Case No. 21-55395

IN THE 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
for the Central District of California
Case No. 2:20-cv-02291-DOC-KES
The Honorable David O. Carter, United States District Judge

APPELLEES' OPPOSITION TO EMERGENCY MOTION FOR STAY PENDING APPEAL

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May 4, 2021

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INTRODUCTION AND SUMMARY OF ARGUMENT

The preliminary injunction order issued by the Honorable David O. Carter confronts the County of Los Angeles with an uncomfortable truth: through its acts and its failures to act, the County has caused, contributed to, and exacerbated what no one disputes is a humanitarian crisis of homelessness in Los Angeles. Through its motion for an emergency stay of the district court's order, the County seeks to avoid this uncomfortable truth and upend the detailed (and largely undisputed) factual findings the district court developed over a year of robust hearings and deep engagement on the issue of homelessness in Los Angeles. Because the County has failed to carry its burden of justifying the extraordinary relief it seeks, the emergency motion should be denied.

The irony of the County's motion is that it rests on the proposition that the County's handling of the homelessness crisis is adequate and cannot be questioned by a court—when it is the County's mishandling of the homelessness crisis that brought this case into being. The Complaint alleges that the County's acts and omissions concerning persons experiencing homelessness trigger constitutional and statutory liability. The district court considered those allegations, held multiple hearings, and ultimately issued a 110-page order that contained detailed factual findings, considered the legal impact of those findings, and concluded a preliminary injunction was necessary.

The County rushed into this Court seeking a stay before the ink on the first order was even dry, but the motion is not properly before this Court because the district court's order on the County's motion to stay the preliminary injunction substantially alters the order the County has appealed. Even if this Court could consider the County's request, the County has failed to prove any of the factors needed to obtain a stay of the terms of the preliminary injunction pending appeal. The County's only evidence supporting "irreparable harm" relies on conclusory statements and demonstrably false assumptions. Nor has it made a "strong showing" of likelihood of success on the merits. The district court's order details the urgency created by the County's failures, the peril the Plaintiff-Appellees will face if the order is delayed, and the public interest served by the injunction. For these reasons, the motion for an emergency stay should be denied.

RELEVANT BACKGROUND

There is no dispute that homelessness in Los Angeles has reached a crisis level which demands urgent action. On March 19, 2020, just nine days after Appellees filed their complaint, the parties all agreed to stay litigation with intent to work on a global settlement to benefit not just the parties but the entire community. The parties agreed to waive all objections to *ex parte* communications with the district court, and agreed to work with the district court to achieve the desired global settlement. (Declaration of Elizabeth Mitchell ("Mitchell Decl.") ¶

A.) Part of that agreement was recognition that to achieve success in the way the parties envisioned was going to require a dynamic and extraordinary effort. It was with the defendants' agreement that the Court embarked on what was effectively a year-long evidentiary hearing. Over the ensuing year, the district court held a series of hearings in which the court heard evidence about the City's and County's efforts and concerns, and talked to individuals throughout the City and County ranging from unhoused in Skid Row to elected officials and everyone in between.

Following an injunction which was ultimately vacated, the City and County reached a partial settlement on June 18, 2020 agreeing to creation of 5,300 new beds for persons experiencing homelessness and requested the district court to monitor and enforce the terms of the agreement. (*Id*., Ex. B, C.) However, when months of additional settlement discussions failed to bear fruit, the district court issued an order to show cause "why the Court should not deploy any and all equitable remedies to address the crisis of homelessness gripping the City and County of Los Angeles." (*Id*., Ex. D.) The order requested briefing on the available equitable remedy power, and ordered the parties to an emergency evidentiary hearing on February 4, 2021. (*Id*.) On February 3, 2021, the court issued a second order giving notice of nine questions it would be asking at the February 4, 2021 hearing. (*Id*., Ex. E.) On February 8, 2021, the court issued a third order requesting responses to five more specific questions, including the issue of

structural racism. (*Id*. Ex. F.) Briefing was submitting on March 5, 2021. (*Id*., Exs. P-T.) Amicus briefs or letters were also received by the Downtown Women's Center, Central City Association, The Center in Hollywood, Union Rescue Mission, Los Angeles Business Council, Citizens Preserving Venice, United Way, the NAACP-Compton, CORE-California, and the Committee for Safe Havens. (*Id.,* Exs. G-N.)

