IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SAN FRANCISCO TAXI COALITION; PATRICK O'SULLIVAN; GEORGE HORBAL; ALLIANCE CAB; S.F. TOWN TAXI INC.; SAI LEE, Plaintiffs/Appellants, vs. CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO MUNICIPAL TRANSIT AGENCY; JEFFREY TUMLIN, Director of Transportation, Defendants/Appellees.	No. 19-16439 U.S. District Court No. 3:19-cv-01972-WHA

ANSWERING BRIEF OF APPELLEES

On Appeal from the United States District Court
for the Northern District of California

The Honorable William Alsup

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INTRODUCTION

The San Francisco Municipal Transportation Agency (SFMTA) is charged with ensuring that San Francisco's ground transportation systems—including public transit, traffic, parking, bicycling, paratransit, walking, and taxi services—are as safe, accessible, and economical as possible. To further that mission, SFMTA has exclusive authority over San Francisco's taxi program and oversees virtually all aspects of taxi services in San Francisco proper and at the San Francisco International Airport (SFO).

In 2018, SFMTA determined that it needed to exercise this authority to address certain taxi-related issues. The industry as a whole had been unexpectedly affected by the influx of ride-sharing companies like Uber and Lyft and their displacement of taxi transportation in San Francisco. The impact was felt industry-wide, but it particularly affected taxi medallion holders who had purchased their taxi medallions recently and were subject to related loan obligations. SFMTA had also observed that the concentration of taxis throughout the City, and between the City and SFO, had become unbalanced. Large numbers of taxis were clustering at the airport waiting for fares, leaving an inadequate number of taxis to service the City proper.

To address these issues, SFMTA adopted regulations—the "Taxi Pickup Regulations"—controlling taxi pickups at SFO beginning in February 2019. Under the new Regulations, access to the taxi pickup line at SFO would depend on the type of medallion associated with the taxi. Some groups of medallion holders—those who had held their medallions the longest—would no longer be able to pick up fares at SFO. A second group of medallion holders would receive expedited access to the pickup line, and a third group would retain standard access to SFO fares. SFMTA gave expedited access to the group of medallion holders that had been disproportionately impacted by the industry's downturn; directing airport

fares to this group would help reduce the unique economic stress that these medallion holders suffered. At the same time, the Regulations would decrease the overall number of taxis that could access the SFO pickup line to help alleviate the congestion at the airport that taxi clustering had caused. By restricting certain medallion holders from picking up fares at the airport, SFMTA hoped to encourage those taxis to provide additional service in the City proper.

Plaintiffs/Appellants are a group of taxi companies and medallion holders who challenged the Regulations below. Plaintiffs argued in the district court that the distinctions SFMTA drew among medallion holders violate state and federal equal protection and due process principles. They argued that the Regulations discriminate on the basis of age in violation of a California law prohibiting discrimination in state-funded programming. And they claimed that San Francisco violated the California Environmental Quality Act (CEQA) by adopting the Regulations without conducting an environmental review.

The district court correctly rejected each of these causes of action. As to the constitutional claims, the Regulations cannot be struck down unless they bear no rational relationship to any conceivable public purpose—the most deferential standard under federal and state law. Plaintiffs cannot satisfy this standard. As the district court correctly held, the Regulations distinguish among medallions based on the length of time medallion holders have had to extract value from the medallions, and based on the extent to which the medallion holders have been impacted by recent taxi industry changes. Because these distinctions are related to legitimate public goals—controlling taxi congestion at the airport, increasing taxi service in San Francisco proper, and providing financial relief for the medallion holders suffering the most from the industry's economic downturn—it was rational for SFMTA to differentiate among medallion classes in this way.

The district court also properly rejected Plaintiffs' other causes of action. SFMTA correctly determined that the Regulations are "not a project" under CEQA, and Plaintiffs' failure to exhaust their CEQA administrative remedies provides an independent basis to affirm the district court's dismissal of Plaintiffs' CEQA claim. And Plaintiffs have not identified a viable theory that the Regulations discriminate against them in violation of state law. The district court correctly entered judgment on the pleadings for San Francisco. This Court should affirm the district court's judgment in its entirety.

STATEMENT OF THE ISSUES

1. Whether the district court correctly held that the allegations in Plaintiffs' complaint are insufficient to show that the Taxi Pickup Regulations lack a rational relationship to a legitimate governmental purpose.

2. Whether the district court correctly held that the Taxi Pickup Regulations do not violate CEQA because the Regulations are not a "project" under CEQA.

3. Whether the district court correctly held that the Taxi Pickup Regulations do not violate California Government Code Section 11135(a) because Plaintiffs failed to demonstrate that the Regulations discriminate on the basis of age under a state-funded program or activity.

STATEMENT OF JURISDICTION

San Francisco[1] agrees with Plaintiffs' statement of jurisdiction.

[1] We use the terms "San Francisco" and "the City" interchangeably to refer to the Defendants/Appellees in this case.

STATEMENT OF THE CASE

I. Statement of Facts

A. The Taxi Medallion System In San Francisco

SFMTA has the authority and responsibility, under the San Francisco City Charter, to manage San Francisco's ground transportation systems. S.F. Charter, art. VIIIA, § 8A.101. As part of that responsibility, the agency has exclusive authority to regulate taxi-related functions. *Id.*; *see also* ER26. SFMTA works to promote a vibrant taxi industry through intelligent regulation and partnership with the industry, and strives to ensure that taxi transportation remains a safe, viable public transportation choice for San Francisco residents and visitors. SER8.[2]

One waySFMTA has carried out this mandate in recent years is by instituting various reforms related to the taxi industry—including reforms to the taxi medallion system. ER26-27. A taxi medallion is a permit SFMTA issues to an individual or business to operate a taxi in San Francisco, including at SFO. ER23-24. As Plaintiffs acknowledge, these medallions are permits, not the property of a medallion holder or an entitlement. AOB 3; *see also* ER23-24.

[2] Plaintiffs' brief contains two sections that purport to set forth the background facts in this case. A section called "Factual History" (AOB 3-9) appears to discuss factual background, but contains no citations to the record or other documents, in contravention of Federal Rule of Appellate Procedure 28(a)(6). Another section called "Statement of the Facts" also appears to discuss background facts. AOB 9-18. This section cites Plaintiffs' Excerpts of Record, but many of those citations refer to materials that Plaintiffs filed in support of their motion for preliminary injunction. ER54-244. As Plaintiffs elsewhere concede, these materials are "not pertinent" to this Court's review of the district court's order granting judgment on the pleadings. AOB 9. And in any case, Plaintiffs' citation of documents attached to their request for judicial notice filed in support of their motion for preliminary injunction (ER54-188) is improper. The district court declined to take judicial notice of these materials, finding that the sources for many of these documents "can reasonably be questioned and no information had been provided as to their sources in order to establish their accuracy." SER137. San Francisco, by contrast, cites the complaint and those documents the court relied on in addressing the City's motion for judgment on the pleadings. *See generally* SER; *see also* ER16 (describing documents).

There are several classes of taxi medallions currently in operation in San Francisco, with distinctions that largely depend on when the medallion was issued. **Pre-K** medallions were issued by the City prior to 1978. ER24. The term "Pre-K" reflects that these medallions were issued before San Francisco voters approved an initiative ordinance, commonly known as Proposition K, in 1978. *Id.* Pre-K medallions could be, and continue to be, held by corporations and individuals alike. *Id.* These medallions were issued for consideration. ER25. An individual or company can own more than one Pre-K medallion. *Id.* Holders of a Pre-K medallion are not subject to a driving requirement, *i.e.*, they are not required to personally operate a taxicab using their medallions. ER24-25. Instead, they are free to lease their medallions to taxicab management companies known as "color schemes" for operation by other drivers. ER25.

Post-K medallions were issued between 1978 and 2010, after Proposition K went into effect in 1978 but before SFMTA enacted certain medallion reforms in 2010. ER24-27. The City issued these medallions based on a waitlist and subject to a nominal processing fee. ER24. Post-K medallions can only be held by individuals, not corporations. *Id.* An individual can hold only one Post-K medallion, and for many years these medallion holders were subject to a driving requirement. ER23-25. This required Post-K medallion holders to personally operate their taxicabs for a certain number of hours per month, but allowed them to lease their permits to color schemes at other times. ER25, ER33. Post-K permits are not transferable and cannot be sold for consideration. ER24-25.

Purchased medallions were issued under the Taxi Medallion Transfer Program, which began in 2010. ER26. The Program allowed certain holders of existing medallions to transfer them for a set price of $250,000, subject to certain exceptions. *Id.*; *see also* S.F. Transp. Code § 1116. $200,000 from the sale was retained by the individual seller, while SFMTA received the remaining $50,000.

ER26. Purchased medallions could be further transferred, subject to SFMTA approval, for the set price of $250,000. *Id.* Many medallion purchasers financed their purchases with a loan agreement that gave the lender a security interest in the medallion. *Id.* Most of these loans were issued by the San Francisco Federal Credit Union. *Id.* These loans create significant overhead expenses for Purchased medallion holders, who must make loan payments of approximately $1,500-$2,500 per month, in addition to the regular vehicle, insurance, and other costs typically borne by all medallion holders. SER40; *see also* ER41.[3]

B. The Taxi Pickup Regulations

The Taxi Pickup Regulations were enacted in the wake of a shift in the taxicab industry that occurred in the years after SFMTA instituted the Taxi Medallion Transfer Program. ER27-28. Beginning in approximately 2015, the industry began to suffer significantly from unforeseen economic inroads made by Transportation Network Companies ("TNCs") like Uber and Lyft. *Id.* This marked a dramatic change in a short period of time; at the time SFMTA adopted the Taxi Medallion Transfer Program, the taxi industry was healthy and had been for many years. SER25. Revenues from operating a taxi exceeded operation costs, and taxis were fully utilized throughout the week. *Id.* But the proliferation of TNCs altered the landscape and the demand for taxi transportation began to plummet. ER28.

