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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

GHP MANAGEMENT CORPORATION,	)	Case No. CV 21-06311 DDP (JEMx)
	)	
Plaintiff,	)	
	)	<b>ORDER GRANTING MOTIONS TO DISMISS</b>
v.	)	
	)	
CITY OF LOS ANGELES,	)	[Dkt 17, 43]
	)	
Defendant.	)	
	)	

Presently before the court are two Motions to Dismiss Plaintiffs' Complaint, one filed by Defendant City of Los Angeles ("the City") and the other filed by Intervenor Alliance for Community Empowerment ("ACCE"); Strategic Actions for a Just Economy ("SAJE"); and Coalition for Economic Survival ("CES") (collectively, "Intervenors"). Having considered the submissions of the parties, the court grants the motions and adopts the following Order.

**I. Background**

At the outset of the COVID-19 pandemic, the City enacted Ordinance No. 186585, which was later updated by Ordinance No. 186606 (collectively, the "Eviction Moratorium" or "Moratorium"). Plaintiffs allege that the Eviction Moratorium "effectively

1 precludes residential evictions.” (Complaint ¶ 45.) The  
2 Moratorium prohibits landlords from terminating tenancies due to  
3 COVID-related nonpayment of rent, any no-fault reason, certain  
4 lease violations related to additional occupants and pets, or  
5 removal of rental units from the rental market. (Complaint ¶ 46;  
6 LAMC § 49.99.2, 49.99.4.)<sup>1</sup> Landlords are also prohibited from  
7 charging interest or late fees on COVID-related missed rent. (LAMC  
8 § 49.99.2(D).) The Moratorium further allows tenants who have  
9 missed rent payments a one-year period to pay delayed rent,  
10 starting from the end of the ongoing local emergency period.  
11 (Compl. ¶ 46; LAMC § 49.99.2) Tenants may sue landlords and seek  
12 civil penalties for violations of the Moratorium. (Compl. ¶ 49;  
13 LAMC § 49.99.7.)

14 Plaintiffs, comprised of (1) thirteen limited liability  
15 corporations or limited partnerships that own apartment buildings  
16 and (2) the management company that manages the buildings, own or  
17 manage nearly five thousand apartment units in Los Angeles.  
18 Plaintiffs allege that the Moratorium constitutes an uncompensated  
19 taking of private property in violation of the Fifth Amendment’s  
20 Takings Clause, as well as the California Constitution’s Takings  
21 Clause. Plaintiffs’ Complaint seeks an award of “just  
22 compensation,” costs, and attorney’s fees, but does not seek to  
23 invalidate or enjoin enforcement of the Moratorium.

24 Intervenor and the City now move separately to dismiss  
25 Plaintiffs’ Complaint.  
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28 <sup>1</sup> The City’s Request for Judicial Notice is granted.

## 1    **II.    Legal Standard**

2            A complaint will survive a motion to dismiss when it  
3    "contain[s] sufficient factual matter, accepted as true, to state a  
4    claim to relief that is plausible on its face." Ashcroft v. Iqbal,  
5    556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550  
6    U.S. 544, 570 (2007)). When considering a Rule 12(b)(6) motion, a  
7    court must "accept as true all allegations of material fact and  
8    must construe those facts in the light most favorable to the  
9    plaintiff." Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000).  
10   Although a complaint need not include "detailed factual  
11   allegations," it must offer "more than an unadorned,  
12   the-defendant-unlawfully-harmed-me accusation." Iqbal, 556 U.S. at  
13   678. Conclusory allegations or allegations that are no more than a  
14   statement of a legal conclusion "are not entitled to the assumption  
15   of truth." Id. at 679. In other words, a pleading that merely  
16   offers "labels and conclusions," a "formulaic recitation of the  
17   elements," or "naked assertions" will not be sufficient to state a  
18   claim upon which relief can be granted. Id. at 678 (citations and  
19   internal quotation marks omitted).

20           "When there are well-pleaded factual allegations, a court  
21   should assume their veracity and then determine whether they  
22   plausibly give rise to an entitlement of relief." Iqbal, 556 U.S.  
23   at 679. Plaintiffs must allege "plausible grounds to infer" that  
24   their claims rise "above the speculative level." Twombly, 550 U.S.  
25   at 555-56. "Determining whether a complaint states a plausible  
26   claim for relief" is "a context-specific task that requires the  
27   reviewing court to draw on its judicial experience and common  
28   sense." Iqbal, 556 U.S. at 679.

