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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF ALAMEDA**

17 ALLIANCE OF CALIFORNIANS FOR  
COMMUNITY EMPOWERMENT (ACCE)  
18 ACTION; POLICYLINK; STRATEGIC  
ACTIONS FOR A JUST ECONOMY (SAJE),

19 Petitioners,

20 vs.

21 THE CALIFORNIA DEPARTMENT OF  
22 HOUSING AND COMMUNITY  
DEVELOPMENT and GUSTAVO  
23 VELASQUEZ, IN HIS OFFICIAL CAPACITY  
AS THE DIRECTOR OF THE CALIFORNIA  
24 DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT,

25 Respondents.  
26

Case No. 22CV012263

Assigned for All Purposes To:  
Judge: Honorable Frank Roesch  
Dept: 17

**PETITIONERS' BRIEF RE: NARROWING  
PRELIMINARY INJUNCTION**

Date: January 19, 2023  
Time: 3:30 p.m.  
Dept: 17

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1 **INTRODUCTION**

2 The Court of Appeal’s Order agrees with this Court that HCD was violating the due process  
3 clause by denying tenants rental assistance without informing the applicant of the specific reason  
4 for denial or providing the documents the Department relied on to deny the application. HCD has  
5 proposed a revised denial notice<sup>1</sup> that fails to cure these fundamental defects and otherwise meet  
6 due process requirements because, among other reasons:

- 7 • By *only* identifying a category of document (e.g., “Rent Relief Application”) with  
8 *unspecified* “issues,” HCD’s proposed denial notice fails to identify with reasonable  
9 specificity the *actual reason* the tenant is being denied the rental assistance needed  
10 to avoid eviction. For example, if an application is denied because the lease does  
11 not have a signature, the denial notice would not provide that information, leaving  
12 the tenant entirely in the dark about why HCD denied the application and how to  
13 remedy the problem.
- 14 • HCD’s proposed denial notice would not include copies of the third-party  
15 documents relied on to deny the application or explain their significance. For  
16 example, the proposed denial notice contemplates that an applicant may be denied  
17 based on unspecified “issues” with an unspecified “Letter or email from Landlord.”  
18 But without seeing that document, the tenant would be left with no real  
19 understanding of the basis for the denial or how to remedy the “issue.”
- 20 • The proposed letter is framed in unusually dense, complicated prose that would  
21 *require an advance degree* to understand according to text complexity programs.<sup>2</sup>  
22 The overall complexity of the proposed letter is exacerbated by HCD’s decision to  
23 include a laundry list of presumably inapplicable reasons for denying the  
24 application.
- 25 • HCD proposes to provide some categories of applicants who are denied assistance  
26 *even less information* than is contained in their proposed letter. Under HCD’s  
27 proposed process, applicants who are partially denied assistance would receive an  
28 “approval” letter that does not explain why a portion of the assistance they requested  
was denied. And those whose applications are determined to be duplicates will  
receive no formal notice of that determination.

26 \_\_\_\_\_  
27 <sup>1</sup> See Ex. 1 to Declaration of Madeline Howard in Support of Petitioners’ Brief re: Narrowing  
Preliminary Injunction, HCD’s proposed denial notice as of January 3, 2022.

28 <sup>2</sup> The introductory paragraph scores a 14.1 on the Flesh-Kincaid Grade Level and a 18.2 on the  
Gunning Fog Index.

1 For these reasons, the Court should deny HCD’s request to permit denials using its  
2 proposed denial letter. This Court should, instead, issue an order narrowing the injunction to  
3 prohibit HCD from issuing any denial that fails to provide the specific bases for denial or that fails  
4 to provide the third-party documents relied upon for that denial. Petitioners have proposed a denial  
5 notice that meets this standard.<sup>3</sup> Denials issued using a form substantially similar to Petitioners’  
6 proposed notices, which would be sent to applicants who did not respond to a Request for Further  
7 Information after 15 days, would comply with the narrowed injunction.

