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County of Alameda
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By: Curtiyah Ganter,
Deputy Clerk

Western Center on Law & Poverty
Madeline Howard (SBN 254660)
mhoward@wclp.org
Lorraine Lopez (SBN 273612)
llopez@wclp.org
Richard A. Rothschild (SBN 67356)
rrothschild@wclp.org
3701 Wilshire Blvd., Suite 208
Los Angeles, California 90010
T: (213) 235-2628
F: (213) 487-0242

Public Counsel
Gregory Bonett (SBN 307436)
gbonett@publiccounsel.org
Faizah Malik (SBN 320479)
fmalik@publiccounsel.org
Nisha Kashyap (SBN 301934)
nkashyap@publiccounsel.org
610 S. Ardmore Avenue
Los Angeles, California 90005
T: (213) 385-2977
F: (213) 385-9089

Attorneys for Petitioners (Additional counsel on following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ALLIANCE OF CALIFORNIANS FOR COMMUNITY EMPOWERMENT (ACCE) ACTION; POLICYLINK; STRATEGIC ACTIONS FOR A JUST ECONOMY (SAJE), Petitioners, v. THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT and GUSTAVO VELASQUEZ, IN HIS OFFICIAL CAPACITY AS THE DIRECTOR OF THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, Respondents.	Case No. 22CV012263 *(Assigned for all purposes to the Honorable Fred Roesch, Dept. 17)* **PETITIONERS' MOTION FOR PRELIMINARY INJUNCTION** Hearing Date: July 21, 2022 Time: 3:30 pm Dept.: 17 Reservation ID: 924029170488 Action Filed: June 6, 2022 Trial Date: None set

Legal Aid Foundation of Los Angeles
Jonathan Jager (SBN 318325)
jjager@lafla.org
Kelsey Atkinson (SBN 336126)
katkinson@lafla.org
7000 S. Broadway
Los Angeles, CA 90003
T: 213.640.3835
F: 213.640.3988

Attorneys for Petitioners

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 21, 2022 at 3:30 pm or on such earlier date as this matter may be heard in Department 17 of the above-entitled court, 1221 Oak Street, Oakland CA, 94612, Petitioners Alliance of Californians for Community Empowerment (ACCE) Action and Strategic Actions for a Just Economy (SAJE) will and hereby do move for a preliminary injunction enjoining Respondents California Department of Housing and Community Development and Gustavo Velasquez in his official capacity as Director of the Department from issuing denials of emergency rental assistance until such time as the Department has implemented an appeal process that meets constitutional due process standards and providing that all denials of rental assistance that have not become final as of the date of the order shall have no force and effect and the Department shall not reject or disapprove any appeals of rental assistance decisions until the Department has implemented a constitutional appeal process as ordered by this Court. For purposes of this injunction, a denial does not become final until 30 days have elapsed from issuance of the initial denial notice; and either the tenant does not appeal or the appeal is rejected. This injunction shall not be construed to restrain the Department from continuing to review rental assistance applications and approving rental assistance applications, including on appeal of an initial denial.

Petitioners' Motion for Preliminary Injunction is made on the grounds that Respondents' administration of the Emergency Rental Assistance Program does not meet constitutional due process standards, and that the Department is denying tenants rental assistance worth thousands of dollars that makes the difference between tenants remaining housed and becoming homeless without providing constitutionally adequate notice or an opportunity to see the documents used in denying the assistance. Respondents' failure to provide due process to tenants seeking rental assistance is causing and will continue to cause tenants and Petitioners irreparable harm, in that tenants denied rental assistance face eviction and homelessness, and Petitioners ACCE and SAJE have diverted resources and suffered frustration of mission due to their efforts to assist tenants unfairly denied rental assistance.

This motion is based upon this notice of motion, the Memorandum of Points and Authorities in support of Petitioners' Motion for Preliminary Injunction filed concurrently herewith and the

declarations of Madeline Howard, Jackie Zaneri, Edna Monroy, Norma Soria, Longji Guan, Jeff Isaacs, Ivy Hong, Amber Twitchell, Naomi Sultan, Joshua Kramer, Anna Zuniga, and Tina Martin with exhibits attached thereto, the verified Petition for Writ Mandate, and such other evidence and arguments as may be presented to the Court at the hearing on the motion.