### 1   **III. Discussion**

#### 2       A.   Per Se Taking

3       Movants contend that the Moratorium is not a permanent  
4 physical invasion of Plaintiffs' properties, and therefore does not  
5 constitute a per se taking. (E.g., City Mot. at 15.) See Loretto  
6 v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 440 (1982)  
7 ("We affirm the traditional rule that a permanent physical  
8 occupation of property is a taking.") In Loretto itself, the  
9 Supreme Court recognized "that States have broad power to regulate  
10 housing conditions in general and the landlord-tenant relationship  
11 in particular without paying compensation for all economic injuries  
12 that such regulation entails[,] . . . [s]o long as these  
13 regulations do not require the landlord to suffer the physical  
14 occupation of a portion of his building by a third party." Id.  
15 Later, in Yee v. City of Escondido, Cal., 503 U.S. 519 (1992), the  
16 Court held that a combination of rent control laws and eviction  
17 protections that limited property owners' ability to evict tenants  
18 did not constitute governmental authorization of "a compelled  
19 physical invasion of property" that would constitute a per se  
20 taking. Yee, 503 U.S. at 527-28.

21       In Yee, a local rent control ordinance limited a mobile home  
22 park owners' ability to raise rents, while a state law  
23 simultaneously protected mobile home owners' ability to transfer  
24 mobile homes sited on rented mobile home park land. Id. at 524-25.  
25 The park owners alleged that the rent control scheme, against the  
26 backdrop of the state law, constituted a physical taking of park  
27 land, insofar as it granted tenants and their successors "the right  
28 to physically permanently occupy and use the real property of

1 Plaintiff." Id. at 525. The Court disagreed. "When a landowner  
2 decides to rent his land to tenants, the government may place  
3 ceilings on the rents the landowner can charge, or require the  
4 landowner to accept tenants he does not like, without automatically  
5 having to pay compensation." Id. at 529 (internal citations  
6 omitted). "Petitioners' tenants were invited by petitioners, not  
7 forced upon them by the government. . . . A different case would  
8 be presented were the statute, on its face or as applied, to compel  
9 a landowner over objection to rent his property or to refrain in  
10 perpetuity from terminating a tenancy." Id. at 528.

11 In response to Movants' arguments that Yee controls here,  
12 Plaintiffs argue primarily that Yee is no longer good law because  
13 "six members of the Supreme Court obviously disagree" with its  
14 central premise: that once a landlord chooses to rent to tenants,  
15 the government may regulate the landlord-tenant relationship  
16 without automatically engaging in a per se taking. (Opp. to City  
17 Mot. at 18:17.) To support their assertion, Plaintiffs point to  
18 the Supreme Court's recent decisions in Alabama Ass'n  
19 of Realtors v. Department of Health & Human Services, 141 S. Ct.  
20 2485 (2021), and Pakdel v. City & Cty. of San Francisco, 141 S. Ct.  
21 2226 (2021). These cases bear only tangentially however, if at  
22 all, on the continued validity of Yee. In Alabama Association of  
23 Realtors, the Supreme Court granted an emergency application to  
24 vacate a stay of a judgment invalidating the Centers for Disease  
25 Control and Prevention ("CDC")'s eviction moratorium. Alabama  
26 Ass'n of Realtors, 141 S.Ct. at 2486, 2490. The Court did not  
27 address any takings issue anywhere in its opinion. Although the  
28 Court did, citing Loretto, recognize that the right to exclude is

1 "one of the most fundamental elements of property ownership," Yee  
2 acknowledged the very same principle. Id.; Yee, 503 U.S. at 528  
3 ("[T]he right to exclude is doubtless . . . one of the most  
4 essential sticks in the bundle of rights that are commonly  
5 characterized as property . . . .") (internal quotation marks  
6 omitted).

