No. 12-17749

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RANCHO DE CALISTOGA, a California General Partnership,
Plaintiff-Appellant,

vs.

CITY OF CALISTOGA, et al.,
Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
DISTRICT COURT CASE NO. C11-05015 JSW

PROPOSED AMICUS BRIEF OF WESTERN MANUFACTURED HOUSING COMMUNITIES ASSOCIATION IN SUPPORT OF APPELLANT AND URGING REVERSAL

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CORPORATE DISCLOSURE STATEMENT (FRAP 26.1)

Amicus Curiae Western Manufactured Housing Communities Association does not have any parent corporation and no publicly held corporation owns 10% or more of its stock.

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STATEMENT OF AMICUS'S IDENTITY, INTEREST, AND SOURCE OF AUTHORITY TO FILE

Amicus Curiae Western Manufactured Housing Communities Association (WMA), a nonprofit organization created in 1945, is the largest association of mobilehome park owners in the United States.[1] Because its members constantly face the same issues as the Appellant Rancho de Calistoga (Rancho), WMA has a broad interest in the issues in this appeal, and regularly appears as amicus curiae in this court and others to advocate for the constitutional rights of all, which includes mobilehome park owners. *See Manufactured Home Communities, Inc. v. County of San Luis Obispo*, 84 Cal. Rptr. 3d 367, 370 (Cal. Ct. App. 2008) ("The Constitution protects everyone, the poor, the wealthy, the weak, the powerful, the guilty and the innocent. . . . Here we add to our list, mobilehome park owners.").

In the amicus brief, WMA seeks to provide the court with an additional reason why the mobilehome owner has stated valid claims

1. In accordance with Fed. R. App. P. 29(c)(5), amicus states that no party's counsel authored this brief in whole or in part, that no party or party's counsel contributed money that was intended to fund preparing or submitting the brief, and no person other than amicus curiae, its members, or its counsel contributed money that was intended to fund preparing or submitting this brief.

for relief under *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528 (2005), which held that a claim that a government action does not "substantially advance a legitimate state interest" is unconstitutional. WMA urges this court to reverse the judgment of the District Court, and allow Rancho to proceed with its lawsuit.

ARGUMENT

This appeal involves the question of whether Rancho stated valid claims for relief by alleging that the city "arbitrarily and impermissibly" applied its mobilehome rent control ordinance when it required the park owner to charge a lesser rent. Whether phrased as a regulatory taking, a private taking, or a due process violation, Rancho de Calistoga has plainly stated substantial claims for relief under the rationale of the U.S. Supreme Court's unanimous opinion in *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528 (2005). The District Court erred when it dismissed Rancho's amended complaint, and its judgment should be reversed, and the case remanded to allow Rancho to proceed with proof of its claims. This brief makes two points: (1) Rancho's amended complaint states valid claims for relief for constitutional violations, and (2) a complaint must not be dismissed for failing to state a claim unless

it fails to provide the defendant with no notice of the factual and legal basis of the claims made, which Rancho's plainly does.

I. *Lingle*: Due Process and Takings

Prior to the Supreme Court's decision in *Lingle*, this Circuit required property owners to challenge land use regulations and attendant actions exclusively as takings under the Fifth Amendment. *See*, *e.g.*, *Armendariz v. Penman*, 75 F.3d 1311, 1325 (9th Cir. 1996) (en banc) (when a specific provision of the Bill of Rights addresses a plaintiff's claim, it cannot raise other constitutional claims that may overlap). Thus, in *Squaw Valley Dev. Co. v. Goldberg*, 375 F.3d 936 (9th Cir. 2004), this court concluded, "[w]e have held that substantive due process claims based on governmental interference with property rights are foreclosed by the Fifth Amendment's Takings Clause . . . [s]ince deciding *Armendariz*, we have consistently precluded substantive due process claims based on a deprivation of property addressed by the Takings Clause. The blanket prohibition applies even to a disguised takings claim." *Id.* at 949 (citing *Madison v. Graham*, 316 F.3d 867, 870-71 (9th Cir. 2002)).

At the time *Armendariz* was decided, a property owner

considering a takings claim had two possible approaches under the Supreme Court's decision in *Agins v. City of Tiburon*, 447 U.S. 255 (1980). First, she could challenge the validity of the government action by alleging that the regulation did not substantially advance a legitimate state interest. The remedy sought in such cases was the invalidation of the regulation or the government action. Alternatively, she could allege that the impact of the regulation or action on her property was so severe that it was, in effect, the same as if the government had affirmatively condemned her land under its eminent domain power. *See id*. The remedy in such cases was the payment of just compensation. *See also Penn Central Transp. Co. v. New York City*, 438 U. S. 104, 127 (1978) ("a use restriction on real property may constitute a "taking" if not reasonably necessary to the effectuation of a substantial public purpose . . . or perhaps if it has an unduly harsh impact upon the owner's use of the property").

