ROB BONTA
Attorney General of California
CHRISTINA BULL ARNDT
Supervising Deputy Attorney General
JACKIE VU
Deputy Attorney General
State Bar No. 253533
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1230
Telephone: (213) 269-6440
E-mail: Jackie.Vu@doj.ca.gov
Attorneys for Respondents Department of Housing and Community Development and Gustavo Velasquez

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ALLIANCE OF CALIFORNIANS FOR COMMUNITY EMPOWERMENT; POLICYLINK; STRATEGIC ACTIONS FOR A JUST ECONOMY, Plaintiffs, **v.** **CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, GUSTAVO VELASQUEZ,** Defendants.	Case No. 22CV012263 **RESPONDENTS' OPPOSITION TO PETITIONERS' MOTION FOR A PRELIMINARY INJUNCTION** Date: July 7, 2022 Time: 8:30 a.m. Dept: 17 Judge: Frank Roesch Trial Date: None Set Action Filed: June 6, 2022

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

INTRODUCTION

In response to impacts from the COVID-19 pandemic, the federal government created the Emergency Rental Assistance Program ("ERAP"), which allocated funds to states to assist individuals facing evictions and rental debt. On January 29, 2021, the Governor signed Senate Bill 91 ("SB 91"), which established California's program for administering and distributing these federal rental assistance funds, known as the State Rental Assistance Program. It was an emergency, temporary assistance program intended to prevent evictions and address housing instability due to or during the COVID-19 pandemic. Under the governing statute, Respondent, the California Department of Housing and Community Development ("HCD"), is responsible for administering the available funds in accordance with state and federal law.

Petitioners cannot show that they are likely to succeed on the merits because they cannot demonstrate that HCD abused its discretion in performing its duty to implement ERAP. The Legislature conferred upon HCD significant discretionary authority to administer rental assistance funds, including how to implement its denial and appeal processes. Further, Petitioners' claim for violation of due process fails because Petitioners do not have a protectable property interest in rental assistance and even if they did, HCD's denial and appeal procedures comport with due process. Lastly, Petitioners' writ petition improperly requests that the Court control HCD's exercise of discretion by changing HCD's denial and appeal processes.

In addition, Petitioners cannot prove that they will suffer imminent, irreparable harm without injunctive relief. By statute, the state's eviction protections end on July 1, 2022. The irreparable harm Petitioners claim they are experiencing based on HCD's allegedly improper denial notices—potential eviction—is not tied prospectively to HCD's denial decisions—after today, even pending applications will be insufficient to stave off evictions. In addition, Petitioners' delay in suing over an alleged problem that they claim began months ago negates any showing of irreparable harm.

Lastly, the very members of the public Petitioners seek to protect will suffer greater harm if the Court grants Petitioners' injunction, because denial notices spur reengagement, giving applicants an opportunity to cure their applications. If HCD is enjoined from issuing denial notices

until it implements a new denial and appeal process, these applicants may be evicted before they can appeal the denials and cure their applications. In sum, Petitioners fail to make a factual showing of irreparable harm, and entirely failed to account for the harm to the public and HCD in restraining HCD from performing its statutory duties. Under these circumstances, it would be an abuse of discretion to grant the requested preliminary injunction.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

I. STATUTORY BACKGROUND

A. California Adopts Legislation Authorizing HCD to Administer and Implement Emergency Rental Assistance Program

The federal government created ERAP to assist individuals facing evictions and rental debt arising from the COVID-19 pandemic. (15 U.S.C. § 9058a.) The U.S. Department of Treasury allocated funds to states and grantees in two rounds, under Section 501 of Subtitle A of Title V of Division N of the Consolidated Appropriations Act, 2021 ("Consolidated Appropriations Act"), and Section 3201 of Subtitle B of Title III of the American Rescue Plan Act of 2021 ("American Rescue Plan"). (15 U.S.C. §§ 9058a(b)(1); 9058c(a)(1).) These two rounds represent a limited amount of federal funding that was appropriated to states based on each state's proportion of the national population. (15 U.S.C. §§ 9058a(b)(1)(A).) They were not tied to California's actual demand and did not purport to cover all of California's rental assistance needs. (*Ibid*.)