Dated: June 22, 2022

Respectfully submitted,

Richard A. Rothschild
Attorneys for Petitioners

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Los Angeles, California 90010
T: (213) 235-2628
F: (213) 487-0242

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gbonett@publiccounsel.org
Faizah Malik (SBN 320479)
fmalik@publiccounsel.org
Nisha Kashyap (SBN 301934)
nkashyap@publiccounsel.org
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katkinson@lafla.org
7000 S. Broadway
Los Angeles, CA 90003
T: 213.640.3835
F: 213.640.3988

Attorneys for Petitioners

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INTRODUCTION

Respondents administer a multi-billion dollar rental assistance program designed to prevent evictions of low-income tenants during the COVID-19 pandemic. Though thousands and often tens of thousands of dollars are at stake for each household, along with the means to avoid homelessness, Respondents continue to deny applications without providing notice sufficient to enable tenants to contest denials. Respondent Department of Housing and Community Development (Department or HCD) denies applications with explanations such as "inconsistent or unverifiable information has been provided by the applicant and cannot be substantiated by the program." Such notices are no better than no notice at all; tenants receiving them have no idea whether or how they should appeal.

Equally important, the Department fails to provide tenants with the documents relied on to deny assistance. This failure is particularly troubling because the tenants may never have even seen those documents; many applications are initiated by landlords, and decisions may be based on information or documents provided by the landlord.

With each passing day, eligible tenants throughout California are losing the assistance they need to keep their homes. This Court should put a stop to that by issuing a preliminary injunction preventing the Department from denying applications for rental assistance unless and until the Department provides denial notices sufficient to enable tenants to know whether and how to appeal, along with access to documents relied on for the denials.

STATEMENT OF THE CASE

With significant federal funding, the Legislature enacts the Emergency Rental Assistance Program, guaranteeing rental assistance to tenants who meet specified eligibility standards.

Recognizing that the COVID-19 pandemic caused millions of Americans to fall behind on their rent and face eviction, Congress established the Emergency Rental Assistance Program. Federal law dictates that ERAP funds be distributed for assistance with rent, rental arrears, utilities, and other enumerated housing expenses. 15 U.S.C. §§ 9058a(c)(2)(A), 9058c(d)(1)(A).

In two rounds of funding, Congress appropriated a total of $46.55 billion nationwide (15 U.S.C. §§ 9058a, 9058c) "to provide financial assistance and housing stability services to eligible households." 15 U.S.C. § 9058a(c)(1). According to the State Auditor, California received a

combined total of $5.2 billion in federal funds as of September 2021 to implement ERAP. State Auditor Rep. 2021-615.1, at 9 (Sept. 2021), https://www.auditor.ca.gov/pdfs/reports/2021-615.1.pdf. HCD also has access to state general fund dollars to cover rental assistance for all eligible tenants who applied before the program closed to new applications on March 31, 2022. Senate Bill No. 115 (2021-2022 Reg. Sess.), Stats. 2022, ch. 2, § 3.

Both state and federal law specify tenant eligibility requirements. Health & Safety Code §§ 50897.1(e)(1)-(e)(2) (tenants must meet federal requirements);[1] 15 U.S.C. § 9058c(f)(2) (tenants must have lost income or receive unemployment benefits; face threat of homelessness; and qualify as low-income); *see also* HCD, State Rental Assistance Program Guidelines – Emergency Rental Assistance[2] at 8 (specifying similar eligibility criteria). For tenants who meet these eligibility requirements "[a]ssistance for rental arrears shall be set at compensation of 100 percent of an eligible household's unpaid rental debt accumulated on or after April 1, 2020." § 50897.1(d)(1).

Generally, the rental assistance funds are paid directly to landlords. HCD Guidelines at 27. If the landlord does not cooperate with the application process, funds are provided directly to the tenant, with a requirement that they be paid to the landlord within 15 days of receipt. § 50897.1(e)(2)(A).

A successful or even a pending application for rental assistance can stave off eviction. A court may not enter an unlawful detainer judgment for a landlord unless the landlord can verify that it has not received rental assistance and that it has no pending application for the rent demanded in the complaint. § 50897.3(e)(2).

The Department adopts an application procedure resulting in denials of rental assistance without meaningful explanation and without permitting tenants to see the documents used against them.

