,” whatever that  
means.  
Commented [LT(25)]: See comment above for Paragra  
17. PUMF 27-32 do not establish that the EHT will apply  
Mr. Friedland’s apartment building.

1 essentially impossible to either rent or sell), Ms. Zec has no interest in renting out her  
2 micro-condominium on Divisadero Street and becoming a landlord in San Francisco.  
3 (PUMF Nos. 35-40, 43; Appx. 96-98 [Declaration of Natasa Zec].)

4 20. Plaintiffs San Francisco Apartment Association (“SFAA”), Small Property  
5 Owners of San Francisco Institute (“SPOFSI”), and San Francisco Association of  
6 Realtors (“SFAR”) are all nonprofit trade associations. SFAA’s and SPOFSI’s members  
7 all own residential rental properties in San Francisco, totaling in the tens of thousands  
8 of units, that will be potentially subject to taxation under Proposition M. They include  
9 members—including hundreds of “mom and pop” owners—who own, but choose, for a  
10 variety of reasons, not to rent out residential units in San Francisco, and they include  
11 members who are trying to rent out residential units but are unable to do so for an  
12 extended period due to adverse market conditions or for other reasons. In both cases,  
13 their members are potentially subject to severe taxation. SFAR’s 4,300+ members are  
14 dependent for their livelihood upon the sale and management of real property in San  
15 Francisco. The great majority of SFAR member brokers and agents are involved in  
16 purchases, sales and/or management of San Francisco residential properties, including  
17 ones that are subject to Proposition M, which threatens to adversely affect the ability  
18 of SFAR’s members to market, sell and manage real property. (PUMF Nos. 45-50, 55-  
19 58, 61-64.)

20 21. Each of these associations has standing to bring this case because (1) their  
21 individual members will be affected by Proposition M and could have challenged the  
22 measure in their own right, (2) the ability of these associations’ members to exercise  
23 their statutory and constitutional rights free from punitive consequences is germane to  
24 their organizational purposes, and (3) this challenge does not require the participation  
25 of the associations’ individual members. (*Id.*) See also *S.F. Apartment Assn. v. City &*  
26 *County of San Francisco*, 3 Cal. App. 5th 463, 472-74 (2016) (SFAA and SFAR had  
27 standing to bring a facial challenge on behalf of their members); *Johnson v. City &*  
28 *County of San Francisco*, 137 Cal. App. 4th 7, 12 n.3 (2006) (SPOFSI representing

Commented [LT(26)]: Nothing in PUMF 35-40, 43 supports these statements; therefore these statements are not properly before the court. See comment to Paragraph above.

Commented [LT(27)]: See comment above about Paragraph 17.

Commented [LT(28)]: The City disputed these PUMFs. Moreover, this statement misrepresents the City’s argument. The City’s argument is based on the holding in *Chiatello*, which states that CCP 526a cannot be used to challenge the collection of taxes. Plaintiffs believe are ill.

Commented [LT(29)]: These are legal conclusions, not facts. Moreover, none of these alleged “facts” were included Plaintiffs’ PUMF and are therefore improper. See comment to Paragraph 3 above.

1 property owners).

2 22. Within one year prior to the filing of this action each individual and  
3 associational Plaintiff paid (or their members paid) property, sales and/or use taxes  
4 within the City and County of San Francisco. (PUMF Nos. 25-26, 33-34, 44, 51-54, 59-  
5 60, 65-66.)

6 **CONCLUSIONS OF LAW**

7 ~~1. Plaintiffs have standing to bring this action, and their action is not  
8 premature or barred by the "pay first, litigate later" rule, because the vacancy tax  
9 challenged herein is not yet "due." No payment will be required until April of 2025 at  
10 the earliest. (See PUMF No. 4; Proposition M, S.F. Bus. & Tax. Reg. § 2053 ("Imposition  
11 of Tax") (Plaintiffs' Appx. 49); Request for Judicial Notice in Support of Defendants'  
12 Motion for Summary Judgment/Adjudication, filed May 24, 2024, Ex. H (Ord. 224-23),  
13 p. 7 (§ 6.9-1(k)(1)); Defendants' Opposition to Plaintiffs' Motion for Summary  
14 Judgment/Adjudication, filed July 26, 2024, p. 15, lines 1-3; see also Order Overruling  
15 Defendants' Demurrer to the First Amended Complaint, filed Jan. 5, 2024.)~~

16 2. The Proposition M vacancy tax violates the Takings Clause of the Fifth  
17 Amendment as alleged in the First Cause of Action in the First Amended Complaint.

18 3. The Proposition M vacancy tax is also preempted by the Ellis Act, Govt.  
19 Code § 7060(a), as alleged in the Second Cause of Action in the First Amended  
20 Complaint.

21 4. Proposition M violates property-owners' fundamental liberty interests in  
22 familial living arrangements, protected by the due process and equal protection clauses,  
23 insofar as it taxes (actually, penalizes) units that are rented to family members of the  
24 owner while exempting units that are leased to strangers, as alleged in the Third and  
25 Fourth Causes of Action in the First Amended Complaint.

26 5. Proposition M violates property-owners' constitutional right to privacy  
27 under the California Constitution, insofar as it seeks to compel them to share the  
28 property on which they reside with others, against their will, as alleged in the Fifth

**Commented [LT(30):** Nothing in PUMF 4 relates to standing. The City raised a material dispute with PUMF which Plaintiffs claim that under the EHT will begin in 20 As stated in the City's response, the text of the EHT expressly states that the EHT became operative on 1/1/2024, subjecting certain taxpayers to liability.

Moreover, the Court made no such finding in its tentative ruling or from the bench. You did not raise the issue during the hearing, except to agree with Judge Haines that this issue was the same as he addressed in the City's second demurrer.

**Commented [LT(31):** The Court made no finding in the tentative ruling that Prop M "penalizes" anyone. The Court simply found that Plaintiffs had produced undisputed facts that Prop M violated Plaintiffs' rights under the due process and equal protections clauses of the 14th Amendment. The Court made no mention or finding of a penalty.



1 Cause of Action in the First Amended Complaint.  
2

3 Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
HONORABLE CHARLES F. HAINES  
Judge of the Superior Court

5 APPROVED AS TO FORM:  
6

7 Dated: November , 2024

\_\_\_\_\_  
THOMAS S. LAKRITZ  
Deputy City Attorney

9 Attorneys for Defendants CITY & COUNTY  
10 OF SAN FRANCISCO; BEN ROSENFELD, in  
11 his official capacity as the Auditor-Controller  
12 of the City & County of San Francisco; and for  
13 Real Party in Interest JOSÉ CISNEROS, in  
14 his official capacity as the Tax Collector of the  
15 City & County of San Francisco  
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