On January 29, 2021, the Governor signed SB 91, which established California's program for administering and distributing ERAP funds. (S.B. No. 91 (2020-2021 Reg. Sess.), Stats. 2021, ch. 2, § 24.) SB 91 added Chapter 17 (commencing with Section 50897) to Part 2 of Division 31 of the Health and Safety Code,[1] creating the State Rental Assistance Program.[2] (*Ibid*.) The goal of the State Rental Assistance Program is to prevent evictions and housing instability due to or during the COVID-19 pandemic. (Request for Judicial Notice ("RJN"), Exh. 1, p. 6.) The Legislature authorized HCD to "adopt, amend, and repeal rules, guidelines, or procedures

[1] Statutory references that follow are to the Health and Safety Code unless otherwise stated.

[2] The state statute refers to the "State Rental Assistance Program." It is referred to hereinafter interchangeably with the federal term, ERAP.

necessary" to carry out the program. (§ 50897.1, subd. (k)(1).) Further, HCD's adoption, amendment, or repeal of rules, guidelines, or procedures is exempt from the rulemaking provisions of the Administrative Procedures Act. (§ 50897.1, subd. (k)(2).)

B. California's Eviction Protections End on June 30, 2022

Section 50897.3(e)(2) provides that in an unlawful detainer action that is based on a tenant's failure to pay rent, 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 does not have a pending application for rental assistance for the amount demanded in the complaint. On June 28, 2021, California passed Assembly Bill 832 ("AB 832"), which amended the Health and Safety Code to add subdivision (g) to section 50897.3. (A.B. No. 832 (2020-2021 Reg. Sess.), Stats. 2021, ch. 27.) Subdivision (g)(2) limits the application of section 50897.3(e) to the administration of the first two rounds of federal funding.

On March 31, 2022, California passed Assembly Bill 2179 ("AB 2179"), ending the state's eviction protections on June 30, 2022. (A.B. No. 2179, (2021-2022 Reg. Sess.), Stats. 2022, ch. 13.) Code of Civil Procedure section 1179.11, subdivisions (a) and (b), prevents courts from issuing a summons on a complaint or judgment in favor of the plaintiff in unlawful detainer actions if a determination for government rental assistance is pending. AB 2179 amended Code of Civil Procedure section 1179.11 so that that section does not apply to unlawful detainer actions filed on or after July 1, 2022. (*Ibid.*) As such, on or after July 1, 2022, courts can issue summons on a complaint or a judgment in an unlawful detainer action, even if the landlord or tenant has a pending application for rental assistance. (See Code of Civ. Proc. § 1179.11, subd. (a) and (b).)

II. HCD'S IMPLEMENTATION OF THE ERAP PROGRAM

A. ERAP's Application Process

The Legislature tasked HCD with administering the ERAP program and in doing so, gave HCD broad discretion over how to implement the program. (§ 50897.1, subd. (k)(1) and (2).) Immediately following the passage of Consolidated Appropriations Act, HCD moved rapidly to implement the ERAP program. (RJN, Exh. 2, p. ii.) HCD has received more than 450,000 applications for rental assistance since the program began in March 2021. (RJN, Exh. 6, p. 9.)

Only "eligible households" can receive rental assistance through the ERAP Program. (RJN, Exh. 1, p. 21.) A tenant is considered an "eligible household" if the household meets three criteria: (1) the household income is 80 percent or less of the area median income, (2) the household has qualified for unemployment or experienced a reduction in household income, incurred significant costs, or experienced other financial hardship during or due to the COVID-19 outbreak, and (3) one or more members of the household can demonstrate a risk of experiencing homelessness or housing instability. (*Ibid*.) In support of their applications, applicants must submit documents showing proof of identity, rent and utility arrears, income, and unemployment or financial hardship during or due to COVID-19. (RJN, Exh. 1, pp. 24-27.) Because many applicants may not have formal documents such as a lease, utility bills in their name, or paystubs, applicants can submit written attestations, declarations, or affidavits in support instead. (*Ibid*.)

In administering the program, HCD is obligated to prevent fraud, waste or abuse. (§ 50897.4, subd. (c); RJN, Exh. 2, p. 31.) This requires HCD to implement a process to prevent households from receiving payments from multiple sources for the same incurred expenses, either unintentionally or fraudulently. (*Ibid*.) In reviewing applications, HCD must balance the goal of keeping documentation requirements as simple as possible with the need to capture potential duplication of benefits and address risks of fraud. (RJN, Exh. 1, p. 25.)