7 Pakdel did involve a takings claim, albeit a regulatory  
8 takings claim rather than a per se claim. Pakdel, 141 S.Ct. at  
9 2228. The Court's opinion, however, was limited to the question  
10 whether petitioners were required to exhaust local government  
11 administrative procedures before filing suit pursuant to 42 U.S.C.  
12 § 1983, even after the local government had rendered a final  
13 regulatory decision. Id. In the course of answering that question  
14 in the negative, the Court stated in a footnote that "[o]n remand,  
15 the Ninth Circuit may give further consideration to [merits] claims  
16 in light of our recent decision in Cedar Point Nursery v. Hassid."<sup>2</sup>  
17 Id. at 2229 n.1 (citation omitted). In Cedar Point, the Court  
18 concluded that a California law requiring farmers to grant union  
19 organizers access to private property for up to three hours per  
20 day, 120 days per year, constituted a per se physical taking.  
21 Cedar Point Nursery v. Hassid, 141 S. Ct. 2063, 2069, 2080 (2021).  
22 Although the Court did cite Yee, it did so only once, and then only  
23 as an example of a decision that has "described use restrictions  
24 that go 'too far' as 'regulatory takings.'" Id. at 2072. The Court  
25 then observed that the "regulatory takings" label can be misleading  
26 where, as in Cedar Point, "a regulation results in a physical

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28 <sup>2</sup> The district court in Pakdel did not reach the merits of the  
takings claims. Pakdel, 141 S.Ct. at 2228-29.

1 appropriation of property.” Id. The Court made no further mention  
2 of Yee, let alone the principle that a regulation governing an  
3 existing landlord-tenant relationship is distinguishable from a  
4 regulation compelling physical occupation in the first instance, or  
5 in perpetuity. Thus, contrary to Plaintiffs’ suggestion, the  
6 Court’s footnote in Pakdel, indicating that the Ninth Circuit  
7 remains free to consider Cedar Point if and when the Ninth Circuit,  
8 on remand, reaches merits issues that were never reached by the  
9 district court, does little to vitiate Yee.<sup>3</sup>

10 This Court declines Plaintiffs’ invitation to read the tea  
11 leaves, such as they are, in Alabama Association of Realtors,  
12 Pakdel, and Cedar Point. None of those cases can be read to  
13 abrogate Yee or its prescription that laws that “merely regulate  
14 [landlords’] use of their land by regulating the relationship  
15 between landlord and tenant” do not constitute per se takings.  
16 Yee, 503 U.S. at 528 (emphasis original).

17 Plaintiffs also argue, briefly, that the Moratorium  
18 constitutes a per se taking even under Yee because it “requires

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20 <sup>3</sup> This Court acknowledges that in Heights Apartments, LLC v.  
21 Walz, the Eighth Circuit found Yee distinguishable and applied  
22 Cedar Point to sustain a per se takings challenge to an eviction  
23 moratorium. Heights Apartments, 30 F.4th 720, 733 (8th Cir. 2022).  
24 That has not, however, been the Ninth Circuit’s approach. In  
25 Ballinger v. City of Oakland, for example, the Ninth Circuit  
26 addressed a takings challenge to an ordinance requiring payments to  
27 tenants prior to an eviction, even for good cause. Ballinger, 24  
28 F.4th 1287, 1292 (9th Cir. 2022), cert. denied sub nom. Ballinger  
v. City of Oakland, California, 142 S. Ct. 2777 (2022). Citing to  
both Cedar Point and Yee, the court applied the latter, concluding  
that even a regulation mandating payments from landlords to tenants  
constituted a regulation of the use of property, and not a per se  
taking, such as those described in Yee, compelling the creation of  
a new landlord-tenant relationship or barring the termination of a  
tenancy “in perpetuity.” Id. at 1293-94 (quoting Yee, 503 U.S. at  
528).