The "fall of the industry" (AOB 6) affected all segments of the taxi industry: taxi drivers, medallion holders, and color schemes. ER28. But Purchased medallion holders were most heavily impacted due to their additional fixed overhead costs. Many Purchased medallion holders could no longer service their

[3] The district court's order referred to Pre-K medallions as "pre-1978 medallions," Post-K medallions as "1978-2010 medallions," and Purchased medallions as "post-2010" medallions. ER13-14. We use the Pre-K, Post-K, and Purchased medallion terminology to be consistent with Plaintiffs' brief.

loans, leading to default and foreclosure. *Id.* Purchased medallion sales slowed, with the most recent medallion transfer occurring in April 2016. *Id.* The San Francisco Federal Credit Union sued San Francisco, asserting that San Francisco had failed "to foster and maintain a vibrant taxicab industry." *Id.*

To assist SFMTA in navigating these changes to the taxi industry and in addressing the economic distress Purchased medallion holders had suffered, the City retained an outside consulting team: PFM Consulting and Schaller Consulting. ER29. SFMTA asked the consultants to assess the state of the taxi industry and recommend how to revitalize it in light of changes to the market. *Id.*

The group issued its report in May 2018. ER29; *see also* SER23-62. The report made a number of findings. First, the report found that "purchased medallion holders are under severe financial pressure," as evidenced by the size of many Purchased medallion holders' loan payments, the outstanding amounts of those loans, and the increasing number of Purchased medallion foreclosures. SER40. The report determined that these financial pressures caused Purchased medallion holders to be disproportionately affected by the influx of TNCs. *Id.* Without a change in the operation of the industry, the report predicted that an increasing number of Purchased medallions would be foreclosed upon. *Id.* Second, the report found that only 17 percent of medallions across all classes brought in at least $65,000 in annual revenue. SER37. By this measure, the report concluded that more than three-quarters of existing medallions are "underutilized," with most medallions sitting idle more than half of the week. SER38. The report noted the stark change from the "mid-2000s," when taxis were routinely operated seven days a week for both day and night shifts. *Id.* And finally, the report examined taxi service at SFO and found it to be suboptimal. SER32-38. Specifically, the report found that taxi drivers were clustering in the taxi holding lot—a waiting area at SFO for taxis. SER35. This clustering led to taxi

"congestion" at the airport as well as "long wait times" for drivers awaiting a pick-up fare at the airport curb. SER35. The report proposed a number of possible changes designed to make the San Francisco taxi industry more competitive and improve service. SER44. Among other things, the report suggested that SFMTA encourage color schemes to provide enhanced rider services (such as a public smartphone app for requesting trips and paying the fare, including at SFO) (SER46); "right-size" the industry by eliminating Pre-K medallions and recalling medallions that are not in active use (SER50); and identify a mechanism for managing taxi congestion at SFO (SER53).

Following this report, SFMTA staff proposed a number of taxi industry reforms to the SFMTA Board of Directors. ER30-31. The reforms included: (1) allowing only Purchased medallion holders to pick up fares at SFO; (2) declining to renew all Pre-K medallions; (3) relieving Purchased medallion holders of the active driving requirement; (4) allowing certain business entities to purchase as many as 50 medallions; and (5) providing greater incentives to operators of wheelchair-accessible ramp taxis to provide services to the San Francisco paratransit program. ER30. The staff report indicated that the airport-pickup reforms were intended "[t]o bring taxi supply into San Francisco to serve the City and add value to [Purchased] medallions, while also alleviating congestion at the airport. . . ." SER6.

These proposals came before the SFMTA Board on October 16, 2018. ER31. After hearing public comment, the Board adopted several of the proposals but rejected others. *Id.* The Board adopted a resolution that, among other things, eliminated the active driving requirement for Purchased medallion holders and gave SFMTA's Director of Transportation the authority to impose restrictions on the types of medallions authorized to pick up fares at SFO. *Id.*; *see also* SER64-65. But the Board did not adopt the staff recommendations to stop renewing Pre-K

medallions or to prohibit Post-K medallion holders from picking up fares at SFO. *Id.*; SER64-65.

Pursuant to this designated authority, on December 27, 2018, SFMTA's Director announced that new regulations governing taxi pickups at SFO would go into effect on February 1, 2019. ER31-32; SER67-73. Under these Taxi Pickup Regulations, Purchased medallion holders can pick up fares from SFO at all times with expedited access, based on a ratio that varies depending on the number of taxicabs present in the holding lot at a given time. SER69-70; ER32. Post-K medallion holders can pick up at SFO at all times without expedited access. SER69; ER32. Taxis operating Pre-K medallions are prohibited from making pickups at SFO. ER32.[4]

When announcing the Taxi Pickup Regulations, SFMTA made clear that these Regulations aimed to further a number of goals. First, the Regulations support SFMTA's efforts to drive revenue to Purchased medallion holders, who had been disproportionately affected by the changes to the taxi industry. SER69-70; ER31; ER39-41. The Regulations thus aim to "channel[] taxi-related revenue to the holders of Purchased medallions" to alleviate their unique economic distress. ER40. Second, the Regulations were designed to "[b]ring taxi supply to San Francisco." SER69. By prohibiting certain classes of medallions from picking up airport fares, the Regulations would incentivize taxi drivers using those medallions to return to the City and provide additional taxi service there. *Id.*; ER39-40. Finally, and relatedly, the Regulations aim to address concerns about taxi congestion at the airport. SER68. In announcing the Regulations, the SFMTA Director stated that SFO has 476 spaces available to accommodate taxicabs on site,

[4] The Taxi Pickup Regulations also contain an additional provision, not at issue in this case, providing that ramp taxis that meet certain wheelchair pickup incentives may obtain monthly access to an expedited airport pickup line. ER32.

and that "[t]hese staging areas are often at full capacity in off-peak hours and sit at more than 80% occupancy for the majority of the day." SER67. This "oversupply" leads to a driver wait-time of up to 3 hours. And during those times that the holding lots are full, "taxis wishing to enter are turned away" and "often circle the terminal waiting for an opening, which contributes to congestion at SFO." SER67-68. The Regulations would help alleviate these congestion issues at SFO. *Id.*

II. Procedural History

The Taxi Pickup Regulations went into effect on February 1, 2019. ER40. Plaintiffs filed suit approximately six weeks later, on March 13, 2019. ER23. The complaint alleged that the Regulations violated Plaintiffs' substantive due process and equal protection rights under the California and United States Constitutions, as well as other provisions of California law: the California Environmental Quality Act, California Public Utilities Code Section 21690.5, and California Government Code Section 11135, which prohibits discrimination on the basis of age (and other protected characteristics) in any "program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state." ER23-53; *see also* Cal. Gov't Code § 11135(a). Plaintiffs sought declaratory and injunctive relief. ER52. Because the complaint contained federal claims, San Francisco removed the matter to federal court on April 12, 2019. ER21.

Plaintiffs sought a preliminary injunction prohibiting enforcement of the Taxi Pickup Regulations. ER10. The district court denied Plaintiffs' motion, holding that Plaintiffs had not shown that they were likely to succeed on their constitutional claims, their CEQA challenge, or their state-law age discrimination claim. SER142. The court held that Plaintiffs' equal protection challenge to the Taxi Pickup Regulations was likely to fail because "[t]he different classes of

medallion-holders are not similarly situated," and thus Plaintiffs could not show that San Francisco had irrationally distinguished among them. SER138. And even if they were similarly situated, the new rules legitimately sought to "prioritize[] medallion holders who have significantly more expenses resulting from the medallion, who have had much less time (comparatively) to realize value from the medallions, and are disproportionate[ly] in precarious financial positions due to the crushing loan balances as a result of the medallions." SER139. The court also rejected Plaintiffs' age discrimination argument as "entirely unsupported," and held that Plaintiffs' argument that the City should have submitted the Regulations to CEQA review failed because there was no evidence the Regulations would have any environmental impact. SER139-140.

Shortly afterwards, the district court granted the City's motion for judgment on the pleadings and entered judgment for San Francisco. ER19-20. The court held that the Taxi Pickup Regulations further at least three legitimate state goals: to decrease congestion at SFO; to help the Purchased medallion holders "who have been disproportionately crushed by the industry downturn"; and "to increase taxi pickups in the City." ER17. Thus, the court held that the City was entitled to judgment on Plaintiffs' equal protection and due process claims. The court also rejected Plaintiffs' CEQA claim. ER18-19. The court ruled that the Regulations were not likely to impact the environment, and were therefore not a "project" under CEQA. ER19. In addition, the court determined that the complaint lacked allegations "suffic[ient] to substantiate a claim for age discrimination." ER18. Reviewing the allegations of the complaint, the court found no indication of either overt discrimination or disparate impact discrimination on the basis of age. *Id.* Instead, the court reiterated that the Regulations were "promulgated on the basis of taxicab efficiency and propping up those medallion holders most heavily hurt by the industry-wide crisis." *Id.* Finally, the court granted judgment for San

Francisco on Plaintiffs' claim that the Regulations violated the California Public Utilities Code. ER19. The court noted that "Plaintiffs did not address the claim in their briefing" and therefore held that Plaintiffs "have accordingly waived their arguments" that this claim should proceed. *Id.* The court separately entered judgment in San Francisco's favor on all causes of action. ER20. Plaintiffs filed a timely notice of appeal. ER1.