### 8 RELEVANT PROCEDURAL HISTORY

9 On July 7, 2022<sup>4</sup>, this Court issued a preliminary injunction restraining HCD from denying  
10 applications for rental assistance. The order provided that the Department could continue approving  
11 rental applications and “seek additional information on applications for which the issuance of a  
12 denial has been enjoined or stayed.”

13 On September 13, 2022, HCD filed a motion to modify or dissolve the preliminary  
14 injunction and proposed a two-part process, in which tenants would (1) first be sent a Request for  
15 Further Information informing them that they would be denied absent submission of documents  
16 addressing a specified section of the application, and (2) then be sent a denial notice if they failed  
17 to respond within 30 days. Ex. 1 to Declaration of Jackie Vu in Support of Motion to Modify or  
18 Dissolve Injunction dated September 12, 2022. At that time, HCD’s proposed denial notice  
19 included vague check box categories such as “[t]he Program was unable to verify your eligibility  
20 because the accuracy and/or authenticity of the documents provided in response to the Request for  
21 Further Information Form could not be independently verified.” Ex. 2 to Vu Declaration. This  
22 Court denied HCD’s motion to modify or dissolve the injunction on October 21, 2022.

23 A month later, on November 18, 2022, the Department filed a petition for writ of mandate  
24 in the Court of Appeal requesting to modify or dissolve the injunction. After receipt of a  
25

26 <sup>3</sup> Ex. 2 to Howard Dec., Petitioners’ Proposed Denial Notice. Petitioners also propose a denial  
27 notice specific to partial denials in substantially the same form, but with explanatory language at  
28 the top explaining that the tenant’s request has been partially approved and partially denied. *See* Ex  
3 to Howard Dec.

<sup>4</sup> The order was reduced to writing on July 14, the date referenced in the Court of Appeal’s order.

1 preliminary opposition, the Court of Appeal issued an alternative writ with the following  
2 directions:

3 The superior court should] narrow the scope of the preliminary injunction issued on  
4 July 14, 2022 so that it prohibits the Department of Housing and Community  
5 Development (Department) from denying applications for rental assistance only if  
6 the applicant has not been informed of the specific reason(s) for the denial or  
provided with the documents that the Department relied upon, or in other categories  
of cases in which the superior court concludes there is a likelihood that applicants  
are being denied due process.

7 HCD has since provided Petitioners with its proposed denial notice. Howard Dec. at ¶2,  
8 Exhibit 1. As part of efforts to reach agreement on a modified denial notice, Petitioners provided  
9 HCD with proposed edits to the denial notice. Howard Dec. ¶3. The parties were not able to come  
10 to an agreement before submission of this brief. *Id.* Petitioners’ edited version of the denial notice  
11 is attached to the Declaration of Madeline Howard as Exhibit 2.

## 12 ARGUMENT

13 **I. The Court should narrow the injunction to prohibit denials of rental assistance that**  
14 **fail to specify the individualized basis for denial and providing access to documents**  
15 **relied upon in making the denial decision. Petitioners’ proposed notice meets that**  
16 **standard, while HCD’s proposed notice does not.**

17 Courts have consistently held that due process requires both notice of the specific reason for a  
18 decision and access to the information used in reaching the decision. In *People v. Ramirez*, 25 Cal.  
19 3d 260, 275 (1979), the California Supreme Court concluded that patient-inmates were entitled to  
20 “a statement of [the] grounds” for exclusion from a treatment program and “access to the  
21 information . . . considered” in reaching the decision.). Similarly, the Court of Appeal in *In re*  
22 *Head*, 147 Cal. App. 3d 1125, 1129-30 (1983), affirmed an order requiring provision of “a written  
23 statement of the grounds” for exclusion from a work furlough program and “access to the  
24 information used . . . in making [the] decision.” Notably, the challenged procedure already  
25 provided “a notice that explained the reasons for rejection and the right to administrative appeal.”  
26 *Id.* at 1129. Nevertheless, the court concluded that access to the information used to make the  
27 decision *also* was required to satisfy due process. *Id.* at 1133. *See also People v. Rocha*, 135  
28 Cal.App.3d 590, 594–95 (1982) (holding that due process requires notice of the grounds for

1 exclusion *and* access to the information used in reaching decision); *People v. Reyes*, 107  
2 Cal.App.3d 976, 982 (1980) (same).

