No. 21-55395

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LA ALLIANCE FOR HUMAN RIGHTS, et al.

Plaintiffs-Appellees,

v.

CITY OF LOS ANGELES, et al.

Defendants-Appellants.

Appeal From The United States District Court
Central District of California, Case No. 2:20-cv-02291
Hon. David O. Carter

EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 FOR STAY PENDING APPEAL

RELIEF REQUESTED BY MAY 3, 2021

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Facts showing the existence and nature of the emergency:

On March 5, 2021, Plaintiffs filed a notice of intent to file a motion for preliminary injunction. [Dkt. 240.] On March 29, the County of Los Angeles ("County") filed a motion to dismiss. [Dkt. 256-260.] On April 12, Plaintiffs filed a motion for preliminary injunction, and the next day the district court informed Plaintiffs that no reply would be necessary. [Dkt. 265, 266.] On April 19, Defendants and Intervenors Cangress and Los Angeles Catholic Worker ("Intervenors") each filed an opposition to the Plaintiffs' motion. [Dkt. 269-275.]

On April 20, less than 24 hours later, the district court issued a 110-page mandatory injunction. [Dkt. 277.] The district court ordered extraordinary relief that, if implemented, would severely hinder the County's current efforts to address the homelessness crisis. Among other things, the mandatory injunction: (i) decrees the cessation of sales and transfers of any (not yet identified) County property that could be used for housing and sheltering people experiencing homelessness

("PEH"); (ii) orders the County to divert its resources from helping homeless people across the County (over 40,000), and focus them on sheltering or housing for PEH living in Skid Row (about 2,000); and (iii) directs the County to audit all funds received from local, state, and federal entities, along with any funds committed to mental health and substance use disorder treatment. Deadlines started on April 23, 2021 and continue for the next 120 days.

On April 21, 2021, the County appealed. On April 22, 2021, the district court issued a "clarification" that (i) certain directives in the injunction apply to "*all* districts in the City and County and are not limited in any way to Skid Row"; and (ii) the cessation of sales and transfers of County/City property "does not apply to projects in progress as of the date of the order." [Dkt. 279.]

On April 23, 2021, the County filed an *ex parte* application for a stay pending appeal. [Dkt. 282.] On April 25, the district court granted in part, and denied in part, the application. [Dkt. 287.] The court *temporarily* stayed the provision of the injunction that restrains the County from "sales, transfers by lease or covenant" of its real property. [*Id*. at 13.] The court left in place all other directives to the County.

The court also issued *new* directives in the stay ruling. It set a May 27, 2021 evidentiary hearing on "structural racism" and "what [City and County] properties are available for homelessness relief." [*Id*. at 14.] The district court added an

admonition: "[w]ithout a global settlement, the Court will continue to impose its April 20, 2021 preliminary injunction, subject to certain modifications in response to the City and County's Applications to Stay Pending Appeal (Dkts. 282, 284)[.]" [*Id*. at 10.][1]

An immediate stay is necessary. The district court issued an injunction that is procedurally defective and legally erroneous. The injunction fundamentally contravenes the constitutional separation of powers by usurping the role and function of municipal officials. The district court has disregarded the limits of its power, second-guessed voter-endorsed initiatives, and substituted its judgment for the judgment of elected officials and policy experts, and has created disruption, displacement, and confusion.

When and how counsel notified:

On April 27, 2021, the undersigned counsel notified counsel for all parties by email of the County's intention to file this motion. Plaintiffs stated they would oppose the motion. Intervenors and Defendant City of Los Angeles stated they would not oppose. Service will be effected by electronic service through the CM/ECF system.

[1] Plaintiffs wrote to the County on April 27, 2021, stating that they believed the stay order reopened the injunction. It did not. The district court did not indicate any willingness to vacate the injunction. All the court did was *temporarily* stay (until May 27, 2021) one of many directives against the County, while reiterating that it would continue to impose its injunction.

Submissions to the district court:

In accordance with Federal Rule of Appellate Procedure 8(a)(1)(A), the County requested a stay from the district court on April 23, 2021. The district court granted in part, and denied in part, the request for a stay on April 25, 2021. Fed. R. App. P. 8(a)(2)(A)(ii).