After over a year with no settlement reached, Appellees filed a Motion for Preliminary Injunction on April 12, 2021. (County's Motion to Stay Pending Appeal ("Motion for Stay") at 3, Dkt. No. 11-1.) The district court issued its Preliminary Injunction on April 20, 2021, based on the year-long series of hearings and party and amici briefs. (*Id*. at 3-4.) The County filed its notice of appeal on April 21, 2021. (*Id*. at 4.) On April 22, 2021, the district court issued a clarification of the order. (*Id.*) On April 23, 2021, the County filed an *ex parte* application for stay pending appeal. (*Id.*) On April 25, the district court partially granted the application. (Declaration of Mira Hashmall ("Hashmall Decl.") Ex. 3, Dkt. No. 11-2.) Nevertheless, the County filed this emergency motion for a stay.

LEGAL STANDARD

"A stay is not a matter of right, even if irreparable injury might otherwise result to the appellant. It is an exercise of judicial discretion." *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672-73 (1926) (citation omitted). "The party

requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Nken v. Holder*, 556 U.S. 418, 433 (2009). In deciding a motion to stay pending appeal, courts consider four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id*. at 434 (citation omitted). "'The first two factors . . . are the most critical'; the last two are reached '[o]nly once an applicant satisfies the first two factors.'" *Al Otro Lado v. Wolf*, 952 F.3d 999, 1007 (9th Cir. 2020) (citing *Nken*, 556 U.S. at 434-35).

ARGUMENT

I. This Appeal Should Be Remanded for District Court Review Pending May 27 Hearing

The County filed its notice of appeal *prior* to the district court's clarification and *prior* to the district court's partial grant of the County's motion to stay which ordered an evidentiary hearing at the City and County's request:

> In addition, the City and County have requested to be heard concerning the Court's findings on structural racism in its April 20, 2021 preliminary injunction. At the May 27, 2021 hearing, the Court will therefore receive testimony from the City and County on these findings. The Court additionally invites all interested parties to notify the Court if they would also like to be heard in this regard.

(Hashmall Decl. Ex. 3, at 14.)

The district court's order on the stay request substantially alters the order Appellant County has appealed—indeed, the stay order moots several of the issues raised in the stay request and schedules additional proceedings that will likely further alter that order. Because the order on appeal is not the final preliminary injunction order, and because the district court has effectively reopened the preliminary injunction record, this Court lacks jurisdiction and the appeal should be dismissed. *Bistodeau v. United States*, No. 20-26051, 2020 WL 8767674, at *1 (9th Cir. Dec. 15, 2020) ("A review of the record demonstrates that this court lacks jurisdiction over this appeal because the district court granted appellant's motion for reconsideration and reopened the case. Because the action is still pending in the district court, this appeal is dismissed for lack of jurisdiction."). The notice of appeal violates Federal Rule of Appellate Procedure Rule 3(c) which requires appellant to "designate the judgment, order, or part thereof appealed" in "[t]he notice of appeal." Fed. R. App. P. 3(c)(1)(B). The notice here does not designate the order governing the preliminary injunction, and this Court lacks jurisdiction to review an order not designated in the notice of appeal. (Mitchell Decl., Ex. O.)

Additionally, under Rule 12.1(b), "the court of appeals may remand for further proceedings" when a lower court has indicated willingness to reconsider its order. Fed. R. App. P. 12.1(b). The district court has demonstrated a willingness to reconsider its preliminary injunction order by scheduling a hearing in response