STANDARD OF REVIEW

This Court reviews de novo Rule 12(c) judgments on the pleadings. *Fajardo v. Cty. of Los Angeles*, 179 F.3d 698, 699 (9th Cir. 1999). Judgment on the pleadings "is properly granted when, 'taking all the allegations in the pleadings as true, the moving party is entitled to judgment as a matter of law.'" *Gregg v. Hawai'i, Dep't of Pub. Safety*, 870 F.3d 883, 887 (9th Cir. 2017) (quoting *Nelson v. City of Irvine*, 143 F.3d 1196, 1200 (9th Cir. 1998)). This Court may affirm the district court's judgment on any ground supported by the record. *Thompson v. Paul*, 547 F.3d 1055, 1058-59 (9th Cir. 2008).

In their discussion of the standard of review, Plaintiffs imply that the district court committed two errors when conducting its Rule 12(c) analysis. First, Plaintiffs suggest that a motion for judgment on the pleadings is subject to closer scrutiny than a motion to dismiss under Rule 12(b)(6). AOB 24. But this is not true. As Plaintiffs elsewhere concede, Rule 12(c) analysis is "substantially identical" to analysis under Rule 12(b)(6). *Chavez v. United States*, 683 F.3d 1102, 1108-09 (9th Cir. 2012) (internal citations and quotation marks omitted); *see also* AOB 23 (conceding that the legal standards governing Rule 12(c) and Rule 12(b)(6) are "functionally identical"). Plaintiffs cite a decision from the District of Columbia district court to suggest that the Rule 12(c) burden is more significant. AOB 24 (quoting *Murphy v. Dep't of Air Force*, 326 F.R.D. 47 (D.D.C. 2018)). But that district applies "a subtle yet significant distinction between Rule 12(b)(6)

and Rule 12(c) motions." *Murphy*, 326 F.R.D. at 49. That is different from this Court's "substantially identical" standard, which controls here. *Chavez*, 683 F.3d at 1108-09.

Second, Plaintiffs obliquely suggest that the district court somehow contravened the Supreme Court's decisions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). AOB 23-24. But the district court did not hold Plaintiffs to any sort of heightened pleading standard. *Id.*; *see also Twombly*, 550 U.S. at 570. *Twombly*'s plausibility standard does not relieve Plaintiffs of their obligation to plead facts sufficient to state plausible constitutional and statutory claims.

SUMMARY OF ARGUMENT

The district court correctly held that the Taxi Pickup Regulations are lawful, and properly rejected Plaintiffs' claims that the Regulations offend the federal and state constitutions and various provisions of California law. The judgment below is correct, and this Court should affirm.

1. The Taxi Pickup Regulations are rationally related to legitimate government interests, and are therefore consistent with equal protection and due process principles. The Regulations further at least three of San Francisco's legitimate aims: to relieve economic pressures affecting Purchased medallion holders; to alleviate taxi congestion caused by an oversupply of taxis at SFO; and to increase the supply of taxis in San Francisco itself. The district court correctly found these to be legitimate governmental interests, and Plaintiffs notably admit that the Regulations are intended to address these goals. Yet Plaintiffs still argue that the Regulations should be struck down because they will not actually accomplish the City's objectives and thus amount to forbidden "economic favoritism" privileging Purchased medallion holders. The Court should reject these arguments. Whether the Regulations will actually be effective, or whether

the City could accomplish its goals through some other means, does not matter for constitutional purposes. And the Regulations do not constitute forbidden economic protectionism under this Court's precedent because they further additional aims besides protecting Purchased medallion holders. They do not offend either the federal or state constitution.

2. The Taxi Pickup Regulations are not a project under CEQA because they lack the potential to cause a direct or a reasonably foreseeable indirect physical change in the environment. Plaintiffs argue the Regulations will encourage taxis to "deadhead" between the airport and the City, increasing traffic on the 101 freeway and affecting air quality. Given the relatively small number of affected vehicles and the existing traffic volume on the 101, the indirect impacts that Plaintiffs fear are entirely speculative. An independent and alternative ground for affirmance, which San Francisco raised below, is Plaintiffs' failure to exhaust their CEQA administrative remedies.

3. The Taxi Pickup Regulations do not violate Section 11135(a) because they do not apply to state-funded programming, and in any case do not discriminate on the basis of age. Plaintiffs incorrectly claim that San Francisco's paratransit program's receipt of state funding transforms SFMTA's taxi services into a state-funded "program or activity." Because SFMTA's taxi programming does not receive state funding, Plaintiffs cannot invoke Section 11135(a). And even if they were proper parties to a Section 11135(a) action, Plaintiffs did not allege sufficient facts to state a viable age discrimination claim. The district court correctly held that Plaintiffs did not state a plausible disparate impact claim or point to any other colorable indicia of age discrimination.

ARGUMENT

I. The Taxi Pickup Regulations Are Rationally Related To Legitimate Government Objectives.

As the district court correctly observed, the government is afforded broad leeway to enact legislative classifications that serve governmental interests. ER17. The Taxi Pickup Regulations easily fit within San Francisco's authority to adopt such classifications. The district court's judgment upholding them should be affirmed.

A. The Rational Basis Test

The parties agree that rational basis review applies to Plaintiffs' equal protection challenge. AOB 24-25. Under this standard, the Taxi Pickup Regulations "cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." *Heller v. Doe*, 509 U.S. 312, 320 (1993). This is an exceedingly deferential standard: the Regulations are "presumed valid, and this presumption is overcome only by a 'clear showing of arbitrariness and irrationality.'" *Kawaoka v. City of Arroyo Grande*, 17 F.3d 1227, 1234 (9th Cir. 1994) (quoting *Hodel v. Indiana*, 452 U.S. 314, 331-32 (1981)). The Regulations are only subject to constitutional scrutiny if they draw classifications among "similarly situated" groups. *Michael M. v. Superior Court of Sonoma Cty.*, 450 U.S. 464, 477-78 (1981). And even if all medallion holders are similarly situated, SFMTA's distinctions among medallion categories "need only be drawn in such a manner as to bear some rational relationship to a legitimate state end." *Clements v. Fashing*, 457 U.S. 957, 963 (1982). "Classifications are set aside only if they are based solely on reasons totally unrelated to the pursuit of the State's goals and only if no grounds can be conceived to justify them." *Id.* Moreover, rational distinctions may be drawn "with substantially less than mathematical exactitude." *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). In reviewing any such distinctions,

"the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines." *Id.*

The same "highly deferential" rational-basis standard applies to Plaintiffs' substantive due process claim. *Munoz v. Sullivan*, 930 F.2d 1400, 1404 n.10 (9th Cir. 1991). "It is by now well established that legislative Acts adjusting the burdens and benefits of economic life" are afforded "a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." *Pension Benefits Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 729 (1984) (quoting *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976)) (internal quotation marks omitted). Pursuant to that presumption, "[o]rdinances survive a substantive due process challenge if they were designed to accomplish an objective within the government's police power, and if a rational relationship existed between the provisions and purpose of the ordinances." *Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 690 (9th Cir. 1993) (quoting *Boone v. Redevelopment Agency of City of San Jose*, 841 F.2d 886, 892 (9th Cir. 1988)).[5]

Under rational basis review, the classification is "presumed constitutional," and the burden is on the party attacking the classification to "negative every

[5] Plaintiffs pleaded separate causes of action under the state and federal constitutions, both raising due process and equal protection claims. ER38-44. This Court should analyze them together, as the district court did. ER17. Federal and California equal protection claims are generally analyzed identically, and the rational basis test under California law is no more rigorous than under federal law. *Walgreen Co. v. City and Cty. of San Francisco*, 185 Cal. App. 4th 424, 434 n.7 (2010) ("[T]he California Supreme Court has rejected the notion that the rational basis test is more rigorous under California law than under federal law."); *see also Serrano v. Priest*, 18 Cal. 3d 728, 763 (1976) ("[O]ur analysis of plaintiffs' federal equal protection contention is also applicable to their claim under these state constitutional provisions."). The same is true of substantive due process claims. *See Love v. State Dep't of Educ.*, 29 Cal. App. 5th 980, 989 (2018) (applying federal substantive due process standard for due process claim under state constitution).

conceivable basis which might support it." *Armour v. City of Indianapolis*, 566 U.S. 673, 681 (2012); *see also RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1144 (9th Cir. 2004). The government, by contrast, "has no obligation to produce evidence to sustain the rationality of a statutory classification." *Heller*, 509 U.S. at 320; *see also Gonzalez-Medina v. Holder*, 641 F.3d 333, 336 (9th Cir. 2011). Indeed, the Supreme Court has made clear that a legislative or regulatory classification "is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993).

Consistent with that directive, "a law must be upheld under rational basis review if any state of facts reasonably may be conceived to justify the classifications imposed by the law." *SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d 471, 481 (9th Cir. 2014) (internal quotation marks omitted); *see also Vance v. Bradley*, 440 U.S. 93, 111 (1979) ("[T]hose challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker."). Thus, "it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction *actually* motivated the legislature." *F.C.C.*, 508 U.S. at 315 (emphasis added); *see also Gallinger v. Becerra*, 898 F.3d 1012, 1017 (9th Cir. 2018) (declining to "deviate from the traditional application of rational-basis review" by looking only at the actual goal of the legislative act). Instead, "it is enough that the governing body '*could have rationally decided* that' the action would further" a legitimate governmental interest. *Johnson v. Rancho Santiago Cmty. Coll. Dist.*, 623 F.3d 1011, 1031 (9th Cir. 2010) (quoting *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 466 (1981)). As a result, allegations that the government's objectives are pretextual or that there are other, illegitimate objectives motivating the government

are irrelevant. *See, e.g., Russell v. Hug*, 275 F.3d 812, 820 (9th Cir. 2002) (claim that true purpose of bar membership requirement is to limit competition was irrelevant where plaintiff failed to negate two rational bases for the requirement); *Ball v. Massanari*, 254 F.3d 817, 824 (9th Cir. 2001) (contention that legislation was infected with "malignant purpose . . . misses the point" because "Congress could have been motivated by a number of legitimate concerns").