B. HCD's Processes Regarding Denials and Appeals

After an application is reviewed, both the tenant and landlord are to be notified once the reviewer renders a final decision. (RJN, Exh. 1, p. 31.) Throughout the implementation of ERAP, HCD solicited feedback at local levels and continually refined the application process to improve the program's effectiveness and to better serve applicants. (Declaration of Geoffrey Ross ("Ross Dec."), ¶ 3.) One of the processes that HCD has recently refined relates to ERAP denial notices. (Ross Dec., ¶ 4.) In May 2022, HCD began working with its third-party contractor to correct for human error in the denial noticing process. (*Ibid*.) Though the prior denial notice template contained a field allowing the reviewer to input the reason for the denial, reviewers would, on rare occasions, fail to do so. (*Ibid*.) In order to ensure that the reason for the denial is identified in every denial notice, HCD changed its processes so that the field articulating the reason for denial,

including what section contains inconsistent or unverifiable information, must be populated before the denial is sent out. (Ross Dec., ¶ 5.) Currently, all denial notices inform the applicant why the application was denied. (*Ibid*.)

HCD's responsibility to prevent fraud is also reflected in its denial process. (Ross Dec., ¶ 6.) Some applications are denied because inconsistencies in the application or documents raise the possibility of fraud or duplication. (*Ibid*.) Every application that is flagged by case management or quality control review for potential fraud is escalated to the Irregularity Team for further independent review. (Ross Dec., ¶ 7.) The Irregularity Team conducts a thorough review of the application, including contacting the applicant to request additional documentation to correct any inconsistencies, if necessary. (*Ibid.*) If the Irregularity Team is unable to resolve the application's irregularities, then the applicant is issued a denial notice. (*Ibid.*) In giving applicants notice of their denials, HCD must be careful not to provide too much information that would allow applicants attempting fraud the ability to bypass HCD's fraud prevention protections. (*Id*.)

A tenant whose application is denied has 30 days to appeal the decision. (Ross Dec., ¶ 8.) Tenants must appeal the decision directly through the online portal, where they can submit additional documentation in support of their application. (*Ibid*.) An applicant who is denied can call the CA COVID-19 Rent Relief Call Center to obtain more information regarding their application and assistance with filing their appeal. (Ross Dec., ¶ 9.) The call center can provide assistance to applicants in over 200 languages. (*Ibid*.) Tenants can also seek assistance with their appeals in multiple languages from one of the over 140 community-based organizations that HCD funded and trained. (Ross Dec., ¶¶ 10, 11.) Issuing denials of applications that do not currently meet HCD's eligibility guidelines triggers the opportunity for applicants—who will then know why their applications are deficient and can immediately appeal the decision—to reengage with the process. (Ross Dec., ¶ 13.)

C. HCD Established Outreach Programs to Provide Education and Assistance Regarding ERAP

In an effort to ensure that ERAP funds were allocated to very low-income households and those hardest hit by the COVID-19 pandemic, HCD partnered with community-based

organizations across the State to provide guidance and assistance to tenants with their ERAP applications. (RJN, Exh. 2, pp. 14-15, 22-23.) HCD provided funding to these organizations based on the budget they submitted to HCD and the hours they could commit to. (Ross Dec., ¶ 12.) HCD has provided over $23.5 million in funding to these community-based organizations to provide assistance to tenants with the ERAP program. (*Ibid*.)

D. The ERAP Program Was Intended to Be a Temporary Assistance Program Based on Federal Funding

ERAP was established to be an emergency, temporary assistance program intended to prevent evictions and housing instability due to or during the COVID-19 pandemic. (RJN, Exh. 1, p. 6.) The program provided rental assistance to eligible households using funding initially allocated to California by the U.S. Department of Treasury in two rounds of funding for a total allocation of approximately $5.2 billion. (*Id*. at p. 1.)