Tenants seeking rental assistance complete a detailed online application on the Housing is Key website. They are required to upload supporting documents establishing their identity, income, tenancy, and rental debt. Zaneri Decl. ¶ 8. Tenants are required to select their primary language and which method of contact they prefer: phone, email, or U.S. mail. *Id.* at ¶ 11. Tenants may also

[1] Unless otherwise specified, all statutory citations will be to the Health & Safety Code.
[2] Declaration of Madeline Howard, Exh. A; State Rental Assistance Program Guidelines (HCD Guidelines).

provide contact information for a third party, such as an attorney, that they wish to receive notifications about their case. *Id.* at ¶ 12. Landlords can separately initiate an application which requires parallel information. Howard Decl. Exh. A; HCD Guidelines at 21.

Tenants often receive notifications in English even if they selected a different language on their application. Monroy Decl. ¶ 8; Zaneri Decl. ¶ 15; Soria Decl. ¶¶ 3-4; Guan Decl. ¶¶ 18, 22. Tenants often receive notifications via email even if they requested notice via U.S. mail or telephone (Monroy Decl. ¶ 7) and often receive no notice at all unless they check the online portal. Zaneri Decl. ¶ 13; Isaacs Decl. ¶ 11; Guan Decl. ¶ 21. Tenants are provided a window of less than seven days to respond with additional documentation, and sometimes only one day. Zaneri Decl. ¶ 13; Monroy Decl. ¶ 19; Hong Decl. ¶ 15. If they do not respond in time, their applications are denied. Zaneri Decl. ¶ 15; Monroy Decl. ¶ 19.

According to HCD program guidelines, ERAP applicants may be denied assistance on three bases: 1) The household is not eligible for government rental assistance; 2) the program no longer has sufficient rental assistance funds to approve the application; or 3) the application remains incomplete 15 days after initial submission due to the tenant's failure to complete their portion of the application. HCD Guidelines at 11, 29. Under the guidelines, applicants may contest a denial "based on program policy or calculations." *Id.* at 29. Tenants and landlords must be notified of any final decision, and when that decision is a denial, the notice must include the reason for the denial. *Id.* at 31. Tenants who receive decisions on their applications are no longer able to access the application on the Housing is Key website to see the information they submitted. Isaacs Decl. ¶¶ 35-38.

According to training, policy, and template documents HCD produced in response to Petitioner PolicyLink's Public Records Act request, the Department has no written policies or training materials regarding how to communicate with tenants in languages other than English, no template denial notices in languages other than English, and no written policies or training materials on appeals. Howard Decl. ¶¶ 7, 11-33.

As of June 7, 2022, 27% of submitted applications have been denied; this amounts to over 135,000 tenant households. *Rent Debt in California: Eliminating Rent Debt and Preventing Eviction is Key to Equitable Recovery*, National Equity Atlas, available at: https://nationalequityatlas.org/ca-

rental-assistance. These denials have occurred even though 92% of denied applicants meet income criteria for the program.[3]

Tenants do not always receive notice of the denial, and only learn of the denial when their landlord notifies them shortly before filing an unlawful detainer. *See, e.g.,* Zaneri Decl. ¶ 18 (ACCE senior attorney reports this happens about ten percent of the time); Isaacs Decl. ¶¶ 10-12, 23 (Legal Services of Northern California attorney reporting similar information). Denial notices do not always include the tenant's name, address, or case number, so when a notice is sent to an attorney or advocate who is assisting a number of tenants, the attorney or advocate may not have a way to identify which tenant the notice is directed towards. Hong Decl. ¶ 17; Monroy Dec. ¶ 11.

Tenants who are in the process of providing additional documentation receive notice that they are being denied for being "nonresponsive" days after they have submitted requested documents. *See, e.g.,* Guan Decl. ¶ ¶ 22-24; Kramer Decl. ¶ 16; Zaneri Decl. ¶¶ 13 ("If the tenant does not happen to check the portal at the right time, they will be denied for being "nonresponsive."), 27. Other denial notices do not state the basis for denial with any specificity, and may contain unexplained acronyms or references. For example, the most common reason tenants are denied other than being deemed "nonresponsive" is "[i]nconsistent or unverifiable information has been provided by the applicant and cannot be substantiated by the program." Isaacs Decl. ¶ 17; Zaneri Decl. ¶ 23; Twitchell Decl. ¶ 23; Sultan Decl. ¶ 6, Exh. A. Other denials notices state an identical basis, but refer to a "section" of information. For instance: "Inconsistent or unverifiable information has been provided by the applicant and cannot be substantiated by the program in section(s) X. Supporting Paperwork." Twitchell Decl. ¶ 23. No further detail is provided. The notice does not explain what "Section X" refers to, or what "supporting paperwork" is at issue. Nor does the notice state whether the "applicant" refers to the tenant or the landlord.