As a consequence of *Agins*' two-part test, *Armendariz*'s forced election of remedies rule had some analytical appeal because a landowner could challenge the validity of a government action under the Takings Clause as illegitimate by applying the "substantially

advance" prong, and was not limited to seeking compensation under the second part. *Armendariz* reasoned that a plaintiff should not have been allowed to bring duplicate claims for invalidity under both due process and takings, both of which challenge the validity of government action. *See Herrington v. Cnty. of Sonoma*, 834 F.2d 1448, 1498 n.7 (9th Cir.) (recognizing difference between a takings claim which requires a showing that all use of property has been denied, and a due process claim which does not), *cert. denied*, 489 U.S. 1090 (1989). *Armendariz* held that, under the first prong of *Agins*, takings and substantive due process claims were essentially the same, and there was no reason to duplicate what the court labeled a "disguised takings claim" with a due process claim. *Squaw Valley*, 375 F.3d at 949.

The "substantially advance" prong of *Agins*'s two-part formulation, however, did not survive the Supreme Court's unanimous ruling in *Lingle* as a takings test. *Lingle* clarified that the "substantially advance" prong is a test of due process, and not of takings:

> Twenty-five years ago, the Court posited that a regulation of private property "effects a taking if [it] does not substantially advance [a] legitimate state interes[t]." *Agins,* 447 U.S., at 260, 100 S.Ct. 2138. The lower courts in this case took that statement to its logical conclusion, and in so doing, revealed its imprecision. Today we correct course. We

> hold that the "substantially advances" formula is not a valid takings test, and indeed conclude that it has no proper place in our takings jurisprudence.

Lingle, 544 U.S. at 548. The Court explained, "[a]n inquiry of this nature has some logic in the context of a due process challenge, for a regulation that fails to serve any legitimate governmental objective may be so arbitrary or irrational that it runs afoul of the Due Process Clause. . . . But such a test is not a valid method of discerning whether private property has been 'taken' for purposes of the Fifth Amendment." *Lingle*, 544 U.S. at 542. *See also id.* at 536 ("In other words, the [Takings Clause] 'is designed not to limit the governmental interference with property rights *per se*, but rather to secure *compensation* in the event of otherwise proper interference amounting to a taking.'") (citing *First English Evangelical Lutheran Church of Glendale v. Cnty. of Los Angeles*, 482 U.S. 304, 315 (1987) (emphasis original)).

This court has recognized that *Armendariz*'s forced election of remedies did not survive *Lingle*, and in *Crown Point Dev., Inc. v. City of Sun Valley*, 506 F.3d 851 (9th Cir. 2007), expressly overruled that part of the case:

> Accordingly, it is no longer possible in light of *Lingle* and *Lewis* to read *Armendariz* as imposing a blanket obstacle to

> all substantive due process challenges to land use regulation.

Id. at 856 (citing *County of Sacramento v. Lewis*, 523 U.S. 833 (1998)). *See also id.* at 855-56 ("*Lingle* pull[ed] the rug out from under' *Armedariz*"); *Action Apartment Ass'n v. Santa Monica Rent Control Bd.*, 509 F.3d 1020 (9th Cir. 2007) (same). But the removal of the "substantially advance" test from one of regulatory taking merely relabeled it, and it continues to be a viable claim for relief. *Lingle* held that when a property owner challenges a regulation—as Rancho did here—on the basis that the city's less-than-requested increase in allowable rent caused the park owner to be deprived of its rights, and that the allowed increase was a pretext to transfer property to tenants, it states valid constitutional claims. *Lingle*, 544 U.S. at 540. Justice Kennedy's short concurring opinion clarified that assertions such as those made by Rancho in its amended complaint are valid, and cannot be dismissed for failure to state a claim:

> This separate writing is to note that today's decision does not foreclose the possibility that a regulation might be so arbitrary or irrational as to violate due process. *Eastern Enterprises v. Apfel,* 524 U.S. 498, 539, 118 S.Ct. 2131, 141 L.Ed.2d 451 (1998) (Kennedy, J., concurring in judgment and dissenting in part). The failure of a regulation to accomplish a stated or obvious objective would be relevant to

> that inquiry. Chevron voluntarily dismissed its due process claim without prejudice, however, and we have no occasion to consider whether Act 257 of the 1997 Hawaii Session Laws "represents one of the rare instances in which even such a permissive standard has been violated." *Apfel, supra,* at 550, 118 S.Ct. 2131. With these observations, I join the opinion of the Court.