Due to diminishing funds from the two rounds of federal funding, HCD requested an additional $1.9 billion from Treasury on November 30, 2021. (RJN, Exh. 3, p. 1.) On January 7, 2022, the Treasury informed HCD that the state-administered program would receive only $62.5 million in reallocated funds. (RJN, Exh. 4, p. 1.) HCD applied again to the Treasury for additional funding on January 21, 2022, requesting approximately $1.89 billion in direct assistance plus administrative funds. (RJN, Exh. 4, pp. 1, 3.) In response to HCD's January 2022 request, the Treasury allocated $136 million to HCD in March 2022. (RJN, Exh. 7, p. 1.)

Based on HCD's January 2022 application to the Treasury, and the Treasury's failure to timely provide the requested funds, the Legislature passed Senate Bill 115 ("SB 115") on February 9, 2022, authorizing HCD to borrow money from the state general fund to continue to fund ERAP for application received on or before March 31, 2022. (S.B. No. 115 (2021-2022 Reg. Sess.), Stats. 2022, ch. 2, § 3.; RJN, Exh. 5, pp. 3-4.) Since funding from the Treasury is intermittently received, and well short of HCD's $1.9 billion request, funds from SB 115's cashflow loans are the primary source of funding for applications currently being processed. (Ross Dec., ¶ 14; RJN, Exh. 7, pp. 1-2.) Consistent with SB 115's limitations, HCD closed the ERAP program to new applications on March 31, 2022. (RJN, Exh. 5, p. 3.)

ARGUMENT

I. LEGAL STANDARD FOR A PRELIMINARY INJUNCTION

In determining whether to grant preliminary injunctive relief, courts must analyze (1) "the likelihood that the plaintiff will prevail on the merits"; and (2) "the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief." (*White v. Davis* (2003) 30 Cal.4th 528, 554.) The two factors are an interrelated sliding scale—the more one factor is shown, the less the other must be proven. (*Common Cause v. Bd of Supervisors* (1989) 49 Cal.3d 432, 446-447.) Injunction is an extraordinary power to be exercised with great caution and only in those cases where it fairly appears that the moving party will suffer irreparable injury. (*Tiburon v. Northwestern R.R. Co.* (1970) 4 Cal.App.3d 160, 179.) "The power, therefore, should rarely, if ever, be exercised in a doubtful case." (*Ibid*.) Moreover, "[t]here is a general rule against enjoining public officers or agencies from performing their duties." (*Tahoe Keys Property Owners' Assn. v. State Water Resources Control Board* (1994) 23 Cal.App.4th 1459, 1471.)

Where a preliminary injunction mandates an affirmative act that changes the status quo, the court "scrutinize[s] it even more closely for abuse of discretion." (*Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 625, quotation omitted.) "A preliminary mandatory injunction is rarely granted, and is subject to stricter review on appeal." (*Ibid*., quotations omitted.) "The granting of a mandatory injunction pending trial 'is not permitted except in extreme cases where the right thereto is clearly established.'" (*Ibid*.)

II. PETITIONERS ARE NOT LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS

Petitioners are unlikely to succeed on the merits of their writ of mandate claim for violation of due process because they do not allege any ministerial acts capable of enforcement via mandamus, ERAP rental assistance is not subject to due process, and HCD did not abuse its discretion in implementing its denial and appeal processes.

A. Petitioners Do Not Allege Any Ministerial Acts Capable of Enforcement by Writ of Mandate

Traditional mandamus under Code of Civil Procedure section 1085 applies to two types of official acts: ministerial duties and quasi-legislative or legislative acts. (*Carrancho v. California*

Air Resources Bd. (2003) 111 Cal.App.4th 1255, 1264-1265.) The distinction is significant. "Generally, mandamus may only be employed to compel the performance of a duty that is purely ministerial in character." (*Mooney v. Garcia* (2012) 207 Cal.App.4th 229, 232-233, quotations omitted.) That means mandamus generally will not issue "if the duty is not plain or is mixed with discretionary power or the exercise of judgment." (*Id*. at p. 233, internal quotations and citations omitted.) In the case of discretionary, quasi-legislative acts, mandate relief is only available where the petitioner can demonstrate an abuse of discretion. (*Id.* at p. 235.)