Decision requested by:

A decision on the motion for a stay pending appeal is requested by May 3, 2021. The deadlines in the injunction have already started running and the County has already had to respond to the district court's inquiries. As set forth in the motion, the County would need to start making fundamental changes to its homeless services and related resources immediately if forced to comply with the terms of the district court's order. In response to the County's stay request, the district court reiterated its intention to keep the injunction in place.

DATED: April 28, 2021

MILLER BARONDESS, LLP

By: _____

MIRA HASHMALL
Attorneys for Defendant and Appellant
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I. INTRODUCTION

The preliminary injunction here goes beyond judicial activism. It assumes supervision and administration of hundreds of millions of dollars for homeless services. In essence, it seeks to put the district court in control of homeless policy in Los Angeles County.

As support, the injunction relies on 65 pages and 497 footnotes filled with newspaper articles and other inadmissible hearsay to detail the history of structural racism against African-American communities in this country. There is no evidence connecting the County of Los Angeles ("County") to structural racism or any of Plaintiffs' alleged injuries.

Plaintiffs are property owners and residents in the Skid Row area of Los Angeles. Plaintiffs created LA Alliance and sued the City of Los Angeles ("City") and the County ("Defendants") because they want "a return to clean sidewalks." In other words, they want people experiencing homelessness ("PEH") off the streets of Skid Row, regardless of how that affects PEH throughout the rest of the County.

From March 2020, when Plaintiffs filed the Complaint, to March 2021 the case was stayed. On March 29, 2021, after Plaintiffs stated their intent to seek a preliminary injunction, the County filed a motion to dismiss. On April 12, Plaintiffs filed their motion for preliminary injunction. On April 20, less than

24 hours after opposition papers were filed, the district court issued its sweeping 110-page ruling.

Following the County's notice of appeal, the district court issued clarifications, modifications, and new directives. The district court also denied the bulk of the County's application for a stay pending appeal, granting a *temporary* stay only as to one piece of the injunction. The district court attempted to backfill the record by ordering the parties to appear at a May 27, 2021 evidentiary hearing on "structural racism"—but did not vacate the injunction.

A stay pending appeal is necessary. Federal courts are tasked with adjudicating disputes between litigants. The court here has cast aside the defects in the lawsuit—including Plaintiffs' lack of standing, lack of justiciable claims, and lack of cognizable injuries—and issued extraordinary mandatory injunctive relief. The injunction contravenes Supreme Court and Ninth Circuit precedent.

The four criteria for a stay are satisfied here: *First*, the County is likely to prevail on appeal. The injunction is a procedurally defective moving target. Plaintiffs lack standing, the constitutional and state law claims fail, and the district court has usurped the legislative role of elected officials. *Second*, the County, the public, and the very PEH the injunction purports to help will be harmed absent a stay. *Third*, Plaintiffs will not be harmed by a stay. *Fourth*, the public interest mandates a stay.

It is undisputed that the County has created policies and implemented services, through substantial stakeholder engagement and multiple County departments, to help PEH. In 2015, the County created its Homeless Initiative with 47 criteria and $100 million. In 2016, it declared a local emergency and set the stage for Measure H. In 2017, Measure H was adopted by a vote of the people, generating over $350 million per year and dramatically increasing the services provided to PEH. The injunction effectively puts these services under the supervision of the district court and raises the specter of mass confusion and disruption.

There is absolutely no basis for the injunction as to the County. Its services for PEH (and others throughout the County)—effectively the safety net of health and welfare—have been ongoing and will continue so. There has been no cessation of services and there will not be any. The County is doing, and will continue to do, its job.

II. AN IMMEDIATE STAY IS WARRANTED

Four factors govern the Court's stay analysis: (1) likelihood of success on the merits; (2) irreparable injury; (3) injury to parties in the proceeding; and (4) the public interest. *Mi Familia Vota v. Hobbs*, 977 F.3d 948, 952 (9th Cir. 2020).

A. The County Is Likely To Prevail On Appeal

Likelihood of success on the merits is the "most important" factor. *Mi Familia*, 977 F.3d at 952.