to objections raised by the City and County. There is a substantial likelihood that the district court will alter its order in light of that hearing. These events trigger the obligation under Rule 12.1 to notify the circuit clerk and calls for a remand that would allow the district court to consider the modification of an injunction. *See, e.g. United States v. Spectrum Brands, Inc.*, No. 17-3331, 2018 WL 2228179, at *1 (7th Cir. Feb. 23, 2018) ("In light of the district judge's indication of his willingness to modify the permanent injunction, this case is REMANDED to the district court for further proceedings."). A formal motion and indication by a trial court under Federal Rule of Civil Procedure 62.1 is not a prerequisite for remand under Federal Rule of Appellate Procedure 12.1(b). *Mendia v. Garcia*, 874 F.3d 1118, 1122 (9th Cir. 2017). "[W]ritten indication from [a] district court stating that it 'was willing to entertain' further proceedings but also that it was making 'no comment on the merits of such a motion'" is sufficient to stay an appeal under Rule 12.1(b). *Balbuena v. Sullivan*, 970 F.3d 1176, 1184 (9th Cir. 2020); *see also Bank of Am., NA v. SFR Invs. Pool 1, LLC*, No. 18-16015, 2019 WL 9042871, at *1 (9th Cir. Dec. 20, 2019) ("Because the district court lacks jurisdiction to [vacate partial summary judgment] order that is properly on appeal, we construe the [ ] order in part as an indication of the district court's willingness to reconsider or vacate the judgment pursuant to Fed. R. App. P. 12.1, and we hereby remand this appeal to allow the district court's order . . . to take effect.").

Here, because the district court has already once modified the injunction since the notice of appeal was filed, and has indicated a willingness to reconsider based on a future evidentiary hearing, this Court should remand the appeal.

II. The *Nken* Factors Favor Denial of the County's Motion to Stay

A. The County Has Failed to Demonstrate Irreparable Injury

The County cannot bear its burden of demonstrating irreparable injury on the thin record upon which it relies. The district court stayed the order requiring cessation of transfers of County-owned property. The district court's requirement of reports and audits require minimal effort. And the Count's howls of financial hardship—arising out of a requirement to shelter individuals experiencing actual hardship on the streets of Skid Row—are demonstrably false.

The County's entire argument supporting irreparable harm is based on a County official's unfounded, unsupported assertion that "[i]t is [] not possible to construct new interim housing sites within 90 days." (Hashmall Decl. Ex. 26, Todoroff Decl. ¶ 8.) The threshold problem with this contention is that the court's order requires offers of shelter to everyone within 180 days—not 90—and the obligation to provide beds for the unsheltered is to be shared by the City *and* the County—not the County alone. The County official's assertion lacks any evidentiary support and is in fact contrary to the evidentiary record in this case. At the district court's first hearing March 19, the parties were informed of 20,000

units that were immediately available for less than $20,000 per bed. (Mitchell Decl. Ex. A at 39-51.) Under the same judge's supervision, the City of Santa Ana raised a shelter in just 28 days. (*Id*. at 36.) Tiny homes, membrane structures, and modular units all provide options that can provide relief to thousands of people in a matter of months at significantly lower costs than hotels. (Declarations of King, Renard, and Leung.) And year-after-year, the County leaves tens of millions of Measure H[1] dollars unused: $92 million in fiscal year 2017-2018,[2] $39 million in fiscal year 2018-2019,[3] and $29 million in FY 2019-2020.[4] County officials claim that the cost to comply with the court's order ($142 million) would cause the County to divert funding for 5,331 beds or lay off 500 county workers. But again these conclusions are based on the false premises that (a) the County would shoulder the entire financial burden, and (b) it is impossible to build sufficient

[1] Measure H is a ¼ cent sales tax approved by the voters in 2017 specifically for homeless housing and support. Its annual budget sits close to $500 million per year. Letter from Fesia A. Davenport, Acting Chief Executive Officer of the County of Los Angeles to The Honorable Board of Supervisors County of Los Angeles (Sept. 15, 2020), https://homeless.lacounty.gov/wp-content/uploads/2020/11/9-15-20-Measure-H-Final-Approved-Brd-Ltr.pdf.

[2] Memorandum from John Naimo, County of Los Angeles Auditor-Controller to Supervisors (Feb. 27, 2019), https://auditor.lacounty.gov/wp-content/uploads/2020/01/FY1718-Audit-of-the-Homeless-and-Housing-Measure-H-Special-Revenue-Fund.pdf.