Under this deferential standard of review, and the Supreme Court's directive to refrain from engaging in "courtroom fact-finding," *F.C.C.*, 508 U.S. at 315, it is also irrelevant whether a classification has actually achieved its intended purpose. *Levald, Inc.*, 998 F.2d at 690 (holding there is "no requirement that the statute *actually* advance its stated purpose; rather, the inquiry focuses on whether the governmental body *could* have had no legitimate reason for its decision") (emphasis in original; internal quotation marks and citation omitted). Likewise, it does not matter whether the government could have chosen a different means of achieving a particular goal. *See, e.g.*, *Gallinger*, 898 F.3d at 1018. This is because "it is for the legislature, not the courts, to balance the advantages and disadvantages" of a particular legislative "requirement." *Williamson v. Lee Optical of Okla.*, 348 U.S. 483, 487 (1955).

B. The Taxi Pickup Regulations Are Constitutional.

The Taxi Pickup Regulations comfortably satisfy constitutional demands. Plaintiffs have failed to allege that the different groups of medallion holders are similarly situated, as necessary to trigger equal protection analysis. And even if the groups were similarly situated, the Regulations are related to at least three legitimate governmental objectives, as the district court correctly determined. ER17-18.

1. The Classes Of Medallion Holders Are Not Similarly Situated.

As Plaintiffs acknowledge, a prerequisite to a meritorious equal protection claim is a showing that the classification concerns similarly situated groups. AOB 27; *see also County Classic Dairies v. State of Mont., Dep't of Commerce Milk Control Bureau*, 847 F.2d 593, 596 (9th Cir. 1988).

Here, as the district court correctly concluded in denying Plaintiffs' motion for preliminary relief, Plaintiffs' equal protection claim fails at the outset because the two groups are not similarly situated. SER138. Purchased medallion holders have been uniquely, and severely, affected by the rise of TNCs like Uber and Lyft. *Id*.; *see also* ER28. The vast majority of Purchased medallion holders paid $250,000 for their medallions, and most of those purchasers took out loans to finance their purchases. ER26. These loans require Purchased medallion holders to make payments of $1,500-$2,500 per month, in addition to other overhead costs. *See* p. 6, *supra*. As a result, Purchased medallion holders, on average, earn substantially less than other medallion holders: $40,000 versus $54,000 per year, according to the PFM/Schaller study. SER26. These dire economic circumstances have caused Purchased medallion holders to default on their loan obligations, leading to foreclosure. ER28.

By contrast, Pre-K and Post-K medallion holders have not suffered to the same extent as Purchased medallion holders. Pre-K medallion holders paid for their medallions, but did so at least 40 years ago and have had many decades to realize value from their medallions. ER24-26. Indeed, those medallion holders have been able to realize an estimated average of $1.6 million in income over the lifetime of their medallions, ER30—income that is often passive because Pre-K medallion holders are not subject to a driving requirement, ER24-25. Post-K medallion holders are subject to a driving requirement, but they paid only a

nominal processing fee for their medallions and have had at least nine and as many as 40 years to put those medallions to productive use. ER24-25. By contrast, Purchased medallion holders have had only a few years to earn back their investments. *Id.* The Taxi Pickup Regulations track these distinctions, and thus do not draw classifications among similarly situated groups.

Plaintiffs argue that all medallion holders are similarly situated because they all used their medallions in similar ways before the Regulations were enacted. AOB 28-29. But as the district court determined at the preliminary injunction stage, this argument "glosses over the crushing impact of the new taxi reality." SER138. Purchased medallion holders have "been hit hardest," by the downturns in taxi fortunes, and SFMTA properly accounted for that distinction in giving them enhanced access to pickups at SFO. *Id.* This Court need go no further to uphold the district court's constitutional holding.

2. The Taxi Pickup Regulations Are Rationally Related To Legitimate Governmental Purposes.

Even if the Regulations trigger constitutional scrutiny, they readily satisfy it because they are rationally related to at least three legitimate governmental objectives. In enacting the Taxi Pickup Regulations, SFMTA acted to control access to a finite revenue source—taxi pickups at SFO—in a manner that would serve a number of municipal objectives. Those objectives include mitigating taxi congestion, reducing taxi drivers' incentives to linger at the airport, and encouraging certain classes of medallion holders to provide service to riders in San Francisco itself. And in structuring the Regulations, SFMTA took account of the degree of economic harm medallion holders had suffered from the recent, previously unforeseen incursion of TNCs in San Francisco's ground transportation market. The Regulations are a rational, constitutional effort to help a vulnerable

group of medallion holders while simultaneously improving taxi service at SFO and in the City itself.

Indeed, Plaintiffs have long conceded that the Taxi Pickup Regulations are related to at least two legitimate governmental objectives. Plaintiffs acknowledged in their complaint that the Taxi Pickup Regulations are designed to allocate more revenue from airport trips to Purchased medallion holders. ER30-33. Plaintiffs have repeatedly emphasized this purpose of the Regulations. *E.g.*, ER30-31 (alleging that "[t]he principal rationale offered in support of the staff-generated reforms was to increase the income of 'Purchased medallion' holders by relieving them of certain competitive pressures"); ER32 (alleging that "the first and principal reason for prohibiting pre-K (and other) medallion holders from picking up fares at the airport, and granting pickup preference to Purchased medallions over post-K medallion holders, was to '[s]upport Purchased medallions by prioritizing their pickups at SFO.'"). Plaintiffs continue to focus on this aspect of the Regulations, admitting that the Regulations are intended "to give Purchased medallion holders significant priority" over other medallion holders in order to "financially aid the Purchased medallion holders." AOB 32-34. SFMTA's description of the City's goals is to the same effect: one of the express "policy goals" of the Regulations is to support Purchased medallion holders by prioritizing airport pickups. SER75. Thus, the district court correctly held that one of the "pertinent aims" of the Regulations was "to help the post-2010 medallion holders who have been disproportionately crushed by the industry downturn." ER17.

Plaintiffs have also long conceded another objective, namely, that the Taxi Pickup Regulations further the legitimate government aim of encouraging drivers to serve the City proper. Plaintiffs admitted in their complaint that the Regulations are premised on the "assumption that by putting SFO off-limits to all pre-Ks, as well as those post-Ks unwilling to spend excessive time in the airport's taxi lots, all

those affected medallions . . . would flood back into the City . . . ." ER40. Again, Plaintiffs' concessions are consistent with SFMTA's express intent. SFMTA's Director stated that one of the goals of the "new medallion rules at SFO" is to "[b]ring taxi supply to San Francisco." SER75. And again, the district court properly concluded that "increas[ing] taxi pickups in the city" is one of the Regulations' goals. ER17-18.

Finally, the Taxi Pickup Regulations are also intended to serve the City's interest in reducing taxi congestion at SFO. For many years, SFO has struggled to manage taxi congestion caused by an oversupply of taxis at the airport. SER14. SFO has four taxi holding lots, with a maximum capacity of 427 cabs. *Id.* Combined with curbside space at the terminals, SFO can accommodate 476 cabs on site. *Id.* Prior to the Regulations' adoption, these areas were often at full capacity in off-peak hours and were more than 80 percent full the majority of the day. *Id.* This oversupply of taxis at the airport led to an average driver wait time of 90 minutes to two hours during peak times, and up to three hours at less busy times. *Id.* When lots are full, taxis unable to enter the lots often circle waiting for a spot to open up, contributing to congestion at SFO. *Id.* The Taxi Pickup Regulations reduce this oversupply and congestion by prohibiting one class of medallion holders (Pre-K medallions) from picking up at the airport, and reducing the incentives that another class of medallion holders (Post-K medallions) have to cluster in the holding lots awaiting a fare. The end goal is to reduce the concentration of taxis at the airport and to relieve the congestion this concentration of taxis causes on airport roadways. The district court, once again, agreed that this is one of the Taxi Pickup Regulations' legitimate aims. ER17-18.

In creating the classifications necessary to achieve its ends, the City acted rationally in distinguishing among the classes of medallion holders based on their pertinent differences. Even if the groups of medallion holders are similarly

situated, at a minimum they are still different in ways that show why SFMTA's classifications are not "arbitrary and irrational." *Pension Benefit Guar. Corp.*, 467 U.S. at 729. As the district court recognized, it is the Purchased "medallion holders who have been disproportionately crushed by the industry downturn." ER17; *see also* pp. 6-7, *supra*. As described above, Plaintiffs admit that Purchased medallion holders have suffered unique injuries in light of the amount of money they spent to obtain their medallions, the loan payments they must continue to make, and the relatively short time they have had to make a return on their initial investment. *See* pp. 20-22, *supra*. It is this group that SFMTA chose to allow priority access to the finite resource of taxi pickups at SFO.

There is nothing unconstitutional about this judgment. As this Court has previously made clear, "where a group possesses distinguishing characteristics relevant to interests the State has the authority to implement, a State's decision to act on the basis of those differences does not give rise to a constitutional violation." *Rancho de Calistoga v. City of Calistoga*, 800 F.3d 1083, 1094 (9th Cir. 2015) (quoting *Equity Lifestyle Props., Inc. v. Cty. of San Luis Obispo*, 548 F.3d 1184, 1195 (9th Cir. 2008)) (internal quotation marks omitted). That is precisely what San Francisco has done here.

Allocating a revenue source to an economically disadvantaged group, alleviating taxi congestion on airport property, and managing taxi supply throughout the City are quintessential examples of "legitimate state purposes," as the district court properly found. ER17. The Regulations further all three of these legitimate state interests. "That," as the district court succinctly stated, "is the end of it." ER18.