1. The Injunction Is Procedurally Improper

(a) The County Did Not Have Proper Notice

A preliminary injunction may be issued "only on notice to the adverse party." Fed. R. Civ. P. 65(a)(1). This notice requirement "has constitutional as well as procedural dimensions." *Qureshi v. United States*, 600 F.3d 523, 526 (5th Cir. 2010) (citation omitted). The defendant must be given a fair opportunity to oppose the application. *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty.*, 415 U.S. 423, 432 n.7 (1974).

This injunction goes well beyond Plaintiffs' claims and requested relief. *Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631, 633 (9th Cir. 2015) (court's authority limited to "case or controversy before it"). The district court issued a 110-page order mandating extraordinary relief without the County even seeing the "facts" relied on in the Order. This is not only highly unusual, it also exceeds the court's authority and violates Rule 65(a)(1). *Qureshi*, 600 F.3d at 526 (vacating injunction for lack of notice).

(b) The Order Is Not Supported By Admissible Evidence

A preliminary injunction is not to be granted absent a clear showing by the movant on each element. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (reversing preliminary injunction because evidence was insufficient to show a likelihood of success on the merits).

The district court stated it did not rely on Plaintiffs' evidence. [Dkt. 277 at 66 n.411.] Instead, it relied on newspaper articles, editorials, and other inadmissible evidence to attack government policies dating back to 1910. [*Id*. at 9-17, 20-31.]

The County, of course, agrees that homelessness is the result of complicated, historical factors. But this case is not about solving homelessness. It is about Plaintiffs' claims for relief, and they are barely referenced in the injunction.

2. Plaintiffs Lack Standing

A plaintiff must establish standing. *Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020) (affirming denial of preliminary injunction because plaintiffs lacked Article III standing). To have Article III standing, a plaintiff must establish that (1) he/she suffered an "injury in fact"; (2) the injury is fairly traceable to the conduct of the defendant; and (3) the injury can be redressed by a federal court. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103 (1998) (citation omitted).

(a) Plaintiffs Have No "Injury In Fact"

Plaintiffs are the LA Alliance, an unincorporated association of downtown Los Angeles tax payers ("business owners, residents, and social service providers") created for the purposes of pursuing this litigation.[2] (Compl. ¶ 76.) None of the individual Plaintiffs are PEH and the Complaint does not allege that any members of LA Alliance are PEH. (*Id*. ¶¶ 76-122.)

Injuries to third parties cannot be used to support Article III standing. *Warth v. Seldin*, 422 U.S. 490, 499-500 (1975) (plaintiffs must "assert [their] own legal rights and interests, and cannot rest [their] claim to relief on the legal rights or interests of third parties").

The County moved to dismiss challenging, among other things, standing. [Dkt. 256.] In their motion, Plaintiffs—for the first time—submitted declarations from PEH who say they are members of LA Alliance, but these people are not named as plaintiffs and do not say when they joined LA Alliance or how they are involved. [Dkt. 265-2.]

The district court did not address standing in the injunction, and disregarded the County's evidentiary objections by disavowing any reliance on Plaintiffs' evidence. [Dkt. 277 at 66 n.411.] The County argued standing again in its

[2] https://www.la-alliance.org/who_we_are ("In 2019, a group of small business owners, residents, and social service providers formed an unincorporated association to pursue a lawsuit[.]")

ex parte application. [Dkt. 282.] In its April 25 order, issued *after* the County appealed, the district court reversed course and stated, incorrectly, "there are numerous homeless persons amongst the Plaintiffs." [Dkt. 287 at 3.]

These declarants are not individual Plaintiffs, or even mentioned in the Complaint. Standing cannot be generated after the fact to prop up an extraordinary injunction against local government.

(b) Plaintiffs' Alleged Injuries Are Not Traceable to the County

Plaintiffs claim injuries due to the increase of homeless encampments in Skid Row. But they cannot establish the County *caused* the increased encampments. *See Warth*, 422 U.S. at 508-10 (taxpayers lacked standing to challenge zoning regulations because the link between their increased tax burden and the alleged failure to support low-income housing was too attenuated); *Linda R.S. v. Richard D.*, 410 U.S. 614, 617-18 (1973) (plaintiff lacked standing to challenge district attorney's failure to prosecute fathers for delinquent child support because harm was not tied to prosecutorial discretion).