3 Consistent with this well-established authority, the Court of Appeal’s Order strongly  
4 suggests that both 1) HCD be enjoined from denying applications for rental assistance where the  
5 applicant has not been informed of the specific reason for the denial or where the applicant has not  
6 been provided access to the documents the Department relied upon; and 2) denials that fail to meet  
7 *either* condition would violate due process. As discussed further below, HCD’s proposed notice  
8 fails to comply with the minimum requirements of due process set forth in the Court of Appeal’s  
9 Order. Petitioners’ proposed notice, by contrast, corrects these infirmities and provides a baseline  
10 for ensuring due process.

11 **A. HCD’s proposed denial notice does not comply with due process because it does**  
12 **not specify the individualized basis for denial or provide access to documents**  
13 **relied upon in making the decision.**

14 While HCD’s latest denial notice adds more detail than prior versions, it still does not state  
15 the actual basis for denial and relies exclusively on checkboxes, some of which are difficult to  
16 decipher. *See* Ex.1 to Howard Dec. The form provides no space for the Department’s contractor,  
17 Horne, to add any individualized information, and does not provide tenants with third-party  
18 documents Horne relied upon in making the denial decision. Put another way, checking a box for a  
19 category of denial, and another box for the type of document that led to that categorization, does  
20 not explain *why* the document led to a denial or what factual determination was made based on the  
21 document in question. Accordingly, this form does not meet the constitutional standard, where  
22 “[n]otice sufficient to enable a meaningful response is an indispensable element of due process.”  
23 *Gresher v. Anderson*, 127 Cal. App. 4th 88, 09; *accord Doe v. Saenz*, 140 Cal. App. 4th 960, 997  
24 (2006) (“Appeal rights are meaningless if an applicant has no notice of the basis for a  
25 determination that he or she is ineligible to work in a community care facility.”).

26 As just one example, under HCD’s proposed denial letter, a tenant denied as “over-income”  
27 is not informed of the two critical data points necessary to substantiate that determination: (1) what  
28 Horne has determined the applicant’s income is; and (2) the applicable income threshold for the



1 tenant’s family based on family size. *See* Ex. 1 to Howard Dec. Determining a household’s  
2 countable income based on information contained in a lengthy complicated application is not  
3 straightforward, and in many cases Horne might make a mistake. But HCD’s proposed notice  
4 makes it impossible to catch such an error. For example, checking a box for “income is over  
5 eligible limits” and “documents with issues” “tax return” is unhelpful when the tenant is not told  
6 what conclusions Horne has made about their income based on the tax return, or what the  
7 applicable income limit is for their household. If Horne has concluded that the tenant’s household  
8 is over-income based on a household size determination that undercounts the actual number of  
9 people living in the home, the tenant would have no way to know that.

10 Similarly, tenants denied because their rent is higher than 400% of the fair-market rent are  
11 not informed what amount HCD has determined their rent is or what fair-market rent applies. *Id.*  
12 Thus even these seemingly straightforward denials fail to inform tenants of the basic facts  
13 underlying the denial decision. This is insufficient under well-established precedent governing the  
14 denial or reduction of public benefits. *See, e.g., Ortiz v. Eichler*, 794 F.2d 889, 893 (3d Cir. 1986)  
15 (affirming an order requiring that an agency’s denial or reduction of Aid to Families with  
16 Dependent Children, Food Stamps, or Medicaid include “a statement of the calculations used by  
17 the agency,” a “requirement . . . amply supported by a formidable array of case law”); *Dilda v.*  
18 *Quern*, 612 F.2d 1055, 1057 (7th Cir. 1980) (invalidating on due process grounds a notice used to  
19 deny or reduce welfare benefits that “states the ultimate reason for the reduction or cancellation of  
20 benefits,” but “fails to provide the recipient with a breakdown of income and allowable  
21 deductions”); *Perdue v. Gargano*, 964 N.E.2d 825, 831 (Ind. 2012) (invalidating a public benefits  
22 denial notice which, like HCD’s notice, specifies the “standardized explanation of the reason(s) for  
23 the adverse action” but “does not provide any additional explanation of the reasons for the denial”).