Tenants may also receive a denial notice stating "your application has been determined ineligible for government rental assistance and denied due to the following reason(s): The applicants request surpasses the CA COVID-19 RRP eligibility period." *See, e.g.,* Hong Decl. Exh. B. No

[3] *(Still A) State of Waiting: California's Emergency Rental Assistance Program June 3, 2022,* National Equity Atlas, available at https://nationalequityatlas.org/CARentalAssistance.

explanation is provided for what "RRP eligibility period" refers nor does the notice provide any further detail about the basis for denial. *Id*.

Equally important, HCD provides no mechanism for the tenant to get a copy of the documents that were considered in the denial decision, regardless of whether the documents were submitted by the tenant or the landlord. Zaneri Decl. ¶ 26; Sultan Decl. ¶ 9.

Denial notices state that the applicant has "30 days to appeal." Sultan Decl. Exh. A; Zaneri Decl. ¶ 24. No information is provided regarding what documentation must be submitted with the appeal, or even who decides appeals. Monroy Decl. ¶¶ 20-22; Isaacs Decl. ¶ 39; Sultan Decl. Exh. A ("Applicants must…submit all documentation needed to support the [appeal]" with no further explanation.). Tenants that contact HCD seeking further information about their appeal receive no information or conflicting information about the reason for the denial and what further documentation is required. Isaacs Decl. ¶ 18; Twitchell Decl. ¶¶ 25-28; Sultan Dec. ¶¶ 7-8.

Tenants who have been approved for assistance and received payments may also be retroactively denied assistance by an outside entity contracted to work with HCD. Twitchell Decl. ¶¶ 16-21. Up to two months after the application has been approved, the tenant receives notice of denial, and is instructed to pay back the funds to HCD. *Id.* Nearly all the notices state that "inconsistent or unverifiable information has been provided by the applicant and cannot be substantiated by the program" without further detail. *Id*. at ¶¶ 16-27.

Once a tenant is issued a final denial of rental assistance, remaining eviction protections no longer apply and the landlord may proceed with evicting the tenant for rental debt that would have been covered by ERAP. § 50897.3(e)(2).

Petitioner tenants' rights organizations file suit.

Petitioners Alliance of Californians for Community Empowerment (ACCE) Action, Policy Link, and Strategic Actions for a Just Economy (SAJE) filed suit on June 6, 2022. ACCE is a membership organization that assists tenants statewide, and SAJE assists tenants in Los Angeles. Verified Petition for Writ of Mandate, ¶¶ 7, 9. Policy Link is a national research and action institute that works to advance racial and economic equity. *Id.* at ¶ 8.

ARGUMENT

Courts evaluate two interrelated factors for a preliminary injunction: "(1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction." *Butt v. State of California*, 4 Cal. 4th 668, 677-78 (1992). "The trial court's determination must be guided by a 'mix' of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction." *Id*. at 678. Petitioners meet the requirements for a preliminary injunction.

I. Petitioners are likely to prevail on the merits because HCD's denial of rental assistance without reasonable notice violates the due process clause of the California Constitution.

A. As rental assistance payments are important statutory benefits, HCD cannot deny them without providing due process protections.

The California and United States Constitutions prohibit the State from depriving any person of "life, liberty, or property, without due process of law . . . ." Cal. Const. Art. I, § 7(a); U.S. Const. 14th Amend. Though the two provisions are almost identically worded, California's due process clause provides more expansive protection than its federal counterpart as "the claimant need not establish a property or liberty interest as a prerequisite to invoking due process protection." *Ryan v. California Interscholastic Fed'n-San Diego Section*, 94 Cal. App. 4th 1048, 1069 (2001). Rather, the claimant must "identify a statutorily conferred benefit or interest of which he or she has been deprived to trigger procedural due process under the California Constitution . . . ." *Gresher v. Anderson*, 127 Cal. App. 4th 88, 105 (2005).[4]

The rental assistance involved here certainly qualifies as a "statutorily conferred benefit." *Id.* As discussed above, state and federal statutes, along with HCD Implementing Guidelines, set out eligibility criteria. Once a household meets that criteria, section 50897.1(d)(1) provides: "Assistance for rental arrears shall be set at compensation of 100 percent of an eligible household's unpaid rental debt accumulated on or after April 1, 2020." Denial of such a valuable benefit triggers procedural due process protections.

[4] This brief will omit internal citations and quotations marks unless otherwise specified.