The injunction relies on "structural racism" as being the cause of homelessness but, true or not, utterly fails to trace it to the County.

(c) Plaintiffs' Cannot Show Redressability

Legal standards must guide the courts' exercise of equitable power. *Juliana*, 947 F.3d at 1170. "Absent those standards, federal judicial power could be 'unlimited in scope and duration,' and would inject 'the unelected and politically unaccountable branch of the Federal Government [into] assuming such an extraordinary and unprecedented role.'" *Id.* (alteration in original) (quoting *Rucho v. Common Cause*, 139 S. Ct. 2484, 2507 (2019).)

The Supreme Court has rejected interference with matters of local policy. In *Rizzo v. Goode*, 423 U.S. 362 (1976), like here, an injunction was "an unwarranted intrusion by the federal judiciary into the discretionary authority committed to [city officials] by state and local law to perform their official functions." *Id.* at 366. Government has traditionally been granted the widest latitude in the dispatch of its own internal affairs. *Id*. at 378-79.

The limited scope of federal equity power was reaffirmed in *Lewis v. Casey*, 518 U.S. 343 (1996), and *Horne v. Flores*, 557 U.S. 433 (2009). District courts cannot substitute their judgment for the judgment of the "local officials to whom such decisions are properly entrusted." *Horne*, 557 U.S. at 455. Plaintiffs cannot show redressability.[3]

[3] Plaintiffs also lack standing as a "prudential" matter. *City of Los Angeles v. County of Kern*, 581 F.3d 841, 845 (9th Cir. 2009); *United States v. Lazarenko*, 476 F.3d 642, 649-50 (9th Cir. 2007) (generalized grievances are not redressable).

3. The Claims Against the County Fail

(a) The Equal Protection Claim Is Untenable

Plaintiffs allege the County violated equal protection by "enforcing the law in some areas and declining to enforce the law in others," which allowed some homeless encampments to persist. (Compl. ¶¶ 185-86.) The injunction relied on "historical constitutional violations, a persisting legacy of racially disparate impacts." [Dkt. 277 at 71, 76-86.]

First, there is no allegation *the County* engaged in geography-based enforcement. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (section 1983 liability requires personal participation by the defendant). The Complaint alleges *the City* failed to enforce its anti-vagrancy laws in Skid Row. (Compl. ¶ 30.)

Second, Plaintiffs do not allege discrimination against a suspect class, and do not allege they belong to a suspect class. Geography is not a suspect classification.

Third, Plaintiffs cannot show the County discriminated against anyone. Plaintiffs contend the City did not enforce its anti-vagrancy laws in Skid Row. The County has no enforcement authority in the City and, in fact, has a "Care First, Jails Last" model that does not support criminal enforcement as a solution to homelessness.

Plaintiffs also cannot allege discriminatory animus. The County has made substantial efforts to serve the needs of PEH and reduce homelessness. Plaintiffs concede this fact. (Compl. ¶¶ 2,18, 73, 74.)

The district court theorized that "state inaction has become state action that is strongly likely in violation of the Equal Protection Clause." [Dkt. 277 at 78; *see* 76-79 (stating "this conclusion advances equal protection jurisprudence").] This does not merely "advance" equal protection doctrine—it creates an unprecedented and unworkable standard, and it was error to spring this new legal theory on the County in the injunction. *Pac. Radiation Oncology*, 810 F.3d at 633.

(b) <u>There Is No State-Created Danger</u>

A "state-created danger" claim requires the plaintiff to prove that the officials (1) created an actual, particularized danger through their own affirmative conduct, and (2) acted with deliberate indifference to a known or obvious danger. *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974 (9th Cir. 2011). And a municipal government, such as the County, cannot be vicariously liable under section 1983. *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 691-92 (1978).

Plaintiffs admit the County makes substantial efforts to serve the needs of PEH and reduce homelessness. (Compl. ¶¶ 2, 18, 73, 74.) Neither the motion nor the injunction identifies any actual, particularized danger the County *created* for Plaintiffs. Instead, the injunction describes a general "history of structural racism,

spanning over a century" as evidence of a "state-created disaster." [Dkt. 277 at 72.]