The distinction between a ministerial duty and quasi-legislative act turns on whether the act in question "involves the exercise of judgment and discretion." (*Glendale City Employees' Ass'n v. Glendale* (1975) 15 Cal.3d 328, 344, internal quotations and citation omitted.) A ministerial duty is one that lacks discretion. (*County of Los Angeles*, *supra*, 214 Cal.App.4th at 653.) In contrast, a quasi-legislative act involves discretion, which is "the power conferred on public functionaries to act officially according to the dictates of their own judgment." (*Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 501-502.) One telltale sign of a discretionary act is where a public agency or officer engages in "balancing various factors and selecting among various approaches to the same problem." (*Carrancho*, *supra*, 111 Cal.App.4th at p. 1268, internal quotations and citations omitted.)

In view of these well-established principles, it is clear that the acts complained of were quasi-legislative acts, not failures to perform ministerial duties. Discretion, the hallmark of a quasi-legislative act, was expressly vested in HCD, which was given wide discretion in the implementation and administration of the ERAP program, including its denial and appeal processes. This is evident from the express language of section 50897, subdivision (k), authorizing HCD to "adopt, amend, and repeal rules, guidelines, or procedures necessary" to carry out the program and exempting HCD's adoption, amendment, or repeal of rules, guidelines, or procedures from the rulemaking provisions of the Administrative Procedures Act. Indeed, not a single detail that Petitioners complain of was actually delineated by the Health and Safety Code. Rather, each and every alleged defect stems from discretionary decisions by HCD. (Motion, pp. 13-15, [complaints about the denial notices], p. 15 [complaints about access to documents].)

Accordingly, the Court should find that HCD's denial and appeal processes were not ministerial duties. This case instead concerns quasi-legislative acts that the Court must review under the abuse of discretion standard.

B. Petitioners' Due Process Claim Fails

1. Petitioners Do Not Have a Property Interest in Rental Assistance

"The first inquiry in every due process challenge is whether the plaintiff has been deprived of a protected interest in 'property' or "liberty.'" (*Today's Fresh Start, Inc. v. L.A. Cty. Office of Educ.* (2013) 57 Cal.4th 197, 214, citation omitted.) "Only after finding the deprivation of a protected interest do [courts] look to see if the State's procedures comport with due process." (*Ibid.*) Petitioners allege that ERAP rental assistance is a "statutorily conferred benefit." (Motion, p. 12.) However, a person seeking a statutorily conferred benefit provided by the government only has a protected property interest if the person has "a legitimate claim of entitlement to it." (*Las Lomas Land Co. v Los Angeles* (2009) 177 Cal.App.4th 837, 853.) Thus, "[t]o have a property interest in a benefit, a person clearly must have more than an abstract need for it. He must have more than a unilateral expectation of it." (*Blank v. Kirwan* (1985) 30 Cal.3d 311, citing *Board of Regents v. Roth* (1972) 408 U.S. 564, 577.)

Here, ERAP applicants do not have any property interest in rental assistance benefits because they do not have "a legitimate claim of entitlement" to them (*Las Lomas Land Co., supra, 177 Cal.App.4th at 853.*) Unlike other government entitlement programs, funding for ERAP is limited to the two rounds of federal funding and SB 115's cashflow loans. Applicants who may otherwise meet all of the eligibility standards will still be denied assistance once the funds are depleted.

In addition, HCD necessarily has discretion to deny applications that do not meet the eligibility standards. In reviewing applications, HCD must factor in the potential for fraudulent and duplicative applications, even if unintentional. These factors are made more difficult because many tenants do not have traditional documents like a rental agreement, pay stub, or utility bill, and must rely on written attestations, increasing the potential for fraud. Though HCD attempts to keep the required documentation simple, applicants still must meet minimum standards before

their applications for rental assistance are approved. Further, decisions to approve applications are constrained by statutory assistance prioritization requirements.[3] Because applicants who may otherwise meet eligibility requirements do not have a "legitimate claim of entitlement" to rental assistance benefits, they are not protected property interests for which due process is required.

This matter is analogous to *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, where the court of appeal determined that petitioner applicant did not have a protected property interest in approval for permits to build a condominium because defendant council had discretion to impose minimum conditions on permits. The court found that the municipal code vests significant discretion in reviewing applications and that the council's reason for denying petitioner's application concerned minimum standards, not absolutes or guarantees. Similarly, without a protectable property interest, Petitioners' claim of a due process violation fails.