But if more were needed, it can be found in the number of appellate decisions across the country that have rejected constitutional challenges to taxicab industry regulations that, like the Taxi Pickup Regulations, "foster enhanced

competition within the taxicab industry . . . increase the level and quality of taxicab service available to the public for other than city airport departure trips, and . . . promote more efficient utilization of taxicabs." *Greater Houston Small Taxicab Co. Owners Ass'n v. City of Houston*, 660 F.3d 235, 240 (5th Cir. 2011). The Fifth Circuit has found constitutional a taxi permitting scheme that favored larger taxi companies and gave smaller companies fewer opportunities to qualify for newly available taxi permits. *Id.* The Eighth Circuit has upheld a taxi permitting ordinance that privileged older taxi companies and purportedly had the effect of excluding new entrants to the taxi market. *Kansas City Taxi Cab Drivers Ass'n LLC v. City of Kansas City, Mo.*, 742 F.3d 807, 808-09 (8th Cir. 2013). And perhaps most importantly, the Sixth Circuit upheld the City of Cleveland's decision to restrict taxi service at the Cleveland Hopkins International Airport by allowing only certain cab companies to make pickups.[6] *Sisay v. Smith*, 310 F. App'x 832, 841-44 (6th Cir. 2009). The court found that this restriction furthered the City of Cleveland's desire to address complaints about poor taxi service at the airport. *Id.* at 835-36. These complaints stemmed from "an oversupply of cabs in the queue—an oversupply that led to immense competition over fares, rude and aggressive behavior among the cab drivers, and unhappy if not irate customers." *Id.* at 836. The circumstances Cleveland sought to address echo those SFMTA wished to resolve here: a situation "where you would have over a hundred, maybe almost 200 taxicabs in the taxi queue at a given time; if you're a taxi driver, you might get two fares in one day. And so you wait three hours for a fare." *Id.* Restricting use of the "outbound queue" at the airport would help alleviate these

[6] Plaintiffs attempt to distinguish the *Greater Houston* and *Kansas City* cases by arguing that those cases involved "legitimate goals of fostering competition and increasing the level and quality of taxi service in the city"—concerns that Plaintiffs claim "do not exist here." AOB 40 n.5. But Plaintiffs' assertion is patently false, as the record demonstrates that the City enacted the Regulations in part to improve the amount and quality of taxi service in the City proper. ER40; SER75.

issues. *Id.* at 839. The Sixth Circuit found this restriction consistent with federal due process and equal protection principles. *Id.* at 841-44. The same is true of SFMTA's decision to restrict access to the outbound taxi line at SFO.

3. The City Is Not Engaged In Prohibited Economic Protectionism.

Plaintiffs' chief objection to the Taxi Pickup Regulations is that SFMTA's goal of reducing the economic burdens on Purchased medallion holders purportedly amounts to "economic protectionism for the sake of protectionism," which Plaintiffs claim is unlawful under *Merrifield v. Lockyer*, 547 F.3d 978 (9th Cir. 2008). AOB 30-33. This Court should reject this argument, as the district court did (ER18), because *Merrifield* is inapposite for at least three reasons. First, *Merrifield* concerned a licensing scheme that was so internally incoherent that it could not possibly be sustained as rational. The Taxi Pickup Regulations do not come close to resembling the scheme the Court invalidated in *Merrifield*. Second, the Taxi Pickup Regulations are an effort to draw lines when allocating a scarce resource—a quintessentially regulatory activity that differs fundamentally from the permitting scheme at issue in *Merrifield*. And finally, even if *Merrifield* did announce a broad prohibition on "mere economic protectionism for the sake of economic protectionism" (AOB 31-32 (quoting *Merrifield*, 547 F.3d at 991 n.15)), the Taxi Pickup Regulations were not enacted for the sake of economic protectionism, but instead serve several additional government interests. ER18.

a. The City's Aims Are Not Incoherent and Contradictory, As The State's Were In *Merrifield*.

The *Merrifield* decision involved a "unique set of facts," *Allied Concrete & Supply Co. v. Baker*, 904 F.3d 1053, 1065-66 (9th Cir. 2018), dissimilar from those at issue here and which Plaintiffs do not set forth fully in their brief, AOB 30-31. The plaintiff in *Merrifield* challenged a state licensing scheme that imposed permitting requirements on exterminators. 547 F.3d at 980-81. The plaintiff

brought both substantive due process and equal protection challenges to the licensing scheme. *Id.* at 980-81, 987-88.

The substantive due process claim was premised on the argument that applying the scheme to exterminators who did not use pesticides was arbitrary and irrational insofar as it required applicants to demonstrate their familiarity with pesticides and pesticide-based extermination techniques. *Id.* at 987-88. This Court rejected the due process challenge, holding that even though the plaintiff and other non-pesticide exterminators did not use pesticides, they would still encounter pesticides in the course of their work. *Id.* at 988. Thus, the licensing scheme furthered the State's proffered public safety interest in "requiring persons who do not use pesticides to learn about the risks of pesticides . . . because persons like [plaintiff] work in environments where they may be exposed to pesticides that have been applied previously and left on-site." *Id.*

The *Merrifield* plaintiff also brought an equal protection challenge to certain exemptions in the licensing scheme that distinguished among non-pesticide exterminators. *Id.* at 981. The law exempted exterminators targeting bats, raccoons, skunks, and squirrels from the licensing requirements, but did not exempt professionals (like the plaintiff) who worked with mice, rats, or pigeons. *Id.* at 981-82. The Court found this classification irrational because it contravened the justification that the State had offered in defending the licensing scheme itself: ensuring familiarity with pesticides in furtherance of public safety. *Id.* at 991. The record showed that the exempted non-pesticide exterminators of bats, raccoons, skunks, and squirrels were more likely to encounter pesticides in the course of their work than non-pesticide exterminators dealing with mice, rats, and pigeons. *Id.* The classification was thus impossible to square with the purported reason for the licensing scheme's very existence. So, this Court held that "[w]e cannot simultaneously uphold the licensing requirement under due process based on one

rationale and then uphold [plaintiff's] exclusion from the exemption based on a completely contradictory rationale." *Id.* The Court declined to "undercut[] the principle of non-contradiction," and thus found that the classification could not be connected to a legitimate governmental interest. *Id.* The Court's observation in a footnote that "mere economic protectionism for the sake of economic protectionism . . . cannot be said to be a legitimate governmental interest" flowed from its conclusion that the classification at issue was "irrational." *Id.* at 991-92 & n.15.

The Taxi Pickup Regulations are not remotely analogous to the licensing scheme struck down in *Merrifield*. The Regulations are neither incoherent nor internally inconsistent, and Plaintiffs do not and cannot argue that SFMTA has pointed to irreconcilable justifications for different aspects of the Regulations. Thus, even though the Regulations seek in part to provide financial support for an economically disadvantaged group—Purchased medallion holders—that goal is not similar to the one the Court struck down in *Merrifield*. The problem in *Merrifield* was not the economic nature of the State's classification—it was the absence of any logical interest that the classification could potentially advance.

The district court is not alone in declining to apply *Merrifield* to economic classifications like those at issue here. Indeed, though *Merrifield* was decided more than a decade ago, neither this Court nor any other has relied on it since to strike down a government classification. To the contrary, this Court and others have repeatedly rebuffed plaintiffs who invoke *Merrifield* in bringing equal protection challenges to economic regulations. *Allied Concrete & Supply Co.*, 904 F.3d at 1065-66; *Speed's Auto Servs. Grp., Inc. v. City of Portland*, 685 F. App'x 629, 630 (9th Cir. 2017); *A.J. Cal. Mini Bus, Inc. v. Airport Comm'n of the City & Cty. of San Francisco*, 148 F. Supp. 3d 904, 917 (N.D. Cal. 2015); *Mayfair House, Inc. v. City of West Hollywood*, No. CV 13-7112-GHK, 2014 WL 12599838, *7

(C.D. Cal. May 4, 2014); *Dairy v. Bornham*, No. 13-1518-EMC, 2013 WL 3829268, *7 (N.D. Cal. July 23, 2013). This Court should do the same here.

b. *Merrifield* Involved A Licensing Scheme, Not The Allocation Of A Finite Resource.

Further, *Merrifield* and the handful of other cases Plaintiffs cite (AOB 31), also differ from the Taxi Pickup Regulations in another fundamental way: They concern professional licensing schemes. *Merrifield*, 547 F.3d at 982; *St. Joseph Abbey v. Castille*, 712 F.3d 215, 218 (5th Cir. 2013) (regulating casket sales). The Taxi Pickup Regulations are categorically different: They control access to a limited resource. The record shows SFO has a finite number of spaces available to accommodate taxis onsite. *See* p. 22, *supra*. And more taxis seek to access those spaces each day than the airport can accommodate. *Id.* In these circumstances, San Francisco has no choice but to engage in regulatory line-drawing to allocate taxis' access to pickups at SFO. *Merrifield* does not undercut the significant constitutional latitude San Francisco has in deciding how to draw that line. *See, e.g., U.S. R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 179 (1980); *Minnesota*, 449 U.S. at 464.

c. The City Is Not Engaged In "Mere Economic Protectionism."

Finally, even if *Merrifield* were "precisely on point" (AOB 30), its prohibition on "mere economic protectionism for the sake of protectionism" would not apply here because San Francisco is neither engaged in *mere* economic protectionism nor protectionism *for its own sake*. *Merrifield*, 547 F.3d at 991 n.15.

As the district court held, *Merrifield* potentially applies only to the extent that legislation has economic protectionism as its sole, exclusive aim. ER18. But the Taxi Pickup Regulations do not *merely* have the goal of benefiting Purchased medallion holders. The Regulations further at least two additional legitimate

government interests: reducing taxi congestion at the airport and increasing the City's taxi supply. *See* pp. 21-22, *supra*.