Based on pre-litigation discussions between counsel, HCD might argue that due process protections cannot be invoked because this case involves denial of applications for benefits rather than termination of existing benefits, which are statutory entitlements. But whatever force such a distinction may have once had in federal due process law, the distinction is not viable under California due process law. The state Supreme Court has held that "when an individual is subjected to deprivatory governmental action, he always has a due process liberty interest both in fair and unprejudiced decision-making and in being treated with respect and dignity." *People v. Ramirez*, 25 Cal. 3d 260, 268 (1979). Thus, California courts have affirmed the due process rights of applicants for benefits under various statutory schemes, some of them more discretionary than the rental assistance statute at issue in this case. *See, e.g., Van Atta v. Scott*, 27 Cal. 3d 424, 444 (1980) (applications of pre-trial detainees for release on their own recognizance); *Gresher v. Anderson*, 127 Cal. App. 4th at 104-10 (applicants for exemption from statute prohibiting employment in community care facilities for past criminal history). The Department's scheme for denials of rental assistance benefits must be evaluated under due process standards and, as will now be discussed, cannot pass muster.

B. HCD is violating the due process clause by denying tenants an important statutory benefit without constitutionally adequate notice.

1. HCD's procedures deny tenants constitutionally adequate notice.

"Notice and an opportunity to be heard are the fundamental hallmarks of due process . . ." *People v. Silva*, 72 Cal. App. 5th 505, 523 (2021). HCD's procedures deny tenants constitutionally adequate notice, thereby rendering meaningless any opportunity to be heard.

a. The Department's denial notices violate due process guarantees because they are so vague that they render appeal rights meaningless.

Simply notifying tenants that they will not receive rental assistance and that they can appeal is not enough. "Notice sufficient to enable a meaningful response is an indispensable element of due process." *Gresher v. Anderson*, 127 Cal. App. 4th at 109.

In *Gresher*, statutes prohibited employment in community care facilities for persons with certain criminal records unless the Department of Social Services granted an exemption. The Department notified affected individuals that it had "received criminal history" about them, and

asked those seeking an exemption to explain the circumstances of the convictions, along with what they had done to prevent re-occurrences. *Id.* at 104. The Court of Appeal held that these notices were constitutionally deficient because "due process requires the Department to tell individuals what convictions they must address to obtain an exemption." *Id.* at 110; *accord Doe v. Saenz*, 140 Cal. App. 4th 960, 997 (2006) ("Appeal rights are meaningless if an applicant has no notice of the basis for a determination that he or she is ineligible to work in a community care facility.")

By comparison, the notices received here are even less informative than the *Gresher* notices. When tenants are notified that their application for rental assistance has been denied, the Department rarely, if ever, provides a reasoned explanation for the denial. Some tenants are never notified at all and learn about the denial only through their landlords. Zaneri Decl. ¶ 19; Isaacs Decl. ¶¶ 10-12; Zuniga Decl. ¶ 15. Tenants and their advocates must check the application portal constantly in order to find out if an application has been denied. Twitchell Decl. ¶ 8; Zaneri Decl. ¶ 4; Guan Decl. ¶ 21.

When the tenant does receive a formal denial, the reason provided often is: "inconsistent or unverifiable information has been provided by the applicant and cannot be substantiated by the program. *See, e.g.,* Isaacs Decl. ¶¶ 8, 17 (attorney who has seen dozens of denial states that "almost all" provide this explanation); Twitchell Decl. ¶ 23 (program that has assisted more than 300 ERAP applicants reports that nearly all denials state this basis). No further information is provided about the basis for denial, or what "inconsistent or unverifiable information" is being referred to.

And some notices use opaque acronyms without explanation: "the applicant's request surpasses the CA COVID-19 RRP eligibility period" Hong Decl. Exh. B. Such notices are so vague that they do not give tenants any understanding of why they were denied or what they can do to correct the problem. *See, e.g.,* Sultan Decl. ¶ 8 (even after consulting with two of her colleagues, attorney filing appeal "was just guessing what information to provide."); Hong Decl. ¶ 26 ("I had to guess what the denial meant from the one sentence that I got in the email and provide what I thought was missing.").

In addition, because many notices use the term "applicant" without specification, they allow landlords to blame tenants for submitting incomplete information even if the denial is in fact based

on the landlord's submission or failure to submit. *See, e.g.,* Zaneri Decl. ¶¶ 25-26. HCD's failure to explain denials robs tenants of any meaningful opportunity to appeal.