24 In addition, some of the categorical reasons for denial on HCD’s form are facially unclear  
25 or appear to allow denials for reasons not permitted under the statutory eligibility criteria. For  
26 example, tenants should not be denied because “a valid landlord could not be determined.” The  
27 program provides a mechanism for tenants to receive rental assistance funds directly (rather than  
28 such funds being paid to the landlord), so the fact that an otherwise-eligible applicant’s landlord

1 cannot be determined should not impact whether the tenant’s application is approved. Indeed,  
2 HCD has admitted as much: in her Supplemental Declaration in Support of HCD’s Reply to  
3 Motion to Modify or Dissolve Injunction, Jessica Hayes represented that applications are to be  
4 processed “based on the merits of the documents submitted by tenants,” and that where “documents  
5 submitted by tenants establish eligibility under the program, the landlords with unverifiable  
6 ownership information are deemed non-participatory and the tenants are provided rental assistance  
7 directly.” *Id.*

8 Similarly, “household size could not be determined” is not a basis for denial supported by  
9 the regulations. *See* Exhibits 6 & 7 to Howard Dec., HCD, State Rental Assistance Program  
10 Guidelines – Emergency Rental Assistance at 11 (“funding availability and application denials);  
11 21-22 (“eligible applicants”). Moreover, a straightforward issue like this could be easily rectified  
12 by a Request for Further Information or a phone call to the tenant in their language of choice,  
13 inquiring about the tenant’s household size, and thus should not be a basis for outright denying an  
14 applicant in the first instance.

15 These deficiencies have serious consequences and deprive applicants of any meaningful  
16 opportunity to appeal their denials. As the Seventh Circuit explained, “there is a human tendency. .  
17 .to assume that an action taken by a government agency in a pecuniary transaction is correct.”  
18 *Vargas v. Trainor*, 508 F.2d 485, 490 (7th Cir. 1974). But unless affected individuals “are told why  
19 their benefits are being reduced or terminated, many of the mistakes that will inevitably be made  
20 will stand uncorrected, and many [of those individuals] will be unjustly deprived of the means to  
21 obtain the necessities of life.” *Id.* To prevent that result, HCD must provide a denial notice that tells  
22 the tenant the factual basis for the denial.

23 **B. HCD’s proposed form does not provide adequate notice concerning third-party**  
24 **documents relied on to deny the application.**

25 HCD’s denial notice informs tenants when a document submitted by a landlord or other  
26 third party is the purported basis for denial, but still does not provide a copy of the document, or  
27 even a description of the document’s contents. Nor does Horne provide copies of title documents  
28 relied upon that tenants with language barriers or limited access to technology would have

1 difficulty tracking down. Refusing to provide access to this third-party hampers tenants' ability to  
2 effectively appeal and does not comply with due process.

3 For example, under HCD's form, when an application is denied because the tenant's "[u]nit  
4 is not a residential rental unit" with the box for "property title" checked, the applicant would not  
5 receive a copy of the title document or even be told what it says. Along the same lines, including  
6 boilerplate language stating that "common issues with property occupancy: property ownership  
7 search does not support residential rental status" does not tell the tenant *why* the application is  
8 being denied. If the title or other document reflects that the property is commercial, or that the unit  
9 is owner-occupied, the notice should say that. Without more information, tenants are left to attempt  
10 to locate the unspecified "property title" documents on their own and to try to decipher them to  
11 figure out the purported defect.

12 Similarly, tenants denied on the grounds that "no rent [was] owed for the eligible period"  
13 based on an "eviction notification" are not informed (1) what "eviction notification" is being  
14 referred to, (2) whether the notification was provided by the tenants themselves or by their  
15 landlords, or (3) what information in that notification led to the denial. That type of basic  
16 information should be set forth in the denial itself.