And to the extent that the Regulations aim to protect a vulnerable economic group, they do not engage in any such protectionism *for its own sake*. There is no indication that SFMTA enacted the Regulations in order to "grant[] favors to politically important actors." *Allied Concrete & Supply Co.*, 904 F.3d at 1064 (distinguishing *Merrifield*). Rather, any economic benefit Purchased medallion holders receive is in furtherance of SFMTA's goal of maintaining a vital taxi industry by preventing foreclosures. Plaintiffs have admitted that this is one of the goals of the Regulations. ER28; *see also* SER26. Foreclosures withdraw these medallions from the market and threaten the size and stability of the taxi industry more generally. SER40. In redirecting an economic benefit to Purchased medallion holders, SFMTA sought to stem the tide of foreclosures and therefore reduce further harm to the industry. SER16. This Court has already confirmed that regulations like these—which give an economic benefit in furtherance of a broader municipal goal—do not amount to "mere economic protectionism." *See Speed's Auto Servs. Grp.*, 685 F. App'x at 630. The City's interest in "maintaining a healthy and well-functioning transportation market" is legitimate, and Regulations designed to achieve that are constitutional. *Id.*

C. None Of Plaintiffs' Other Arguments Show The Taxi Pickup Regulations Are Unconstitutional.

Plaintiffs also proffer a variety of different reasons why the Taxi Pickup Regulations are unconstitutional. All of these arguments lack merit as well.

1. SFMTA May Constitutionally Privilege Purchased Medallion Holders.

Plaintiffs complain that the Taxi Pickup Regulations will privilege Purchased medallion holders to the detriment of other medallion holders. AOB 33. Plaintiffs argue that Pre-K medallion holders, in particular, will suffer economic

harm from the Regulations. AOB 20; ER24. Even accepting these arguments as true, they do not change the result. "Rational basis scrutiny simply does not require that legislation which furthers one Congressional goal have no adverse side effects." *Munoz*, 930 F.2d at 1406. As this Court has recognized, "[a] classification does not fail rational-basis review because . . . in practice it results in some inequality." *Aleman v. Glickman*, 217 F.3d 1191, 1201 (9th Cir. 2000) (internal citations omitted). That rule makes particular sense here, where San Francisco is engaging in regulatory line-drawing to allocate a scarce resource. *See* p. 28, *supra*. Regulators like SFMTA "must necessarily engage in a process of line-drawing." *Fritz*, 449 U.S. at 179. This process "inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line, and the fact that the line might have been drawn differently . . . is a matter for legislative, rather than judicial, consideration." *Id.* (internal quotation marks and citation omitted).

2. Whether The Regulations Will Accomplish SFMTA's Goals Is Irrelevant.

Further, Plaintiffs argue that although SFMTA enacted the Regulations to reduce taxi congestion and encourage the growth of taxi supply in the City proper, the Regulations will not have these effects. AOB 34-38. Thus, Plaintiffs claim that the district court's conclusions are "unsupported by the record." AOB 36.

But these arguments are entirely irrelevant to the Court's constitutional inquiry. As the Supreme Court has admonished many times, evidence of a classification's effectiveness does not bear on its constitutionality under rational basis review. *Heller*, 509 U.S. at 320 (the government "has no obligation to produce evidence to sustain the rationality of a statutory classification"); *F.C.C.*, 508 U.S. at 315 (legislative choices are "not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data").

SFMTA's determination that the Regulations will have the intended effects "does not require empirical data to sustain it against rational basis challenge." *Int'l Franchise Ass'n v. City of Seattle*, 803 F.3d 389, 407 (9th Cir. 2015); *Minnesota*, 449 U.S. at 466 ("Whether *in fact* the Act will promote more environmentally desirable milk packaging is not the question: The Equal Protection Clause is satisfied by our conclusion that the Minnesota Legislature *could rationally have decided* that its ban on plastic nonreturnable milk jugs might foster greater use of environmentally desirable alternatives."). Plaintiffs do not point to a single case that contravenes this established authority. Thus, their quibbling with whether the Taxi Pickup Regulations will in fact accomplish their aims does not matter.

In any case, Plaintiffs appear to misunderstand the Regulations' intended effects. Plaintiffs complain the Regulations will reduce the size of the taxi fleet altogether, and therefore will not have the effect of increasing taxi supply in the City. AOB 34-35. But the Regulations are designed to reduce foreclosures and therefore *prevent* the number of medallions on the streets from dwindling further. *See* p. 29, *supra*. Plaintiffs also argue that TNCs like Uber and Lyft are causing congestion at the airport, not taxis. AOB 37. But Plaintiffs ignore that the Regulations aim to reduce *taxi* congestion related to overflowing holding lots used for taxis exclusively. *See* p. 22, *supra*. Finally, Plaintiffs argue that the Airport Commission, not SFMTA, has the exclusive authority to manage congestion at the airport. AOB at 38. But this is incorrect: the Transportation Code gives SFMTA this precise authority. S.F. Transp. Code § 1109(e)(2) ("The Director of Transportation may impose restrictions on the types of Medallions authorized to operate a taxicab trip originating at the San Francisco International Airport for the purpose of alleviating congestion."). None of Plaintiffs' assertions undercut the Regulations' validity.

3. "Pretext" Plays No Role In The Court's Analysis.

Plaintiffs also claim that SFMTA's congestion and taxi-supply justifications are pretext for the City's purportedly impermissible desire to "prop up" Purchased medallion holders, and in turn, avoid liability in the Credit Union's lawsuit against the City. AOB 33, 38-39. But this argument presupposes that giving Purchased medallion holders economic relief is unlawful, which is incorrect. *See* pp. 25-29, *supra*. Even if it were unlawful, Plaintiffs' pretext argument would still fail. Once again, the Supreme Court and Ninth Circuit have spoken on this point: The idea of pretext plays no role in rational basis analysis. *See, e.g.*, *Flemming v. Nestor*, 363 U.S. 603, 612 (1960) (whether proffered justification actually motivated legislature is "constitutionally irrelevant"); *Jackson Water Works, Inc. v. Pub. Util. Comm'n of State of Cal.*, 793 F.2d 1090, 1094 (9th Cir. 1986) (similar).[7]

This Court's decision in *RUI One Corporation v. City of Berkeley*, 371 F.3d 1137 (9th Cir. 2004), is instructive here. In that case, the plaintiff in an equal protection challenge argued that the City Council's decision to enact a living wage ordinance was motivated not by a legitimate government interest in reducing poverty, but instead by an impermissible desire to help a unionization campaign. *Id.* at 1155. This Court rejected this argument because "it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature." *Id.* (internal quotations and citations omitted).

And regardless, the Regulations would be no less constitutional even if they were motivated by concerns related to the City's possible liability in the Credit Union lawsuit. AOB 33. Protecting the public fisc is a legitimate goal. *Lyng v.*

[7] Plaintiffs cite two cases arising in the different context of a "class of one" equal protection challenge. AOB at 38-39 (citing *Engquist v. Oregon Dep't of Agric.*, 478 F.3d 985 (9th Cir. 2007); *Prime Healthcare Servs., Inc. v. Harris*, 216 F. Supp. 3d 1096 (S.D. Cal. 2016)). As Plaintiffs admit (AOB 38), these cases involve selective enforcement of the law, not a constitutional challenge to an economic regulation, and are therefore irrelevant.

Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am., UAW, 485 U.S. 360, 373 (1988); *see also Sierra Medical Servs. All. v. Kent*, 883 F.3d 1216, 1227 (9th Cir. 2018) (affirming Medi-Cal reimbursement program that favors public over private providers because "[s]teering more Medi-Cal spending toward public providers is . . . in the state's fiscal interest").

4. SFMTA Has Not Acted With Unconstitutional Animus.

Finally, and relatedly, Plaintiffs suggest that SFMTA's privileging of Purchased medallion holders because of their comparatively dire economic circumstances is tantamount to unconstitutional animus toward other medallion holders. Plaintiffs cite cases in which courts detected animus and invalidated a law. AOB 25, 39-40 (citing *Dragovich v. U.S. Dep't of Treasury*, 848 F. Supp. 2d 1091, 1099-1100 (N.D. Cal. 2012) (striking down federal Defense of Marriage Act); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 450 (1985) (striking down law discriminating against mentally disabled)).

This is a familiar, frequently rejected argument in equal protection cases. *See, e.g., Gallinger*, 898 F.3d at 1021 (rejecting equal protection challenge to law prohibiting possession of firearms on school grounds). "Accommodating one interest group is not equivalent to intentionally harming another." *Id.* The court in another taxi case explained the difference:

> Flywheel has not presented any case holding that favoritism by the legislature or government agency afforded to one segment of commerce over another is equivalent to legislation motivated by animus . . . . Animus is ill will or hostility . . . and is not simply the converse of favoritism toward another. As the Court noted at the hearing, legislators often favor[] one industry or segment of commerce over another; yet such economic regulation is historically the kind of legislation that is subject to the most deferential form of rational basis review . . . . Simply put, Flywheel has not offered any authority establishing that favoring one part of an industry amounts to disfavoring another out of malice or spite.

Desoto CAB Co., Inc. v. Picker, 228 F. Supp. 3d 950, 959 (N.D. Cal. 2017), *aff'd*, 714 F. App'x 783 (9th Cir. 2018). Plaintiffs cannot plausibly compare the Regulations to laws targeting historically disfavored groups.

And in any case, the concept of animus does not come into play when a classification serves a legitimate interest, as the Regulations do. *See* pp. 20-25, *supra*. A finding of animus requires that a law further no legitimate government interests. *Gallinger*, 898 F.3d at 1021. The existence of legitimate governmental interests is alone enough defeat Plaintiffs' animus charge.