1 the landowner to submit to the physical occupation of his land.  
2 'This element of required acquiescence is at the heart of the  
3 concept of occupation.'" (Opp. to Intervenor's Mot. at 3:23-28.)  
4 Yee, 503 U.S. at 527 (quoting FCC v. Florida Power Corp., 480 U.S.  
5 245, 252 (1987) (emphasis original)). But, as in Yee, the  
6 Moratorium does not swoop in out of the blue to force Plaintiffs to  
7 submit to a novel use of their property. Nor does the Moratorium  
8 present the type of different case, contemplated by Yee, where a  
9 regulation compels a landowner to "refrain in perpetuity from  
10 terminating a tenancy." Id. at 528. The Moratorium only precludes  
11 evictions for a limited, albeit indeterminate, time. Compare id.  
12 (discussing Cal.Civ.Code § 798.56(g) requirement of up to 12 months  
13 notice prior to eviction). "Put bluntly, no government has  
14 required any physical invasion of petitioners' property. [The]  
15 tenants were invited by [the landlords], not forced upon them by  
16 the government." Yee, 503 U.S. at 528; see also Ballinger, 24  
17 F.4th at 1293 (No per se taking, even where regulation required  
18 payment by landlord to tenants prior to eviction for good cause,  
19 because landlord plaintiffs "voluntarily chose to lease their  
20 property . . . ."). A regulation affecting that pre-existing  
21 relationship is not a per se taking.

22 B. Regulatory taking

23 "[W]hile property may be regulated to a certain extent, if  
24 regulation goes too far it will be recognized as a taking."  
25 Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415 (1922).  
26 "[C]ompensation is required only if considerations such as the  
27 purpose of the regulation or the extent to which it deprives the  
28 owner of the economic use of the property suggest that the



1 regulation has unfairly singled out the property owner to bear a  
2 burden that should be borne by the public as a whole.” Yee, 503  
3 U.S. at 522-23 (citing Penn Central Transportation Co. v. New York  
4 City, 438 U.S. 104, 123-125 (1978)). The relevant Penn Central  
5 factors “include the regulation’s economic impact on the claimant,  
6 the extent to which the regulation interferes with distinct  
7 investment-backed expectations, and the character of the government  
8 action.” MHC Fin. Ltd. P’ship v. City of San Rafael, 714 F.3d  
9 1118, 1127 (9th Cir. 2013).

10 1. Economic Impact

11 The Ninth Circuit discussed the Penn Central factors,  
12 including the economic impact factor, at length in Colony Cove  
13 Properties, LLC v. City of Carson, 888 F.3d 445 (9th Cir. 2018).  
14 As the court explained, “[n]ot every diminution in property value  
15 caused by a government regulation rises to the level of an  
16 unconstitutional taking.” Colony Cove, 888 F.3d at 451.  
17 Similarly, “the mere loss of some income because of regulation does  
18 not itself establish a taking.” Id. Rather, courts look to  
19 whether a regulation is “functionally equivalent to the classic  
20 taking in which government directly appropriates private property  
21 or ousts the owner from his domain.”<sup>4</sup> Id. (quoting Lingle v.  
22 Chevron U.S.A. Inc., 544 U.S. 528, 539 (2005)). Accordingly, the  
23 threshold is high. Indeed, the Ninth Circuit has observed that a  
24 diminution in property value as high as 92.5% does not constitute a  
25 taking, and no court has found a taking where the diminution of  
26 value does not exceed 50%. Id.

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28 <sup>4</sup> This same fundamental inquiry underpins analyses of per se  
takings. See Lingle, 544 U.S. 538-39.

1 To determine a diminution in value for purpose of evaluating  
2 the economic impact on a plaintiff, courts "compare the value that  
3 has been taken from the property with the value that remains in the  
4 property." Colony Cove, 888 F.3d at 451 (quoting Keystone  
5 Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470, 497 (1987)).  
6 Here, however, Plaintiffs' Complaint does not allege any particular  
7 diminution in value, or specific pre- or post-Moratorium values  
8 from which a level of diminution could be calculated.

9 Plaintiffs assert that this pleading deficiency is not fatal,  
10 and that they need not allege any quantitative facts pertaining to  
11 valuation, because the Ninth Circuit's Colony Cove opinion is  
12 wrong. (Opp. to Intervenor's Mot. at 6:1-4, 7 n.4.) Plaintiffs  
13 contend that because the Penn Central factor analysis is  
14 "essentially ad hoc," the allegation that Plaintiffs have lost  
15 rents as a result of the Moratorium is alone sufficient to satisfy  
16 the economic impact factor. See Penn Central, 438 U.S. at 124.