17 It is no response to say that tenants could always call Horne or HCD to get answers to these  
18 basic questions. Under "such a procedure only the aggressive receive their due process right to be  
19 advised of the reasons for the proposed action. The meek and submissive remain in the dark and  
20 suffer their benefits to be reduced or terminated without knowing why the Department is taking  
21 that action." *Vargas v. Trainor*, 508 F.2d at 490 (rejecting an argument that due process  
22 deficiencies in public benefits denial notices were cured by informing recipients they could call  
23 their caseworkers).

24 Provision of landlord documents is particularly important because of the frequent  
25 adversarial relationship between tenants and landlords. For example, a landlord of a below-market  
26 rent-controlled apartment might submit a false ledger showing no rent is due in order to block the  
27 tenant's ability to get rental assistance and set the tenant up for eviction. To prevent such a result,  
28 the tenant should get a copy of that ledger to contest the denial effectively and point out the specific

1 errors in the document. HCD provides no reasoned basis for refusing to provide landlord  
2 documents or even describe their contents; as this Court previously recognized, any private  
3 information related to *other* tenants or the landlord itself could be redacted. In short, access to these  
4 documents is essential to ensure a meaningful right to appeal, and HCD’s proposed denial notice  
5 fails to provide that access.

6 **C. Petitioners’ proposed notice allows HCD to comply with due process by**  
7 **informing tenants of the specific basis for denial and the factual determinations**  
8 **that led to denial, with minimal administrative burden.**

9 Petitioners’ proposed denial notice meets due process standards by providing (1) a simple  
10 way to inform tenants of the specific bases for a denial and the factual determinations that led to  
11 such denial, as well as (2) access to third-party documents the Department relied upon in issuing  
12 the denial. Petitioners modified HCD’s denial notice by making the language more readable and  
13 making three general categories of changes<sup>5</sup>:

- 14 • Adding short text fields for HCD/Horne to specify basic factual information, such as  
15 the applicable income or fair market rent standard, the particular information  
16 deemed inconsistent in a specified document, and what other document has been  
17 deemed inconsistent;
- 17 • Converting HCD’s generalized list of “common issues” to individualized check  
18 boxes, informing tenants of the specific problems identified with their applications  
19 or any documents submitted;
- 19 • Providing for attachment of third-party documents that Horne relied upon in making  
20 the denial decision.

20 Considering a specific example demonstrates why Petitioners’ proposed notice is superior  
21 to that proposed by HCD. Naomi Sultan, a tenant advocate, learned that her client was denied  
22 because the client’s lease was missing pages<sup>6</sup>. Under the HCD proposed notice, that tenant would  
23 receive a denial notice where the box for “failure to establish rental relationship” or “failure to  
24 establish proof of residence in unit” (or both) would be checked, and the check-box for lease or rent  
25

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26 <sup>5</sup> Compare Exhibits 1 and 2 to Howard Dec., the proposed denial notice HCD provided to  
27 Petitioners on January 3, 2023 and Petitioners’ proposed denial notice.

28 <sup>6</sup> Declaration of Naomi Sultan in Support of Petitioners’ Opposition to Respondents’ Motion to  
Modify or Dissolve Preliminary Injunction, filed @.

1 agreement would likewise also be checked in the subsection below. But those checkboxes wouldn't  
2 reveal the actual basis for denial—that the lease is missing a page that purportedly demonstrates  
3 residence or a rental relationship, leaving the applicant to guess at the defect. Moreover, a tenant  
4 with an entirely different issue, who is denied because the lease the tenant uploaded shows up as  
5 blurry and illegible in the portal, would likely receive the exact same denial notice, with the same  
6 boxes checked, as Ms. Sultan's client. The short text field provided in Petitioner's proposed notice  
7 corrects for this deficiency, allowing HCD/Horne to provide a brief explanation of the issue, so that  
8 the tenant knows exactly what is needed to address it in an effective appeal. This might be done by  
9 providing the missing lease pages or uploading a new copy—or, even more critically, pointing out  
10 that such defects are not a lawful basis for denial where a copy of the lease is not even required by  
11 program regulations at all. Ex. 7 to Howard Dec., HCD Guidelines p. 24 (Listing documents that  
12 establish tenancy “in the absence of a signed lease”).