2. HCD Did Not Abuse Its Discretion as Its Denial and Appeal Procedures Comport with Due Process

Even if Petitioners had sufficiently alleged a protected property interest, there was no abuse of discretion as HCD's denial and appeal processes comports with due process.[4] The abuse of discretion standard, otherwise known as the "'arbitrary and capricious' standard," is an "extremely deferential test." (*County of Los Angeles, supra*, 214 Cal.App.4th at p. 654.) The facts in this case do not justify a finding that HCD's actions were "palpably unreasonable and arbitrary." (*Tailfeather v. Board of Supervisors* (1996) 48 Cal.App.4th 1223, 1244.)

HCD was given an open-ended mandate to administer and implement the ERAP program. (§ 50897.1, subd. (k).) To that end, it created a denial and appeal process that balanced the need

[3] Section 50897.1(b)(1) outlines three categories for priority assistance. The highest priority ("Priority 1") are households with a household income that is not more than 50 percent of the area median or households which have received a 3-day notice demanding payment for rent or an unlawful detainer summons. The next highest priority ("Priority 2") are communities disproportionately impacted by COVID-19, as determined by the HCD. Finally, eligible households not covered by Priority 1 or 2 with a household income not more than 80 percent of the area median income are considered "Priority 3." In addition, "[f]or purposes of stabilizing households and preventing evictions, rental arrears shall be given priority for purposes of providing rental assistance" and "[r]emaining funds not used [for rental arrears] may be used for any eligible use," including prospective rent. (§ 50897.1, subd. (c)(2) and (3).)

[4] While a constitutional violation would constitute an abuse of discretion, as explained in the sections B.1 and B.2.a of this Opposition, Petitioners cannot establish a claim for violation of due process.

to inform applicants of the denial reason and the need to reduce fraud and duplication. Moreover, any alleged shortcomings in the denial and appeal processes were cured through reasonable subsequent remedial measures based on ongoing feedback from local community organizations. Thus, the Court should hold there was no abuse of discretion as a matter of law.

a. HCD's Implementation of Its Denial and Appeal Procedures Comport with Due Process

Under the due process clause, the State need only provide "notice reasonably calculated to apprise interested parties of the pendency of the action affecting their property interest and an opportunity to present their objections." (*Nasir v. Sacramento County Office of the District Attorney* (1992) 11 Cal.App.4th 976, 985.) What constitutes adequate due process varies depending on the context. "'Due process' is an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts." (*Bergeron v. Department of Health Services* (1999) 71 Cal.App.4th 17, 23, citing *Hannah v. Larche* (1960) 363 U.S. 420, 442.) "The extent to which due process relief will be available depends on a careful and clearly articulated balancing of the interests at stake in each context." (*People v. Ramirez* (1979) 25 Cal.3d 260, 269.) One factor to consider in a due process analysis is "the governmental interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." (*Id.* at 269.)

HCD has received over 450,000 applications for rental assistance since ERAP's inception. On rare occasion, some of the denial notices and procedures may not have met HCD's standards, which Petitioners' motion and declarations present examples of, but this demonstrates only individual error, not systemic abuse of discretion. Moreover, HCD has refined its process to account for human error so that all applicants are now given notice of the reason for their denial. If the denial was based on inconsistent or unverifiable information, HCD identifies the section of the application that is deficient. Further, the denial notices advise applicants that they have 30 days to appeal the decision and submit additional documentation. Given HCD's mandate to prevent fraud, HCD's denial notices are general enough to allow the applicant to appeal and

correct the deficient application without disclosing details that would enable a person to bypass HCD's fraud prevention protections. (See Denial Notice, attached as Ex. 1 to Ross Dec.)

HCD's due process procedures are similar to those that the court of appeal found to be sufficient in *Bergeron v. Department of Health Services, supra*. In that matter, appellant dentist submitted bills of her Medi-Cal patients to respondent Department of Health Services ("Department") for payment. Due to an ongoing fraud investigation concerning appellant's billing practices, the Department provided appellant notice that her payments were being withheld and that she could submit written evidence for further consideration. The court found that the Department's notice providing only "general allegations" and not a more detailed account of the incidents being investigated was sufficient so as not to jeopardize the investigation. (*Bergeron v. Department of Health Services, supra*, 71 Cal.App.4th at p. 24-25.) In addition, appellant was provided an "opportunity to respond" by submitting additional written evidence for consideration by the Department. (*Id*. at p. 25.) The court determined the state and federal interest in preserving the limited resources in the Medi-Cal system for those in need justifies the temporary withholding of payments and that, given the procedural notice mechanisms and the opportunity to respond with additional documentation, the dictates of due process were met. (*Id*. at p. 26.)