[3] County of Los Angeles, FY 2018-2019 Actuals Measure H Expenditures (Aug. 30, 2019), http://file.lacounty.gov/SDSInter/lac/1060405_COAB-MeasureH18-19Expenditures.pdf.

[4] Davenport Letter, *supra* n.2, https://homeless.lacounty.gov/wp-content/uploads/2020/11/9-15-20-Measure-H-Final-Approved-Brd-Ltr.pdf.

shelter in 90-180 days. These statements do not withstand scrutiny in light of the record in this case. (*Cf.* Renard Decl. ¶ 3 (600 beds for $6,722,000, or $11,203.33 per bed, set up in 60 days.).) The county official's declaration creates the impression of irreparable harm where there is none. *See, e.g. Nken*, 556 U.S. at 434-35 ("[S]imply showing some 'possibility of irreparable injury,' fails to satisfy the second factor.") (citation omitted). The County cannot conjure irreparable harm by choosing the most impracticable course of action while ignoring other practical possibilities. *Al Otro Lado*, 952 F.3d at 1008 ("That the government's asserted harm is largely self-inflicted 'severely undermines' its claim for equitable relief. '[S]elf-inflicted wounds are not irreparable injury.'") (citations omitted).

B. The County Has Not Made a "Strong Showing" of Likelihood to Succeed on the Merits

Appellate review of a preliminary injunction is "limited and deferential" to the district court. *Harris v. Bd. of Supervisors*, 366 F.3d 754, 760 (9th Cir. 2004). Findings of fact are reviewed for clear error. *Independent Living Ctr. of S. California, Inc. v. Shewry*, 543 F.3d 1050, 1055 (9th Cir. 2008). The scope of injunctive relief is reviewed for an abuse of discretion or application of erroneous legal principals. *United States v. Schiff*, 379 F.3d 621, 625 9th Cir. 2004).

C. The County Had At Least Three Months' Notice of the Court's Considerations

The district court issued its original Order to Appear and Show Cause

January 31, 2021, and over the course of three separate orders and an evidentiary hearing held February 4, 2021, the district court clearly described its constitutional concerns and provided the County an opportunity to fully brief and argue the issues. The County filed a brief in response to Plaintiff-Appellees' motion for preliminary injunction. And when amicus NAACP-Compton/CORE-California/Committee for Safe Havens filed a brief raising the issue of structural racism in Los Angeles and its role in the homelessness crisis, the Court directed defendants specifically to address these issues in its opposition. (Mitchell Decl. Exs. 264, 266.) Finally, when the County cried "surprise" after the Order was issued, the district court scheduled a second evidentiary hearing on May 27, 2021 to allow the County to be heard concerning the district court's findings supporting the injunction. Yet it filed this motion to stay anyway. The County's claims of lack of notice cannot be credited.

D. Appellees Have Article III Standing

Appellees have each demonstrated that they (1) suffered an "injury in fact" which is (2) "fairly traceable" to actions by the County, and (3) it is "likely" that the injury will be redressed by a favorable decision by the trial court which confers Article III standing.[5] *See Tyler v. Cuomo*, 236 F.3d 1124, 1131 (9th Cir. 2000)

[5] To the extent Plaintiffs have demonstrated Art. III standing, so too have they demonstrated prudential standing. *Lexmark Int'l, Inc. v. Static Control*

(citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). Plaintiffs-Appellees easily clear each of these hurdles.

1. Appellees Have Suffered An "Injury in Fact"

LA Alliance for Human Rights' membership includes "current and former homeless individuals, non-profits, residents, business owners, service providers, and community members, all seeking to find solutions to end the humanitarian crisis of homelessness in Los Angeles."[6] Declarations submitted in support of the motion for preliminary injunction came from members of Plaintiff LA Alliance for Human Rights, including (i) seven individuals who are and are currently homeless in Skid Row, (ii) five current housed individuals living in Skid Row, one service provider working in Skid Row, (iii) two individuals who own businesses in Skid Row, and (iv) two individuals living in and around Skid Row who require wheelchairs and cannot access the sidewalks. (Hasmall Decl. Ex. 9.) All individuals are members of LA Alliance for Human Rights which has associational standing to bring claims for injunctive relief on behalf of its members. Cal. Civ.