These generalized averments, not tethered to Plaintiffs, their Complaint, or any actions taken by the County,, cannot support extraordinary relief. *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 474-75 (1982) ("[T]he Court has refrained from adjudicating 'abstract questions of wide public significance' which amount to 'generalized grievances,' pervasively shared and most appropriately addressed in the representative branches." (quoting *Warth*, 422 U.S. at 499-500)).

(c) The County Did Not Violate Plaintiffs' Substantive Due Process Rights

While Plaintiffs barely address substantive due process, the district court dedicates seven pages to that claim. [Dkt. 277 at 79-86.] The injunction finds that the "practice of disrupting unhoused Black families' constitutional right to family integrity by compounding structural racism in present day policies is sufficient to find Plaintiffs have a likelihood of success on their due process claim." [*Id*. at 86.]

In its latest order, the district court relies on "family-related issues" to try to get to strict scrutiny. [Dkt. 287 at 7-8.] But "family-related issues" are not raised in the Complaint or Plaintiffs' motion. Nor do Plaintiffs, or any of Plaintiffs' new

declarants, allege that they are "unhoused Black families" suffering from a loss of family integrity.

At best, Plaintiffs allege they suffered economic harms, such as lost business, increased costs, and lost property value. The Complaint attacks decisions made *by the City* in response to federal court cases in which the County was not a party. (Compl. ¶ 186 (asserting the City "had no rational basis" for entering into a settlement in the *Mitchell* case).) Plaintiffs cannot sue the County based on alleged irrational conduct by the City.

Plaintiffs admit the County has taken substantial steps to combat the homeless crisis. (Compl. ¶ 2 ("The City and the County combined spend over a billion dollars annually providing police, emergency, and support services to those living on the streets."); *id*. ¶ 18 (the County has "gone to great lengths in the last couple years to address this crisis"); *id*. ¶ 73 ("[T]he City and County have made efforts to address this crisis . . ."); *id*. ¶ 74 ("[T]he amount of effort and resources that have been devoted to addressing this issue is considerable and admirable.").) These admissions foreclose liability.

(d) <u>The Mandatory Duty Claim Misconstrues the Statute</u>

The district court uses Welfare & Institutions Code section 17000 ("WIC § 17000") as another hook for its injunction against the County by repeating a

soundbite from Los Angeles Homeless Services Authority's ("LAHSA[4]") Executive Director Heidi Marston's comments that "housing is healthcare." [Dkt. 277 at 86-90.] That soundbite does not generate a viable legal claim.

To establish a claim for violation of a mandatory duty, a plaintiff must first prove that the statute at issue is "*obligatory*, rather than merely discretionary or permissive, in its directions to the public entity; it must *require*, rather than merely authorize or permit, that a particular action be taken or not taken." *Haggis v. City of Los Angeles*, 22 Cal. 4th 490, 498 (2000). Even if the entity has an obligation to perform a function, there is no claim if the function itself involves discretion. *Id*.

Under WIC § 17000, counties have two obligations: (1) to provide general assistance to the indigent; and (2) to provide medically necessary care to "medically indigent persons." *Hunt v. Superior Court*, 21 Cal. 4th 984, 1002-03 (1999). The Board of Supervisors adopts the "standards of aid and care." Cal. Welf. & Inst. Code § 17001 ("The *board of supervisors of each county*, or the agency authorized by county charter, shall adopt standards of aid and care for the indigent and dependent poor of the county or city and county." (emphasis added)).

Because the County has *discretion* to determine how to discharge these obligations, the mandatory duty claim fails. *Haggis*, 22 Cal. 4th at 498; *Tailfeather*

[4] LAHSA is an independent, joint powers authority created by the County and City.

v. Bd. of Supervisors, 48 Cal. App. 4th 1223, 1246 (1996) ("Achieving the mandated level of care requires the exercise of considerable discretion as the County chooses between a multitude of potential courses of action.").