17 Even if this Court were to agree with the substance of  
18 Plaintiffs' arguments, the court could not simply disregard Colony  
19 Cove and excuse Plaintiffs of their burden to allege and show the  
20 requisite adverse economic impact. "A district court bound by  
21 circuit authority . . . has no choice but to follow it, even if  
22 convinced that such authority was wrongly decided." Hart v.  
23 Massanari, 266 F.3d 1155, 1175 (9th Cir. 2001). Plaintiffs'  
24 allegation that their tenants are \$20 million in arrears is  
25 presented in a vacuum, and cannot alone demonstrate a significant  
26 economic impact, notwithstanding Plaintiffs' vague and conclusory  
27 allegation that "the economic impact of the Eviction Moratorium is  
28 severe and ruinous." (Compl. ¶ 71.)

1           2.     Interference with investment-backed expectations  
2           The next Penn Central factor is “the extent to which the  
3 regulation has interfered with distinct investment-backed  
4 expectations.” Penn Central, 438 U.S. at 124. “To ‘expect’ can  
5 mean to anticipate or look forward to, but it can also mean ‘to  
6 consider probable or certain,’ and ‘distinct’ means capable of  
7 being easily perceived, or characterized by individualizing  
8 qualities.” Guggenheim v. City of Goleta, 638 F.3d 1111, 1120 (9th  
9 Cir. 2010) (en banc). “To form the basis for a taking claim, a  
10 purported distinct investment-backed expectation must be  
11 objectively reasonable.” Colony Cove, 888 F.3d at 452; see also  
12 Connolly v. Pension Ben. Guar. Corp., 475 U.S. 211, 226 (1986).  
13 “[W]hat is relevant and important in judging reasonable  
14 expectations is the regulatory environment at the time of the  
15 acquisition of the property.” Bridge Aina Le’a, LLC v. Land Use  
16 Comm’n, 950 F.3d 610, 634 (9th Cir. 2020) (internal quotation marks  
17 and citation omitted). “[T]hose who do business in [a] regulated  
18 field cannot object if the legislative scheme is buttressed by  
19 subsequent amendments to achieve the legislative end.”  
20 Concrete Pipe & Prod. of California, Inc. v. Constr. Laborers  
21 Pension Tr. for S. California, 508 U.S. 602, 645 (1993) (quoting  
22 FHA v. The Darlington, Inc., 358 U.S. 84, 91 (1958)) (internal  
23 alterations omitted).

24           Movants argue that Plaintiffs knowingly chose to invest in the  
25 highly-regulated rental housing market, and that any subjective  
26 expectations Plaintiffs may have had that the regulatory  
27 environment would remain static were and are objectively  
28 unreasonable. The City raised, and this Court rejected, a similar

1 argument in the context of a Contracts Clause challenge to the same  
2 Moratorium at issue here. See Apartment Ass'n of Los Angeles  
3 Cnty., Inc. v. City of Los Angeles, 500 F. Supp. 3d 1088, 1095  
4 (C.D. Cal. 2020), *aff'd*, 10 F.4th 905 (9th Cir. 2021), *cert.*  
5 *denied*, 212 L. Ed. 2d 595, 142 S. Ct. 1699 (2022). Had Plaintiffs  
6 acquired their rental properties in the midst of the pandemic,  
7 Movants' argument might be more compelling. The regulatory  
8 environment existing prior to the pandemic, however, gave  
9 Plaintiffs little reason to expect that they might be barred from  
10 evicting tenants for nonpayment of rent. Bridge Aina Le'a, 950  
11 F.3d at 634. "'Distinct investment-backed expectations' implies  
12 reasonable probability, like expecting rent to be paid, not starry  
13 eyed hope of winning the jackpot if the law changes. A landlord  
14 buys land burdened by lease-holds in order to acquire a stream of  
15 income from rents and the possibility of increased rents or resale  
16 value in the future." Guggenheim, 638 F.3d at 1120 (emphases  
17 added). As this Court has stated, "the scope and nature of the  
18 COVID-19 pandemic, and of the public health measures necessary to  
19 combat it, have no precedent in the modern era, and [] no amount of  
20 prior regulation could have led landlords to expect anything like  
21 the blanket Moratorium." Apartment Ass'n of Los Angeles, 500  
22 F.Supp. 3d at 1096; see also Baptiste v. Kennealy, 490 F. Supp. 3d  
23 353, 390 (D. Mass. 2020). The extent to which the Moratorium  
24 interferes with Plaintiffs' reasonable expectations thus weighs in  
25 favor of a regulatory taking.