Components, Inc., 572 U.S. 118, 126 (2014) (where a federal court finds Article III jurisdiction, declining to hear the case on prudential grounds would be "in some tension with [the Supreme Court's] recent reaffirmation of the principle that 'a federal court's "obligation" to hear and decide' cases within its jurisdiction 'is "virtually unflagging."'") (citations omitted).

[6] LA Alliance for Human Rights, Who We Are, https://www.la-alliance.org/who_we_are (last visited May 3, 2021); *see also* (Hashmall Decl. Ex. 9, Page 616, Declaration of Don Steier).

Proc. Code §§ 369.5(a), 382; *Raven's Cove Townhomes, Inc. v. Knuppe Dev. Co.*, 114 Cal. App. 3d 783, 793-96 (1981); *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).

2. Appellees' Injuries are Fairly Traceable to the County's Conduct

Appellees have demonstrated their injuries are "fairly traceable" to the County's conduct as comprehensively identified by the Court. Hashmall Decl., Ex.13 pp. 6-8, 18-20 (the County complicit in structural racism system by, *inter alia,* implementing segregated service programs and taking property from black families), 17-18 (making Project Roomkey rooms disproportionately available to white homeless Angelenos), 25-26 (discriminating in housing availability), 27-31 (failing to meet affordable housing targets), 40 (identifying homelessness as "the humanitarian crisis of our lives" yet failing to act), 50-51 (failing to place more unhoused Angelenos in Project Roomkey rooms despite 100% funding reimbursement), 50-52 (increased fire hazards and transportation related deaths), 55-58 (failing to provide adequate mental health and substance use disorder beds), 58-59 (failing to curtail public health hazards), 67-71 (acknowledging systemic inequality but failing to act), 76-79 (lack of coordination between City and County leads to political paralysis resulting in disproportionate rate of death for Black homeless residents); 86-90 (detailing failures to meet statutory obligations under Section 17000 including healthcare and mental health beds). The County's long

history of statutory and constitutional failures has led to significant harm suffered by members of LA Alliance of Human rights, including exposing unhoused members (many of whom are African American) to violence, disease, unhealthy conditions, fires, and unspeakable conditions, and causing financial and emotional harm to residents and businesses; s*ee, e.g. Tyler*, 236 F.3d at 1132 (City's actions were traceable to the plaintiffs injuries where City failed to hold meetings which may or may not have resulted in different action.).

3. Appellees' Injuries Are Likely to be Redressed by a Favorable Decision by the Court

Finally, Appellees have demonstrated redressability. This issue was briefed extensively by the parties. (Mitchell Decl. Exs P-T.) "[T]he law and the Constitution demand recognition of certain [] rights . . . If government fails to fulfill [its] obligation, the courts have a responsibility to remedy the resulting [] violation." *Brown v. Plata*, 563 U.S. 493, 510-11 (2011) ("*Plata*"). The County argues, incorrectly, that the district court lacked the authority to issue the injunctive relief requested by Appellees and ultimately ordered by the district court. (Motion to Stay at 18); *cf. Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971) (when considering the affirmative acts of a government body "[o]nce a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies"); *Lemon v. Kurtzman*, 411 U.S. 192,

200 (1973) ("In shaping equity decrees, the trial court is vested with broad discretionary power; appellate review is correspondingly narrow.").

The district court possesses the power to enjoin the County to current or imminent statutory violations as well. *See*, *e.g.*, *Rodde v. Bonta*, 357 F.3d 988, 999 (9th Cir. 2004); *Harris v. Bd. of Supervisors*, 366 F.3d at 762; *Huezo v. L.A. Cmty. Coll. Dist.*, 672 F. Supp. 2d 1045, 1054 (C.D. Cal. 2008). In *Rodde*, this court upheld a district court injunction requiring Los Angeles County to keep a hospital open, requiring it to spend over $50 million per year to provide services, finding that closure would cause the county to violate its obligations under Welfare and Institutions Code section 17000. *Rodde,* 357 F.3d at 993-94.