In the context of the ERAP's program's temporary nature, Petitioners' requested additional safeguards would impose fiscal and administrative burdens on HCD which would interfere with the efficiency of the application process. Petitioners' request for "an opportunity for tenants to give oral testimony" (Petition, Prayer for Relief, ¶ 1) is not required for denials of applications for public assistance, and would result in an increase in administrative costs that would reduce the amount of money available for rental assistance and be contrary to the objective of the program. (See *Zobriscky v. Los Angeles County* (1972) 28 Cal.App.3d 930, 933.)

Based on the foregoing, HCD's denial and appeal processes do not amount to a violation of due process. HCD did not abuse its discretion as its implementation of the processes were not "palpably unreasonable and arbitrary." (*Tailfeather, supra,* 48 Cal.App.4th at 1244.)

C. The Requested Writ Relief Would Improperly Control HCD's Discretion

Petitioners' underlying writ petition fails because the requested relief cannot lie as a matter of law. The judicial policy of protecting the discretionary decisions of government agencies and officials from judicial control "ensure[s] judicial abstention in areas in which the responsibility for basic policy decisions has been committed to the coordinate branches of government." (*Nunn v. State of California* (1984) 35 Cal.3d 616, 622.)

The Legislature gave HCD authority to implement ERAP, including implementation of the denial and appeal process. Petitioners' writ request would have this Court improperly (and unconstitutionally) control HCD's exercise of this discretion by changing HCD's denial and appeal process, including requiring an opportunity for applicants to give oral testimony to the official deciding their appeal. However, in light of the number, sweep, and scope of government benefits and the burden on the agency, "any general requirement for an evidentiary hearing in connection with the denial of an application for welfare benefits is neither necessary nor desirable as a matter of due process of law." (*Zobriscky*, *supra,* 28 Cal.App.3d at 933; see *Jackson v. Carleson* (1974) 39 Cal.App.3d 12, 16.) As such, Petitioners' requested writ relief fails as a matter of law.

III. THE BALANCE OF HARMS WEIGHS AGAINST INJUNCTIVE RELIEF

In evaluating the balance of harms at the preliminary injunction stage, the inquiry is whether the harm that will befall the moving party if the motion is not granted exceeds any harm to the party to be restrained if the preliminary injunction is imposed. (*California State Univ., Hayward v. National Collegiate Athletic Ass'n* (1975) 47 Cal.App.3d 533, 544.) The plaintiff must offer evidence of "irreparable injury or interim harm that it will suffer if an injunction is not issued pending an adjudication of the merits." (*White v. Davis* (2003) 30 Cal.4th 528, 554.) A plaintiff must make a "significant" showing of immediate irreparable injury to enjoin a public agency from performing its duties. (*Tahoe Keys Property Owners' Assn. v. State Water Resources Control Board, supra,* 23 Cal.App.4th at p. 1471.) Petitioners cannot meet that high burden here.

///

///

A. Petitioners Fail to Demonstrate That They Will Suffer Immediate, Irreparable Harm without Injunctive Relief

Petitioners' allegations of immediate, irreparable harm suffer from two irremediable defects: lack of irreparable harm from the requested injunction and unreasonable delay in making the request.

First, Petitioners fail to demonstrate any irreparable harm that would result from denial of the requested injunction because after July 1, 2022, a pending application for rental assistance will not stave off eviction. Petitioners contend that its tenant members will suffer imminent, irreparable harm because "[o]nce a denial of rental assistance becomes final, a landlord is free to proceed with an eviction" under section 50897.3, subdivision (e)(2). (Motion, p. 20.) However, Petitioners ignore section 50897.3, subdivision (g), which was added on June 28, 2021, to limit the application of section 50897.3, subdivision (e) to the administration of the first and second round of federal funding. As explained above, the first and second rounds of federal funding have been depleted and the funds from SB 115's cashflow loans are the primary source of funding for applications currently being processed. Accordingly, section 50897.3, subdivision (e) no longer applies and pending applications for rental assistance will not stave off eviction proceedings.