Plaintiffs concede the County has exercised its discretion and determined how to support its indigent residents.[5] (Compl. ¶ 64.) What Plaintiffs, and the district court, want is for the County to discharge its obligations in a *different way*. That is exactly what the law prohibits. *Tailfeather*, 48 Cal. App. 4th at 1246 (counties have discretion under WIC sections 17000 and 17001; a court can only determine "whether the County has abused or exceeded its discretion under the governing statutes—not to dictate how that discretion must be exercised").

(e) The ADA Claims Do Not Apply to the County

The Order lumps the County with the City for its discussion of Plaintiffs' ADA claims. [Dkt. 277 at 90-91.] Plaintiffs did not name the County in those claims (the Eighth, Ninth, and Tenth Causes of Action). (Compl. ¶¶ 167-183.)

4. Plaintiffs Did Not Establish Irreparable Harm

The injunction states: "No harm could be more grave or irreparable than the loss of life." [Dkt. 277 at 92.] The order denying the County's stay application doubles down on this theory. [Dkt. 287 at 6.]

[5] As explained above, Plaintiffs are not indigent residents and do not have standing to bring this claim.

The County appreciates that the homelessness crisis requires swift and decisive action. But Plaintiffs are not PEH living in Skid Row, and they are not at risk of dying. Plaintiffs are business owners in Skid Row. (Compl. ¶¶ 77-106, 108, 112-22.) As for the new declarants, they are not individual plaintiffs, are not referenced in the Complaint, and they cannot be used as the basis for a finding of irreparable harm.

5. The Injunction Is Impermissibly Vague

An injunction must "state its terms specifically" and "describe in reasonable detail . . . the act or acts restrained or required." Fed. R. Civ. P. 65(d)(1). A vague injunction cannot be enforced. *Del Webb Communities, Inc. v. Partington*, 652 F.3d 1145, 1150 (9th Cir. 2011) (injunction prohibiting home inspections from using "illegal, unlicensed and false practices" is "too vague to be enforceable"). The vagueness of the injunction here has already resulted in multiple "clarifications." [Dkt. 279, 287.] The County is left scrambling trying to ascertain the meaning of the district court's 110-page injunction and follow-on orders.

B. The County Will Be Irreparably Harmed Without A Stay

Courts find irreparable harm where injunctions interfere with government functions. *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (finding irreparable harm where injunction interfered with the state's "law enforcement and public safety interests"); *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox. Co.*, 434 U.S.

1345, 1351 (1977) ("[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.").

Here, the injunction usurps the County's authority, substitutes the district court's judgment for that of elected officials, and runs head-on into voter-endorsed, Board-approved policies, like Measure H, and state law, like the Mental Health Services Act. It orders the County to dedicate funds and resources to conduct audits and investigations. [Dkt. 277 at 106.] It even proposes *commandeering County property* for the district court to use in crafting homeless policy and dictating the allocation of local governmental resources. [*Id*. at 107.]

This intrusion into local affairs *will* irreparably harm the County and its constituents. In its opposition papers, the County explained why both the County and the public would be irreparably harmed if the requested relief were granted [Dkt. 270, 274], as did the City [Dkt. 269] and Intervenors [Dkt. 275-276]. The declarations of Cheri Todoroff, Matt McGloin, and Vanessa Moody establish irreparable harm:

- Implementation would interfere with the provision of services, which are provided throughout the County (not just in Skid Row);
- To even attempt to comply with the terms of the requested injunction, the County would have to pull resources from other areas, which

would mean disproportionately directing services with resulting inequities;

- Diverting resources to emergency, interim housing would only exacerbate the existing backlog of residents seeking permanent housing;
- Because existing interim housing resources are occupied, and because constructing 2,093 new beds in 90 days is simply not feasible, issuing the requested injunction would actually require the County to move current residents out of their housing resources to move the Skid Row population in;
- Forcing relocation undermines the County's goal of achieving long-term results by building relationships with PEH and helping them find permanent housing and services; and
- Mandating that the County cease sales and transfers of certain properties would impact properties designated to be used for other public purposes (including shelter/housing for PEH, schools, etc.).