These are not isolated examples. Petitioners, who have seen hundreds of denial notices, have yet to see any that actually inform applicants of what information they would have to provide to successfully secure rental assistance.

b. Denying tenants immediate access to documents violates due process guarantees.

The Department's failure to provide immediate access to the documents relied upon for denials is unconstitutional, as illustrated by *Gresher*. In that case, applicants for statutory exemptions were told they could obtain their criminal records, but the Court of Appeal still found due process violations, noting that the applicants "are ordinarily unable to obtain an arrest record from the Department of Justice within the time period allowed for requesting an exemption." 127 Cal. App. 4th at 108.

In this case, denial notices never attach the documents relied upon for denial, and the application system blocks applicants from looking at the documents they submitted. Issacs Decl. ¶¶ 36-38. In some cases, the denial is based on documents provided by the landlord. An ACCE attorney states: "when I ask for copies of those documents, or information about them, HCD won't provide them and says the landlord documents are private." Zaneri Decl. ¶ 26. Without access to the documents, tenants cannot possibly present an appeal effectively. The Department, by denying tenants the means to contest denials, has violated their due process rights. The question then becomes how much process is due, which we now address.

2. The relief petitioners seek is justified by the *Ramirez* factors.

The Supreme Court has held that what procedures are required to comply with California due process guarantees depend upon (1) the importance of the private interest at stake; (2) the risk of erroneous deprivation through the procedures employed and the "probable value . . . of additional or substitute procedural safeguards"; (3), the "dignitary interest in enabling individuals "to present their side of the story before a responsible governmental official", and (4) the governmental interest and burdens the additional process would entail. *People v. Ramirez,* 25 Cal. 3d at 269. Application of

these factors compels the conclusion that tenants faced with a denial of rental assistance must receive a specific, reasoned explanation for the denial and access to all of the information HCD has relied on, especially all documents.

a. The private interests at stake—thousands of dollars and the ability of tenants to keep their home—are enormous.

The private interest at stake is substantial in monetary terms alone. Assistance for repayment of rental debt can amount to thousands, even tens of thousands of dollars.

The personal stakes are even higher. Both state and federal courts have recognized the critical importance of public benefits and the harm caused by denials. An "eligibility controversy *may deprive an eligible recipient of the very means by which to live while he waits.* Since he lacks independent resources, his situation becomes immediately desperate." *Boehm v. Cnty. of Merced*, 163 Cal. App. 3d 447, 454 (1985) (emphasis in original).

When HCD denies an application for rental assistance, the tenant faces the immediate prospect of eviction. And given the statewide housing shortage, many tenants will become homeless. The private interest at stake in this case could not be greater.

b. Providing tenants facing rental assistance denials with reasoned explanations and the documents relied on will substantially reduce the frequency of erroneous determinations.

As for the second *Ramirez* factor, experience has shown that the risk of erroneous denials of rental assistance is high. Unlike most benefits programs, where the beneficiaries themselves provide most of the information, here much depends on information provided by landlords. Many landlords might have little incentive to prevent evictions, particularly in rent control jurisdictions where they might be able to lease the apartment for much higher rent.

HCD's lack of clear standards or detailed guidance for individuals making eligibility determinations increases the risk of erroneous denials further. HCD's training and policy documents include no guidance for how long tenants should be provided to respond to requests for further information or documents, resulting in tenants being denied for being "non-responsive" when they are in the process of providing requested information. Martin Decl. ¶ ¶ 11-12; Guan Decl. ¶ ¶ 22-24;

Kramer Decl. ¶¶ 16, 22; Monroy Decl. ¶ 19; Zaneri Decl. ¶¶ 13 ("If the tenant does not happen to check the portal at the right time, they will be denied for being "nonresponsive."), 27.

Further, the Department provides no guidance for contacting applicants in languages other than English, leading to non-English speaking tenants being denied when they cannot respond to notices they cannot understand. Zaneri Decl. ¶ 15. Even more egregious are denials that occur weeks or months after an application has been approved and paid. Twitchell Decl. ¶¶ 16-21. Again, HCD has no written standards or policies regarding these harmful retroactive denials that require low-income tenants to return rental assistance they have already provided to their landlord.