The facts in *Rizzo v. Goode*, *Lewis v. Casey,* and *Horne v. Flores,* cited by Appellants, are distinguishable from this case because each turns on the absence of what is present here: actions by the County that adversely affect Appellees. (See p. 13 *infra.)*; *cf. Rizzo v. Goode*, 423 U.S. 362, 377 (1976) ("critical" to its decision to reverse the district court's injunction is that the district court "found that the responsible authorities had played no affirmative part in [the alleged actions]"); *Lewis v. Casey*, 518 U.S. 343, 351 (1996) (plaintiffs failed to show a "relevant actual injury" and misunderstood the prevailing law); *Horne v. Flores*, 557 U.S. 433, 452 (2009) (concluding the appellate court was mistaken in limiting its analysis to whether specific funding targets were met, instead of considering

whether any actual injury persisted).

E. Defendant-Appellants Have Failed to Demonstrate They Are Likely to Succeed on the Merits

The district court crafted a 110-page opinion detailing the failures of the City and County of Los Angeles that have directly led to the crisis on the streets of Los Angeles. The County complains the record does not support the factual findings because it refers to reports and newspaper articles, but a district court may take judicial notice of any facts it finds reasonably without dispute, and evidentiary findings are reviewed only for clear error. *Independent Living Ctr. of S. California,* 543 F.3d at 1055. Appellant County fails to identify any abuse of discretion or even single fact noticed by the district court with which it disagrees.

1. State-Created Danger

The district court properly found—and the County does not contest—the long history of systemic racism by the City and County that has led to, or at a minimum significantly contributed to, the homelessness crisis today. (Hashmall Decl. Ex. 1, at 72.) The County has placed its homeless and housed constituents in danger and then, knowing the health and safety risks involved, acted with deliberate indifference to those risks. *Id*. at 17-18, 25-26, 27-31, 40, 50-51, 55-59, 67-71, 76-79, 86-90.

The Ninth Circuit has recognized the constitutional right, under the Due Process clause, to be free from state-created danger. *Kennedy v. City of Ridgefield*,

439 F.3d 1055, 1061-62 (9th Cir. 2006). When a state or local official acts to place a person in a situation of known danger, with "deliberate indifference" towards their person or physical safety, the state violates due process. *Id.* Courts have recently recognized that a municipality's policy that places homeless individuals in danger can violate due process and merit injunctive relief. *See Santa Cruz Homeless v. Bernal*, ---F. Supp. 3d----, Case No. 20-cv-09425-SVK, 2021 WL 222005, at *1 (N.D. Cal. Jan. 20, 2021); *see also Hernandez v. City of San Jose*, 897 F.3d 1125, 1136 (9th Cir. 2018) (Plaintiffs alleged sufficient facts to support a state-created danger claim where "throughout the Rally, the Officers 'witnessed the many violent criminal acts perpetrated by dozens of anti-Trump protesters' and yet continued to 'direct[] [the Attendees] into the mob.") (citations omitted). Given the myriad admissions and concessions that homelessness is a crisis, and the lack of significant and comprehensive response to ameliorate this crisis, the County has been deliberately indifferent to the danger it created.

2. Other Constitutional Claims

The district court's factual findings of structural racism as the driving force in the homelessness crisis is undisputed by the City and County.[7] While the County argues the district court is making new law, in fact the district court applies

[7] Contrary to the County's claims, several of LA Alliance's members are African American persons experiencing homelessness, including Gregory Gibson, Ann Jackson, Mary Brannon, and Wenzial Jarrell.

well-established law to a set of circumstances that have been crying out for its application for years. The County's inaction, considering the decades of historical failures and intentional discriminatory treatment, supports broad equitable remedies to reverse the impact of those actions, just as *Brown v. Board of Education* called for an "affirmative duty to dismantle [the state's] prior dual university system." *United States v. Fordice*, 505 U.S. 717, 727-28 (1992).