5. Plaintiffs' Bare Assertions Of Irrationality Are Irrelevant.

Finally, Plaintiffs repeatedly make the conclusory assertion that the Taxi Pickup Regulations are "simply irrational" and "cannot possibly be in furtherance of a legitimate governmental interest." AOB 29, 33. These bare assertions are insufficient to survive a Rule 12 motion. *Iqbal*, 556 U.S. at 678; *Mahoney v. Sessions*, 871 F.3d 873, 877 (9th Cir. 2017). The district court properly rejected them. ER18.

II. SFMTA's "No Project" Determination Complied With CEQA, And Plaintiffs Failed To Exhaust Their CEQA Claims.

Plaintiffs contend the Taxi Pickup Regulations will harm the environment because they will encourage taxis with Purchased medallions to drive to the airport without passengers, while taxis with Pre-K and Post-K medallions will return to the City empty after dropping fares at SFO. "The bottom line is that there is going to be an increase in taxis without passengers driving to and from the airport, and that will both increase traffic and (despite San Francisco's efforts to reduce carbon emissions in its taxi fleet) affect the environment." AOB 42-44. Plaintiffs challenge San Francisco's determination that the Taxi Pickup Regulations are "not a project" under CEQA, and therefore not subject to environmental review.

A. San Francisco's "No Project" Determination Was Proper.

A "project" under CEQA is "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" undertaken, assisted or authorized by a public agency. 14 Cal. Code Regs. ("CEQA Guidelines") § 21065(a).

After the district court entered judgment in this case (but before Plaintiffs filed their opening brief in this Court), the California Supreme Court issued its opinion in *Union of Medical Marijuana Patients, Inc. v. City of San Diego*, 7 Cal. 5th 1171 (2019) ("*UMMP*"). The California Supreme Court reversed the court of appeal decision in that case, on which Plaintiffs rely. AOB 41-43. In *UMMP*, the court delivered a comprehensive overview of CEQA procedures. A government agency implements CEQA through a three-tier decision tree.

> First, the agency must determine whether the proposed activity is subject to CEQA at all. Second, assuming CEQA is found to apply, the agency must decide whether the activity qualifies for one of the many exemptions that excuse otherwise covered activities from CEQA's environmental review. Finally, assuming no applicable exemption, the agency must undertake environmental review of the activity, the third tier.

Id. at 1185 (citing *Muzzy Ranch Co. v. Solano Cty. Airport Land Use Comm'n.*, 41 Cal. 4th 372, 380-81 (2007)). The first tier "requires the agency to conduct a preliminary review to determine whether the proposed activity constitutes a 'project' for purposes of CEQA." *Id.* The decision provided detailed guidance how to conduct the first tier inquiry whether a particular action qualifies as a "project."

> … [A] proposed activity is a CEQA project if, by its general nature, the activity is capable of causing a direct or reasonably foreseeable indirect physical change in the environment. This determination is made without considering whether, under the specific circumstances in which the proposed activity will be carried out, these potential effects will actually occur. Consistent with this standard, a "reasonably foreseeable" indirect physical change is one that the activity is capable, at least in theory, of causing. (Guidelines, § 15064, sub. (d)(3).) Conversely, an indirect effect is not reasonably foreseeable if

> there is no causal connection between the proposed activity and the suggested environmental change or if the postulated causal mechanism connecting the activity and the effect is so attenuated as to be "speculative."

Id. at 1197.

In *UMMP*, the action under review was a zoning ordinance authorizing the establishment of medical marijuana dispensaries and regulating their location and operation. The court described the "general nature" of the action as a zoning amendment "to permit the establishment of a sizable number of retail businesses of an entirely new type." *UMMP*, 7 Cal. 5th at 1199. The zoning amendment in *UMMP* was a CEQA "project," because "such a policy change could foreseeably result in new retail construction to accommodate the businesses," and "the establishment of new stores could cause a citywide change in patterns of vehicle traffic from the businesses' customers, employees, and suppliers." *Id.*

In this case by contrast, the general nature of the action is *not* capable of causing a direct or reasonably foreseeable indirect physical change in the environment. The "general nature" of the Taxi Pickup Regulations is a taxi rule allocating priority rights among various categories of San Francisco's taxis to pick up a certain category of fare. Taxis, by definition, are plying the streets and highways when working. These Regulations do not create more fares or authorize additional taxis, but simply establish priority among existing taxis to pick up existing fares. Reallocating existing fares among existing taxis cannot possibly create significantly more traffic or significantly impact air quality. San Francisco's "no project" determination was therefore correct.

Moreover, San Francisco has a clean taxi fleet, mandating hybrid and electric vehicles. S.F. Transp. Code § 1106(m). There are approximately 1,800 authorized taxi medallions overall. SER8-9. When SFMTA enacted the Regulations, there were 828 Pre-K and Post-K medallions. SER9. These are the

medallion categories that Plaintiffs predict will be encouraged to return to the City empty after dropping fares at SFO. There were 560 Purchased medallions, SER9-10, which Plaintiffs predict will be encouraged to drive empty to SFO to take advantage of the priority pickup line. Compared to traffic volumes on the 101 freeway, any impact of modified behavior by these few hundred clean air vehicles on traffic or air quality is necessarily infinitesimal.

Plaintiffs also make a second procedural CEQA argument. Plaintiffs complain San Francisco "never conducted a preliminary review to determine whether its proposed rule changes were a 'project' requiring CEQA review. . . . Instead, staff made a cursory conclusion that the rule changes were not a 'project' without undergoing any study to determine the effects on traffic, congestion[,] air pollution, etc." AOB 41-42.

CEQA does not specify any format or procedure for the tier-one "preliminary review." CEQA Guidelines § 15060. This contrasts sharply with the "initial study," which CEQA requires *after* the "preliminary review" for projects that are not eligible for a CEQA exemption. CEQA specifies format, content, and procedure for conducting the "initial study." *Id.* § 15063. "The somewhat abstract nature of the project decision is appropriate to its preliminary role in CEQA's three-tiered decision tree. Determination of an activity's status as a project occurs at the inception of agency action, presumably before any formal inquiry has been made into the actual environmental impact of the activity." *UMMP*, 7 Cal. 5th at 1197-98.

The Court should reject Plaintiffs' procedural objection to San Francisco's "no project" determination.

B. Plaintiffs Failed To Exhaust Their CEQA Claims.

Plaintiffs do not address the alternative ground for affirmance that San Francisco presented below. CEQA plaintiffs must present their CEQA arguments

during administrative proceedings before they may present those arguments to the courts. San Francisco explained to the district court that Plaintiffs failed to satisfy CEQA's administrative exhaustion requirement. Dkt. Nos. 12, 38.

A CEQA plaintiff bears the burden of demonstrating exhaustion of administrative remedies. *Bridges v. Mt. San Jacinto Cmty. Coll. Dist.*, 14 Cal. App. 5th 104, 116 (2017); *Sierra Club v. City of Orange*, 163 Cal. App. 4th 523, 526 (2008). CEQA imposes two distinct and separate mandatory administrative exhaustion requirements on a plaintiff. First, the alleged grounds of noncompliance with CEQA must be presented to the public agency *by any person* before the close of the public hearing on the project. Cal. Pub. Res. Code § 21177(a). Second, *the plaintiff* must have objected to the approval of the project before the close of the public hearing on the project. *Id.* § 21177(b). CEQA's exhaustion requirements are excused if the agency had no public hearing, or if the agency "failed to give the notice required by law." *Id.* § 21177(e).

A plaintiff must plead facts demonstrating he or she has exhausted administrative remedies and therefore has standing to pursue a CEQA claim in court. *E.g.*, *Tahoe Vista Concerned Citizens v. Cty. of Placer*, 81 Cal. App. 4th 577, 590-91 (2008). The exhaustion requirement—a jurisdictional prerequisite to judicial review—precludes a court from considering issues a plaintiff failed to raise at the administrative level. *See Tomlinson v. Cty. of Alameda*, 54 Cal. 4th 281, 291 (2012); *Sierra Club*, 163 Cal. App. 4th at 536.

"The essence of the exhaustion doctrine is the public agency's opportunity to receive and respond to articulated factual issues and legal theories before its actions are subjected to judicial review." *Coal. for Student Action v. City of Fullerton*, 153 Cal. App. 3d 1194, 1198 (1984). To satisfy the exhaustion requirement, the challenging party must present to the decision makers specific objections on each issue it wishes to preserve for judicial review. *See City of*

Walnut Creek v. Cty. of Contra Costa, 101 Cal. App. 3d 1012, 1019 (1980) (a challenger may not "make only a perfunctory or 'skeleton' showing in the hearing and thereafter obtain an unlimited trial de novo, on expanded issues, in the reviewing court").

> The purposes of the [exhaustion] doctrine are not satisfied if the objections are not sufficiently specific so as to allow the Agency the opportunity to evaluate and respond to them. [R]elatively . . . bland and general references to environmental matters [ ], or isolated and unelaborated comment[s] do not satisfy the exhaustion requirement. Rather, [t]he 'exact issue' must have been presented to the administrative agency. . . . Requiring anything less would enable litigants to narrow, obscure, or even omit their arguments before the final administrative authority because they could possibly obtain a more favorable decision from a trial court.

N. Coast Rivers All. v. Marin Mun. Water Dist. Bd. of Dirs., 216 Cal. App. 4th 614, 623 (2013) (internal citations and quotation marks omitted).

In this case, Plaintiffs' complaint is entirely silent as to any action to comply with either of CEQA's two exhaustion requirements. *See* ER31, 47-49. Plaintiffs nowhere assert any person raised any alleged CEQA deficiency before SFMTA. Likewise, Plaintiffs nowhere assert they personally objected to the project before SFMTA. Nor do Plaintiffs suggest any legal deficiency in SFMTA's public notice of the October 16, 2018 SFMTA Board meeting.