That the program is rife with erroneous denials can be seen by the fact that when a tenant obtains assistance from an advocate or attorney, denials are frequently reversed. Through repeated phone calls and emails with HCD staff, tenant advocates determine the specific basis for the denial and provide information or clarification about the issue that led to an inaccurate denial, or provide additional documentation leading to approval. *See, e.g.,* Isaacs Decl. ¶ ¶19-20; Monroy Decl. ¶ 26 (Director of Organizing for Petitioner SAJE states that it "is very frustrating that so many tenants I have helped were denied rental assistance because all of them were actually eligible to get help. They just needed a lot of advocacy because the agency denies people even when they have submitted all of the information and doesn't explain the reason for the denial.").

For the vast majority of the tens of thousands of applicants who do not have access to an advocate, an erroneous denial will lead to eviction. The relief petitioners seek would significantly reduce these errors and the harms that flow from them. For example, as noted, many tenants receive notices denying assistance because of "inconsistent or unverifiable information has been provided by the applicant and cannot be substantiated by the program." If the tenants knew which information was deemed inconsistent or unverifiable and had access to the documents relied on, they could provide the needed clarifying information in their appeals. Similarly, despite HCD written guidance

to the contrary, some applications are denied because of the lack of a written lease. HCD Guidelines at 24; Hong Decl. ¶ 20 ("Not having a formal lease is very common among the low-income Asian elders we work with."). If the responsible HCD staff person were required to state the mistaken rationale in the denial notice, the tenants would prevail on an appeal.

That some denials of assistance may be valid cannot justify the Department's failure to provide adequate notice. Although a court may not invalidate a regulatory scheme "because in some future hypothetical situation constitutional problems may arise . . . neither may we ignore the actual standards contained in a procedural scheme and uphold the law simply because in some hypothetical situation it might lead to a permissible result." *California Teachers Ass'n v. State of California*, 20 Cal. 4th 327, 347 (1999). The risk of error is too high to justify the Department's procedures.

c. Tenants' dignitary interests require that they receive the information they need to appeal.

Tenants' dignitary interests weigh heavily in favor of the relief they seek. Denying a tenant's application for assistance without explanation or even letting the tenant see the documents the Department relied on robs that tenant of any dignity. "'For government to dispose of a person's significant interest without offering him a chance to be heard is to risk treating him as a nonperson, an object, rather than a respected, participating citizen.'" *People v. Ramirez*, 25 Cal. 3d at 267-68. That is precisely the effect of what the Department is doing in this case.

d. No governmental interests justify the denial of meaningful notice and access to documents.

It is hard to imagine what governmental interest would justify failure to adequately explain denials or refusal to provide tenants the documents relied on for those denials. The Department could provide those elementary safeguards with little or no added burden or cost. *Cf. People v. Ruiz*, 59 Cal. App. 5th 372, 383 (2020) (failing to advise a parolee why he was denied less restrictive supervision and how he could remedy that violated his due process rights, the court noting that "the cost of modifying the notice given when an individual is released from prison would likely be de minimus."); *see also Propert v. D.C.*, 948 F. 2d 1327, 1335 (D.C. Cir. 1991) ("while cost to the government is a factor to be weighed in determining the amount of process due, it is doubtful that

cost alone can ever excuse the failure to provide adequate process.").

In short, when the Court applies the *Ramirez* factors, it should conclude that the remedies sought—adequate explanations for rental assistance denials, along with documents relied upon—are required by the due process clause of the California Constitution.

II. Petitioners meet the requirements for a writ of mandate.

When mandate is sought under Code of Civil Procedure section 1085, "[t]wo requirements are essential: a clear, present and usually ministerial duty upon the part of the respondent, and a clear, present and beneficial right in the petitioner to performance of that duty." *Pacific Bell v. California State & Consumer Services Agency*, 225 Cal. App. 3d 107, 118 (1990). Both requirements are met here. First, Respondents have a ministerial duty to comply with the due process clause. *Gresher*, 127 Cal. App. 4th at 114, n.7.

Second, Petitioners have a beneficial right to the performance of that duty. Petitioners' members have faced denials of rental assistance that threaten their constitutional rights. And Petitioners themselves have found their missions frustrated and their resources diverted by the Department's illegal policy. Monroy Decl. ¶ 25 ("We have had to put other work on hold in order to help tenants with rental assistance applications. This additional work has frustrated SAJE's mission of advocating for tenant rights, healthy housing, and equitable development."); Zaneri Decl. ¶ 7 ("ACCE has diverted staff resources normally spent on our policy campaigns and attorney resources to help tenants navigate the rental assistance process.").