### 26 3. Character of the Moratorium

27 "A 'taking' may more readily be found when the interference  
28 with property can be characterized as a physical invasion by

1 government than when interference arises from some public program  
2 adjusting the benefits and burdens of economic life to promote the  
3 common good." Penn Central, 438 U.S. at 124. For example, rent  
4 control ordinances intended to shield residents from "excessive  
5 rent increases," have been found to constitute "precisely such a  
6 program." Colony Cove, 888 F.3d at 454. Here, there can be little  
7 doubt the Moratorium is geared toward promoting the common good.  
8 Indeed, the Moratorium is predicated on the City's findings that  
9 "[t]he COVID-19 pandemic threatens to undermine housing security  
10 and generate unnecessary displacement of City residents." (LAMC §  
11 49.99.) There can be little dispute that, absent the Moratorium's  
12 protections, significant numbers of tenants with COVID-related loss  
13 of income would have been evicted, resulting not only in the harms  
14 typical of mass displacements, but exacerbating the spread of  
15 COVID-19 as well, to the detriment of all. Other courts,  
16 addressing similar regulations, have reached the same conclusion.  
17 See, e.g., Baptiste, 490 F. Supp. At 390 (D. Mass. 2020); S.  
18 California Rental Hous. Ass'n v. Cty. of San Diego, No.  
19 3:21CV912-L-DEB, 2021 WL 3171919, at \*9 (S.D. Cal. July 26, 2021).

20 With respect to the "character" factor, Plaintiffs largely  
21 reiterate their argument, rejected above, that the Moratorium is a  
22 per se taking. Beyond that, Plaintiffs contend in a footnote that,  
23 although rent control schemes may qualify as sufficiently public-  
24 oriented, the Moratorium "is far different and significantly more  
25 serious." (Opp. to Intervenor's Mot. at 9 n.5.) Plaintiffs do  
26 not, however, explain how a regulation intended to minimize the  
27 displacement of financially vulnerable tenants in the midst and as  
28 a result of a public health emergency unprecedented in modern

1 history is less protective of the common good than are rent control  
2 ordinances. As to seriousness, it is not clear to the court what  
3 bearing the "seriousness" of the Moratorium has on the public  
4 nature of its purpose. To the extent Plaintiffs intend to  
5 emphasize the shifting of financial burdens from tenants to  
6 landlords, the Ninth Circuit has recognized that commonplace  
7 regulations, including rent control, zoning schemes, and other land  
8 use restrictions, "can also be said to transfer wealth from the one  
9 who is regulated to another." Yee, 503 U.S. at 529. And, to the  
10 extent Plaintiffs use the word "serious" to refer to the degree of  
11 the Moratorium's financial effects, they have failed, as discussed  
12 above, to plead any facts establishing a "serious" economic impact.

13 4. Balance of Penn Central factors

14 Plaintiffs have adequately alleged that the Moratorium has  
15 interfered with the reasonable, investment-backed expectations  
16 Plaintiffs had when they acquired their rental properties. The  
17 Complaint does not, however, allege any diminution in value, let  
18 alone a diminution high enough to function as the equivalent of a  
19 classic taking. Because the Moratorium also indisputably promotes  
20 the common good, the balance of the Penn Central factors weighs  
21 heavily against a determination that the Moratorium constitutes a  
22 regulatory taking.

23 **IV. Conclusion**

24 For the reasons stated above, the motions to dismiss are  
25 GRANTED.<sup>5</sup> Plaintiffs' Complaint is DISMISSED, with leave to amend.

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27 <sup>5</sup> Having determined that Plaintiffs' Complaint fails to allege  
28 either a per se or regulatory taking, the court does not reach the  
City's arguments that any takings claims are unripe, or that  
(continued...)

1 Any amended complaint shall be filed within twenty-one days of the  
2 date of this Order.

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5 IT IS SO ORDERED.

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7 Dated: November 17, 2022



DEAN D. PREGERSON  
United States District Judge

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28 <sup>5</sup>(...continued)  
Plaintiffs lack standing to assert any such claims.