The injunction threatens to upend local government and throw the County's homeless services delivery into chaos. The likelihood of severe irreparable harm to the County and the public weighs heavily in favor of a stay. *Lair v. Bullock*, 697 F.3d 1200, 1214-15 (9th Cir. 2012) (State of Montana demonstrated probability of

irreparable harm where citizens had "a deep interest in fair elections," allowing injunction to remain in place pending appeal "could throw a previously stable system into chaos," and disruption to the election would be "irreversible").

C. A Stay Will Not Substantially Harm Plaintiffs

A stay will not injure Plaintiffs, Intervenors, or any other stakeholders. The County's efforts to serve PEH in Skid Row are ongoing. Here, "the balance of interests falls resoundingly in favor of the public interest." *Lair*, 697 F.3d at 1215.

D. The Public Interest Supports A Stay

The public has an interest in government policies that take into account all potential ramifications and weigh the interests of all relevant stakeholders. *Ariz. Democratic Party v. Hobbs*, 976 F.3d 1081, 1086 (9th Cir. 2020) (granting stay pending appeal and holding that public interest served by preserving existing laws, "rather than by sending the State scrambling to implement and to administer a new procedure"); *Golden Gate Rest. Ass'n v. City & County of San Francisco*, 512 F.3d 1112, 1127 (9th Cir. 2008) (granting stay pending appeal regarding passage and implementation of City ordinance mandating minimum levels of health care expenditures by private employers).

The County explained why the injunction would not benefit PEH or the public more generally, as did Intervenors. [Dkt. 270, 275, 276.] The United Way of Greater Los Angeles also weighed in. [Dkt. 253, 273.] Intervenors submitted

declarations from third-party experts: a law professor and homeless advocate, the president of a nonprofit urban research organization, a clinical-community psychologist and founder of the Pathways Housing First Institute, and the Director of Public Policy and Community Organizing at Community Housing Partnership. [Dkt. 275, 276.] These declarations were all ignored in the injunction.

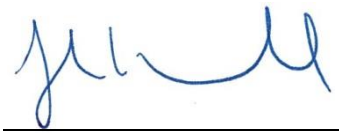
Intervenors explained: "Plaintiffs ask this Court to grant an incredibly broad, mandatory injunction that would require the City and County to radically reshift their priorities and practices away from a needs-based system of care and towards a location-based model of housing, and then deploy its police force to enforce an anti-camping ordinance against some of the most vulnerable members of the community." [Dkt. 275 at 12:14-19.] Intervenors argued, using expert declarations in support, that the requested relief "would have a significant negative impact not only on people living in Skid Row, but also to those people experiencing homelessness outside of Skid Row, and the community as a whole . . . [I]t will elevate form over substance, offers of shelter over real housing solutions." [*Id*. at 12:25-13:3.] It would "undermine any progress currently being made towards actually finding housing solutions for people on Skid Row and throughout Los Angeles." [*Id*. at 13:3-5.]

The County's policies are the product of community meetings, information gathering from relevant stakeholders, and expert analysis. In contrast, the court's

injunction emerged in a vacuum with limited guidance from Plaintiffs—who are not elected officials, policy experts, or even PEH. In these circumstances, the district court should defer to the County's consideration of the public interest. *Golden Gate Rest. Ass'n*, 512 F.3d at 1126-27 ("Finally, our consideration of the public interest is constrained in this case, for the responsible public officials in San Francisco have already considered that interest.").

DATED: April 28, 2021

MILLER BARONDESS, LLP

By: 

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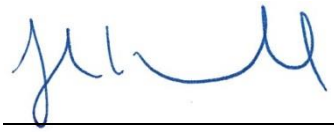
CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2021, I electronically filed the foregoing document with the Clerk of the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. Counsel in this case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

DATED: April 28, 2021

MILLER BARONDESS, LLP

By: 

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion complies with the type-volume limitation of Fed. R. App. P. 27 because it contains 4,076 words and the page limitation of Circuit Rule 27-1 because it does not exceed 20 pages. This motion complies with the typeface and type style requirements of Fed. R. App. P. 27 because this brief has been prepared in a proportionally spaced typeface using Word 14-point Times New Roman typeface.

DATED: April 28, 2021

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