Plaintiffs argued below they did in fact exhaust their administrative remedies, even though they failed to plead exhaustion in their complaint. Dkt Nos. 29, 30. First, at the September 18, 2018 SFMTA Board meeting, Robert Cesana argued "you are going to increase traffic of taxis coming and going to the airport. Half will be empty going, and half will be empty coming back . . . . [I]f you go ahead with this, you are going to have to do possibly an environmental report because you are increasing the traffic on 101." *Id*. Plaintiffs identified Mr. Cesana as a "member of the Medallion Holders Association." *Id.* Second, at the October 16, 2018 SFMTA Board meeting, Charles Rathbone asserted "[t]he airport ban is

environmentally unsound. It encourages or forces hundreds of inefficient deadhead trips back and forth between the airport every day." *Id.* Mr. Rathbone identified himself as "a Medallion holder at Luxor Cab." *Id.*

The arguments Plaintiffs asserted in briefing below, even if pleaded, would fail CEQA's "exact issue" exhaustion requirement. Plaintiffs' complaint asserts the Taxi Pickup Regulations will cause increased greenhouse gas emissions and TNC congestion at SFO. ER33-34, 48-49. But Mr. Cesana and Mr. Rathbone's environmental concerns were limited to increased *taxi* traffic on the 101. Plaintiffs' silence during the administrative process as to greenhouse gas emissions and TNC congestion is fatal as to CEQA's "exact issue" requirement. Moreover, these comments are bland, general, isolated, and unelaborated—exactly the type of comment that is insufficient to satisfy exhaustion. See *N. Coast Rivers All.*, 216 Cal. App. 4th at 623.

Plaintiffs failed to show any of the individual plaintiffs—Patrick O'Sullivan, Sai Lee or George Horbal—made any environmental objections to the SFMTA Board. Nor did Plaintiffs ever suggest any representative of plaintiffs Alliance Cab or S.F. Town Taxi Inc. made any environmental objection to the SFMTA Board. Plaintiffs have never identified a single Taxi Coalition member who objected to the SFMTA Board, much less the substance of any member's objections.

Because Plaintiffs' complaint fails to allege facts to establish exhaustion by any Plaintiff, their failure to exhaust presents an alternative ground for affirmance. Leave to amend would be futile, because Plaintiffs' additional assertions fail as a matter of law to satisfy CEQA's exhaustion requirement.

III. The District Court Properly Dismissed Plaintiffs' State-Law Age Discrimination Claim.

Finally, the district court properly rejected Plaintiffs' claim that the Taxi Pickup Regulations discriminate on the basis of age in violation of California

Government Code Section 11135(a). Notably, Plaintiffs focus their arguments primarily on the City's contention below that Plaintiffs are not able to identify a "program or activity that is . . . funded directly by the state," as Section 11135(a) requires. AOB 45-46. Plaintiffs devote starkly less attention to the district court's stated reasons for entering judgment for San Francisco on this claim: The court found that "[t]his claim can . . . be dismissed on a much more straightforward ground." ER18. "The overwhelming evidence is that the rule has been promulgated on the basis of taxicab efficiency" and supporting Purchased medallion holders. *Id.* "No evidence of discrimination on the basis of age has been put forward." *Id.* The district court noted that "[t]he entirety of plaintiffs' briefing on this claim spans less than a page and a half." *Id.* Plaintiffs devote approximately the same attention to the claim on appeal. AOB 45-47.

In any case, the district court's judgment is correct under either approach. Plaintiffs did not allege that any purported discrimination took place within a state-funded program, as Section 11135(a) requires. And even if they had, they failed to set forth sufficient allegations to substantiate a claim for age discrimination, as the district court concluded. ER18.

A. Plaintiffs Have Not Identified A State-Funded Program.

The parties agree that a claim for discrimination under Section 11135(a) requires a plaintiff to show that the discrimination occurred in connection with a state-funded program or activity. AOB 44-45. The statutory text makes this clear: a plaintiff must show that he has been denied "full and equal access to the benefits of, or unlawfully subjected to discrimination under, any program or activity that is . . . funded directly by the state." Cal. Gov't Code § 11135(a). California courts have reiterated that plaintiffs must show that any allegedly unlawful conduct occurred *in the context of a state-funded program*. *Comunidad en Accion v. Los Angeles City Council*, 219 Cal. App. 4th 1116, 1126 (2013) (granting summary

adjudication to city on Section 11135(a) claim where allegedly discriminatory decisions were not made in connection with a state-funded program or activity).

In their complaint, Plaintiffs did not identify any state-funded program at all. Plaintiffs concede that the Taxi Pickup Regulations apply specifically to SFMTA's taxi program. *See, e.g.*, ER29-35. Yet Plaintiffs did not allege that any of San Francisco's taxi-related programming receives state funding. Rather, Plaintiffs instead alleged simply that "SFMTA receives state funding, including but [sic] limited to, State Transit Assistance funds, for a variety of its transportation programs or activities." ER51. This vague allegation does not show that SFMTA's taxi-related programming receives state funding; the absence of such an allegation is alone fatal to Plaintiffs' claim.

Nevertheless, Plaintiffs persist in attempting to rewrite their complaint to identify a different "program": the San Francisco paratransit program. AOB 45-46. It is true that San Francisco receives state funding for its paratransit program, which provides transit services to people with disabilities or other health conditions. AOB45; SER 86-88. But it is not true, as Plaintiffs claim, that this state funding can be imputed to the City's taxi programming. The premise of Plaintiffs' argument is that the paratransit program "is part of the City's taxi program." AOB 46. But this is precisely backwards. The paratransit program is a separate program in which taxis may participate. S.F. Transp. Code § 1105(a)(11). Taxis provide only a small component of paratransit services; rather, ADA-compliant shared vans provide the bulk of San Francisco paratransit trips. SER87-88. That paratransit services receive state funding does not transform the taxi medallion program into a state-funded program.

And even if Plaintiffs had identified a state-funded program, they concede that taxi medallion holders are *not* the intended beneficiaries of that program. AOB 46. Individuals who are not the beneficiaries of a state-funded program lack

standing to invoke that program under Section 11135(a). *See Blumhorst v. Jewish Family Servs. of Los Angeles*, 126 Cal. App. 4th 993, 1003 (2005) (plaintiff in Section 11135 action must allege personal injury). In any case, Plaintiffs are wrong to argue that the Taxi Pickup Regulations will harm the paratransit program. San Francisco's paratransit program does not operate at SFO, and will not be impacted by any changes to pickups there. SER100.

B. Plaintiffs Failed To Allege Sufficient Facts To State An Age Discrimination Claim.

In any event, even if Plaintiffs had alleged the existence of a state-funded program, Plaintiffs are wrong that the district court was required to "address the merits of this claim" by allowing it to proceed. AOB 47. The district court's rejection of Plaintiffs' age discrimination claim is simply a straightforward application of the typical burden-shifting framework that applies to such claims. *Darensburg v. Metro. Transp. Comm'n*, 636 F.3d 511, 518-19 (9th Cir. 2011) (applying federal age discrimination burden-shifting framework to Section 11135(a) claim). Under that framework, Plaintiffs' claim suffered from two insurmountable flaws. First, Plaintiffs did not make out a prima facie case of disparate impact. Plaintiffs perfunctorily alleged that Pre-K and Post-K medallion holders are "on average significantly older" than Purchased medallion holders. ER51. As the district court noted, Plaintiffs merely alleged an "age gap" by showing that the average age of a medallion holder is 61, while the average age of Pre-K medallion holders is 74. ER18; *see also* ER51. But both federal and California courts have made clear that allegations like these are insufficient. The fact that the "average age" of an affected group is higher than the average age of an unaffected group does not suggest an unlawful disparate impact. *Katz v. Regents of the Univ. of Calif.*, 229 F.3d 831, 833-34 (9th Cir. 2001); *see also Darensburg*, 636 F.3d at 514-15. Similarly, the "mere fact that each person affected by a

practice or policy is also a member of a protected group does not establish a disparate impact." *Carter v. CB Richard Ellis, Inc.*, 122 Cal. App. 4th 1313, 1324-25 (2004). Plaintiffs' bare allegations about the age of Pre-K medallion holders are not enough under this precedent—particularly since, as the district court noted, Pre-K medallion holders are not significantly older than the members of other medallion classes. ER18.

Second, even if Plaintiffs had made out a prima facie case of disparate impact, the district court properly dismissed the claim because "[t]he overwhelming evidence is that the rule has been promulgated on the basis of taxicab efficiency" and providing aid to Purchased medallion holders. ER18. Despite Plaintiffs' criticisms (AOB 46), the district court properly considered allegations about the Regulations' purposes in rejecting Plaintiffs' discrimination claim. Age-discrimination plaintiffs fail to state a valid claim where a government action was based on "reasonable factors other than age." *See Smith v. City of Jackson, Miss.*, 544 U.S. 228, 241 (2005); *see also Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1291 (9th Cir. 2000) (defendant can refute age discrimination claim by "establishing that the challenged practice was based on legitimate business reasons"). Here, the district court had already determined that the Regulations seek to solve various problems SFMTA wished to address. ER18. Thus, Plaintiffs could not show the Regulations were in fact a veiled attempt to accomplish "discrimination on the basis of age." *Smith*, 544 U.S. at 241. The district court properly entered judgment for the City on this cause of action.

CONCLUSION

For the reasons offered above, this Court should affirm the judgment of the district court.

Dated: January 27, 2020

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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Dated: January 27, 2020

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UNITED STATES COURT OF APPEALS
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Pamela Cheeseborough