Lingle, 544 U.S. Id. at 548-49 (Kennedy, J., concurring). Thus, *Lingle* deprived the *Armendariz* rule of whatever validity it may have had. However, in direct contravention of *Crown Point*, the District Court dismissed Rancho's due process claim because it concluded it was "subsumed" by its takings claims. *See* Order Granting Motion to Dismiss, with Leave to Amend and Setting Case Management Conference at 8 (June 27, 2012) ("To that extent, [Rancho]'s substantive due process claim is subsumed by the regulatory takings claims and is not cognizable."). A complaint states a claim for due process violations when it alleges arbitrary or capricious government interference with a property interest. *See Action Apartment Ass'n, Inc. v. Santa Monica Rent Control Bd.*, 509 F.3d 1020, 1025 (9th Cir. 2007) (The two elements of a substantive due process claim are the existence of a protected interest, and proof the government arbitrarily or capriciously interfered with that interest). In addition to an "arbitrary and

capricious" claim, a property owner states a claim when she alleges the government has a hidden motive. *See*, *e.g.*, *Cine SK8, Inc. v. Town of Henrietta*, 507 F.3d 778 (2d Cir. 2007) (a town's revocation of a permit on which the landowner relied would be a due process violation if the plaintiff could show the revocation was the result either of improper motive—in that case, racial animus—or an extrajurisdictional procedure where the town's permit procedures did not provide for a revocation process). Consequently, Rancho's amended complaint states valid claims for relief, and the District Court, failing to adhere to both the Supreme Court's rule, and the law of this Circuit, erred in dismissing it.

II. Substance Rules Form in Notice Pleading

"Pleadings must be construed as to do justice," Fed. R. Civ. P. 8(e), and substance rules over the form and nomenclature of the plaintiff's claim. *See Self Directed Placement Corp. v. Control Data Corp.*, 908 F.2d 462 (9th Cir. 1990) (emphasizing pleading sufficient *facts* to give the defendant notice of the claim, and not the label attached to the cause of action). Here, Rancho's amended complaint plainly alleges all it needs to in order to pass muster under Rule 12(b)(6)'s liberal notice pleading

requirements. Under the Federal Rules of Civil Procedure, a plaintiff need only plead sufficient facts, which the District Court must accept as true, and "state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). During this threshold review, "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). Rancho's First Amended Petition for Writ of Administrative Mandamus (filed July 25, 2013) (D.C. Dkt. 25) alleged that the city's rent control ordinance was "applied in a manner that does not promote any legitimate public purpose, but results only in a transfer of the landlord's property to the tenant." *See* ¶ 81, at 21. This and the following allegations were more than sufficient to give the city notice, and state a claim for relief. *See Lingle*, 544 U.S. at 540 (government action fails to substantially advance a legitimate state interest); *Action Apartment*, 509 F.3d at 1025 (government arbitrarily or capriciously interfered with property interest). *See also Cine SK8*, 507 F.3d at 786 (constitutional violation when government acts with hidden motive). Rancho's amended pleading alleged that "[r]ent control also violates the due process, takings, and/or

equal protection clauses of the United States Constitution if it [sic] 'arbitrary, discriminatory or demonstrably irrelevant to the policy the Legislature is free to adopt.'" *Id.* ¶ 82, at 21. If this was not clear enough, Rancho's legal theory and supporting facts were made plain in paragraph 83:

> Because the Petitioner cannot exploit a tenant unless it is able to charge an above market rent, and because there is no means testing under the Calistoga ordinance, there is no legitimate reason to require the Petitioner to charge rents of less than $625 per month at this particular point in time. Rather, the Calistoga ordinance is being applied *arbitrarily and impermissibly* in order to provide each and every one of the 184 tenants with a monthly subsidy, whether they need it or not, all at the Petitioner's expense.

Id. ¶ 83, at 21 (emphasis added). Thus, it was error for the District Court to dismiss the pleading for failure to state a claim under Fed. R. Civ. P. 12(b)(6). *See* 2 James Wm. Moore, *et al.*, *Moore's Federal Practice* ¶ 12.34[1][b] (3d ed. 2012) (courts will not dismiss for failure to state a claim based on the labeling of legal theories) (citing *Bowers v. Hardwick*, 478 U.S. 186, 201 (1986) (Blackmun, J. dissenting); *Lujan v. National Wildlife Fed'n*, 497 U.S. 871, 909 n.10 (1990); *Tolle v. Carroll Touch, Inc.*, 977 F.2d 1129, 1134 (7th Cir. 1992)).

CONCLUSION

Amicus respectfully requests this Court reverse the judgment of the District Court, and remand the case for further proceedings.

DATED: Honolulu, Hawaii, June 20, 2013.

Respectfully submitted,

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