Further, the Legislature codified the end of the state's eviction protections with the passage of AB 2179 on March 31, 2022. AB 2179 specifically amended Code of Civil Procedure section 1179 to end on June 30, 2022, conditions prohibiting courts from issuing summons in unlawful detainer actions if an application for government assistance is pending. As such, denying Petitioners' request to enjoin HCD from issuing any further denials will not cause Petitioners or their members any harm that would not occur anyway after state eviction protections end on June 30, 2022. With their distant and speculative claims, petitioners cannot demonstrate imminent irreparable injury of any kind.

Second, Petitioners' delay in seeking injunctive relief negates their claim of imminent harm. (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1481.) HCD has issued thousands of denial notices since the program first began in March 2021. Presumably, Petitioners have assisted applicants with their applications, denials, and appeals since ERAP's inception.

Indeed, declarations submitted in support of Petitioners' motion indicate that applicants have been dealing with issues concerning HCD's denial and appeal process for months. Yet rather than seek immediately relief on an ex parte basis, Petitioners brought this motion challenging HCD's denial and appeal process on the eve of the program's closure, after the state's eviction protections have concluded. Petitioners clearly reached the conclusion that HCD's processes lacked due process over the past 15 months, but they did not come to court until the program was wrapping up. Such delay belies Petitioners' claim of imminent harm. Any harm to Petitioners is of their own making—had they brought this action sooner, the Court could have considered it when ERAP funding was still available and, because the State eviction protections were still in place, when Court action might have impacted evictions. Given this unexplained delay, Petitioners are not entitled to a mandatory injunction. (*Lusk v. Krejci* (1960) 187 Cal.App.2d 553, 556 ["long delays in assertion of rights can be the basis of a denial of mandatory injunctive relief"].)

B. The Public Will Suffer Greater Harm If the Court Grants the Requested Relief than Plaintiffs Will Suffer if the Court Denies It

Contrary to Petitioners' assertion, issuance of the requested preliminary injunction would cause more harm than good to the public's interest. As of July 1, 2022, even tenants with pending applications are subject to an unlawful detainer action. If the Court were to enjoin Respondents from issuing denial notices, applicants would not have an opportunity to appeal the denial and cure their application's defects. The denial notices at least provide many non-responsive applicants an opportunity to reengage in the application process and appeal the denial as soon as possible after the state's eviction protections have ended.

Further, the requested injunctive relief will add unnecessary costs and burden on HCD while impeding its efficiency, resulting in delays in the denial and appeal processes. The request is contrary to the rule against enjoining "agencies from performing their duties." *Tahoe Keys Property Owners' Assn., supra,* 23 Cal.App.4th at. 1471

///

///

///

CONCLUSION

For the reasons discussed above, Respondents respectfully request that the Court deny Petitioners' Motion for a Preliminary Injunction.

Dated: July 1, 2022

Respectfully submitted,

ROB BONTA
Attorney General of California
CHRISTINA BULL ARNDT
Supervising Deputy Attorney General

JACKIE VU
Deputy Attorney General
Attorneys for Respondents Department of Housing and Community Development and Gustavo Velasquez

DECLARATION OF SERVICE BY E-MAIL

Case Name: **Alliance of Californians for Community Empowerment, et al. v. HCD, et al.**
Case No.: **22CV012263**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence by electronic service.

On July 1, 2022, I served the attached documents:

RESPONDENTS' OPPOSITION TO PETITIONERS' MOTION FOR A PRELIMINARY INJUNCTION

by transmitting a true copy via electronic mail addressed as follows:

Madeline Howard mhoward@wclp.org
Lorraine Lopez: llopez@wclp.org
Nisha Vyas: nvyas@wclp.org
Greg Bonett: gbonett@publiccounsel.org
Faizah Malik: fmalik@publiccounsel.org
Jonathan Jager: jjager@lafla.org

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on July 1, 2022, at Los Angeles, California.

Everth Mandujano
Declarant


Signature

LA2022601962
65243268.docx