Equally important, where "the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the [petitioner] need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced . . . . " *Green v. Obledo*, 29 Cal. 3d 126, 144 (1981); *see also Save the Plastic Bag Coal. v. City of Manhattan Beach*, 52 Cal. 4th 155, 168 (2011) ("[t]he term 'citizen' in this context is descriptive, not prescriptive."). There can be little doubt that providing due process protections when administering emergency rental assistance is an important public duty. Petitioners have shown that they will likely be issued a peremptory writ of mandate.

III. Petitioners will suffer more harm from denial of provisional injunctive relief than the Respondents will suffer from a grant of that relief.

A. Petitioners' members and Petitioners themselves are subject to imminent irreparable harm if the Department continues to deny rental assistance without providing basic due process protections.

Tenants who are denied rental assistance without basic due process protections are continuing to suffer irreparable harm. Once a denial of rental assistance becomes final, a landlord is free to proceed with an eviction. § 50897.3(e)(2). *See also* Hong Decl. ¶ 10 ("Many of the tenants I assisted are in dire circumstances. If they do not get rental assistance, I am worried they will end up getting evicted and living on the street."); Martin Decl. ¶ 24 ("I am currently living paycheck to paycheck and have nearly depleted my savings. . . . Without rental assistance I may not be able to stay in my home."); Twitchell Decl. ¶ 36 (denial of rental assistance places clients in danger of losing their homes).

Loss of home constitutes a serious and irreparable harm. *See Park Village Apartment Tenants Ass'n v. Mortimer Howard Trust*, 636 F.3d 1150, 1159 (9th Cir. 2011) ("It is well-established that the loss of an interest in real property constitutes an irreparable injury."); *La Raza Unida v. Volpe*, 337 F. Supp. 221, 233 (C.D. Cal. 1971) ("One who is forced to vacate his chosen neighborhood or city, to sever long-standing friendships, to confront a tight and possibly discriminatory housing market, and to incur other indignities that are likely to be present here suffers severe and irreparable injury."). In addition to the harm to Petitioner ACCE's members, ACCE and SAJE will be forced to continue to divert their organizational resources and staff time to counsel tenants facing displacement. Zaneri Decl. ¶ 7; Monroy Decl. ¶ 25. Petitioners, as well as the tenants they serve, face irreparable harm if an injunction is not issued.

B. Respondents' putative harms are minimal, and do not justify the denial of basic due process protections.

On the other side of the ledger, the Department would suffer little harm if the Court issues the preliminary relief sought. Petitioners seek an order temporarily halting rental assistance denials— which would entail no burden at all—until the Department ensures adequate notice and access to needed documents. Even if setting up a constitutional system would entail some expense, courts have overwhelmingly held that such fiscal concerns are insufficient to deny preliminary relief

in cases such as this. *See, e.g., Harris v Bd. of Supervisors, Los Angeles Cnty.*, 366 F.3d 754, 766 (9th Cir. 2004) ("[f]aced with [ ] a conflict between financial concerns and preventable human suffering, [the court has] little difficulty concluding that the balance of hardships tips decidedly in plaintiffs' favor."); *Hunt v. Superior Ct.*, 21 Cal. 4th 984, 999-1000 (1999) (affirming preliminary injunction preventing denial of county-funded health care, noting it was undisputed that "when weighed against the financial burden on the County resulting from a preliminary injunction, the balance of hardships favors plaintiffs.").

The balance of harms favors Petitioners, who will also likely prevail on the merits. Petitioners are entitled to a preliminary injunction.

C. Petitioners, as nonprofit organizations working with and on behalf of low-income communities, should not be required to post a bond.

While undertakings are normally required for preliminary injunctions, courts have discretion to exempt low-income litigants from that requirement. Code Civ. Proc. § 995.240; *Conover v. Hall*, 11 Cal. 3d 842, 849-53 (1974). Under section 995.240, "the court shall take into consideration all factors it deems relevant, including but not limited to the character of the action or proceeding, the nature of the beneficiary . . . and the potential harm to the beneficiary if the provision for the bond is waived." Petitioners SAJE, ACCE, and Policy Link are nonprofit organizations. They do not have budgets that could support a bond; given the strong likelihood that they will prevail in this writ petition, the Court should waive the posting of a bond.

CONCLUSION

Respondents cannot continue to deny rental assistance to thousands of tenants without providing constitutionally adequate explanations, and immediate access to the documents relied upon for the denials. The motion for preliminary injunction should be granted.

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Respectfully submitted,

Richard A. Rothschild
Attorneys for Petitioners