3. Welfare and Institutions Code 17000

Section 17000 mandates that counties provide support to "all incompetent, poor, indigent persons and those incapacitated by age, disease, or accident" when such persons are not otherwise supported. Cal. Welf. & Inst. Code § 17000. Under Section 17000, counties must provide medical care "at a level which does not lead to unnecessary suffering or endanger life and health." *Tailfeather v. Bd. of Supervisors*, 48 Cal. App. 4th 1223, 1240 (1996). This mandate includes subsistence medical services and medically necessary services which are defined as those "reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain." Cal. Welf. & Inst. Code § 14059.5(a); *see also Hunt v. Super. Ct.*, 21 Cal. 4th 984, 1014-15 (1999).

The County argues that because section 17000 permits counties to act with discretion, 17000 does not impose a mandatory duty. (Motion to Stay at 23.) In fact, while a County has some manner of discretion in *how* it provides relief, the

County is still obligated *to* provide relief and only in accordance with statute. *Tailfeather*, 48 Cal. App. 4th at 1245 ("Section 17000 . . . mandates that medical care be provided to indigents and section 10000 requires that such care be provided promptly and humanely. The duty is mandated by statute. There is no discretion concerning whether to provide such care."); *see also Hunt*, 21 Cal. 4th at 991 ("Although this provision confers upon a county broad discretion to determine eligibility for—and the types of—indigent relief, this discretion must be exercised in a manner that is consistent with—and that furthers the objectives of—state statutes."). If the County fails to meet its obligation, a court "must intervene to enforce compliance." *City & County of San Francisco v. Super. Ct.*, 57 Cal. App. 3d 44, 50 (1976).

The County has admitted that homelessness both causes and exacerbates physical and mental illness. (Hashmall Decl. Ex. 7, at 14-15.) The County has admitted that individuals are dying *because* they are homeless. *Id.* Comparing New York's homeless mortality rate to Los Angeles' homeless mortality rate leaves no doubt that unsheltered homelessness *in and of itself* leads to death, not to mention pain, suffering, and disease. *Id.* The County's failure to provide sufficient beds and services for mentally ill persons, as the County itself has admitted, provides an additional support for a finding of violation of section 17000. *Id.*

F. Appellees Will Be Substantially Injured if Stay is Issued

Appellants acknowledge "the homelessness crisis requires swift and decisive action" but wrongly states "Plaintiffs are not PEH living in Skid Row, and they are not at risk of dying." (Motion to Stay at 25.) Plaintiff-Appellees are in fact PEH living in Skid Row and face very real risks every day. (Hasmall Decl. Ex. 9.) Appellants provide no authority for their assertion that an individual must be a named plaintiff or identified in the complaint to be considered a member of the association bringing claims on their behalf. In fact the opposite is true. *See, e.g. Wash. State Apple Advert. Comm'n*, 432 U.S. at 343.

G. The Public Interest Favors Immediate Action by the City and County

The County falsely claims the Order would require a shift in priority for the County. (Motion to Stay at 29.) In fact, the district court has emphasized both interim and long-term solutions are needed; this is not an "either/or" proposition. (Hashmall Decl. Ex. 2.) The district court expects the County and City to both work on permanent solutions while also addressing the constitutional and statutory violations inherent in leaving individuals on the street while solely focusing on permanent solutions. The public interest lies in ending the death and despair in the streets of Los Angeles.

CONCLUSION

Based on the foregoing, Plaintiff-Appellees respectfully request this Court DENY Defendant-Appellant's Emergency Motion to Stay.

DATED: May 4, 2021

Respectfully submitted,

/s/ *Matthew Donald Umhofer*

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing opposition complies with the type-volume limitation of Federal Rule of Appellate Procedure 27 as it contains 4,895 words and page limitation of Ninth Circuit Rule 27-1 as it does not exceed 20 pages. This opposition complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 27 as this brief has been accurately formatted proportionately using Word 14-point Times New Roman typeface.

DATED: May 4, 2021

Respectfully submitted,

/s/ *Matthew Donald Umhofer*

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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APPELLEES' OPPOSITION TO EMERGENCY MOTION FOR STAY PENDING APPEAL; DECLARATIONS OF DAVID RENARD, GREG LEUNG, AMY KING, AND ELIZABETH MITCHELL; EXHIBITS

Signature s/ Matthew Donald Umhofer **Date** May 4, 2021

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