13 Similarly, under HCD's form, denials based on the property address “not [being] in an  
14 eligible area,” provide no factual detail for that determination—is the problem that the property is  
15 outside California, not in an eligible city or county, or something else entirely? Petitioner's  
16 proposed notice rectifies these issues with minimal administrative burden by allowing Horne/HCD  
17 to specify the ineligible address it has identified, why the address is ineligible, and where in the  
18 Rental Application the problematic information can be found.

19 Petitioners' proposed notice also attempts to account for HCD's anticipated concerns about  
20 the administrative burdens associated with an individualized letter that would include narrative  
21 detail regarding the bases for denial. Working off of HCD's checkbox construct, Petitioners' notice  
22 thus strikes the correct balance, by allowing HCD/Horne to use a checkbox system, coupled with  
23 short text fields, that can be efficiently completed without subjecting tenants to a never-ending  
24 guessing game about the reasons for denial.

25 Indeed, the burden of adding a few words to the denial notice so that the tenant is not left in  
26 the dark should be quite minimal—according to HCD, Horne staff already make internal notes in  
27 each applicant file regarding the reasons for denial on a case-by-case basis. Ex. 4 to Howard Dec.,  
28 Excerpt of Jessica Hayes Nov. 22, 2022 Deposition Transcript, pp. 320-321. Indeed, presumably

1 even under HCD’s proposal, Horne staff will need to rely on those internal case notes to check the  
2 appropriate checkboxes. Translating those same notes into some short text fields, in addition to  
3 such checkboxes, should not impose much additional burden. In fact, providing short text fields  
4 and more specific checkboxes should *reduce* the administrative burden on HCD/Horne by saving  
5 them from having to respond to hundreds of phone calls and emails from applicants asking for  
6 more detail on what the issue is with their application. In all events, some incremental burden is  
7 undoubtedly justified so as to ensure due process, particularly in the context of an emergency  
8 assistance program, where it is especially important that the Department be required to “show its  
9 work” and can do so easily based on what’s already reflected in its internal systems.

10 This is even more true where, as here, HCD acknowledges that staff working under time  
11 pressure are often “more mistake-prone” and that policies requiring a human to review applications  
12 before they are denied via algorithm may not have been followed. Ex. 5 to Howard Dec., Excerpt  
13 of Jessica Hayes Nov. 22, 2022 Deposition Transcript at 353 (“folks were under a lot of pressure to  
14 move a lot of applications really fast for a lot of reasons. And so, you know, the faster we go with  
15 the more work we have, the more mistake-prone folks get oftentimes.”).

16 **D. HCD is violating the due process rights of multiple categories of applicants by**  
17 **providing no notice of denial at all.**

18 HCD’s proposed notice is inadequate for an additional reason: HCD would continue to  
19 deny due process to entire categories of individuals.

20 **1. HCD may not seek to recapture funds without providing notice and an**  
21 **opportunity to be heard.**

22 HCD has a “recapture” process under which it demands repayment of funds distributed  
23 pursuant to previously-approved applications that Horne later determined were mistakenly  
24 approved. Declaration of Amber Twitchell in Support of Petitioners’ Motion for Preliminary  
25 Injunction, June 22, 2022, ¶¶ 12-29. HCD’s proposed denial notice does not address this situation,  
26 and so any narrowed injunction must continue to restrain the Department from retroactively  
27 denying rental assistance through “recapture” notices until such time as the Department develops a  
28 procedure for handling these cases that comports with due process.

1                   **2. Tenants with denials that were paused by the preliminary injunction**  
2                   **and have not become final must receive a new denial notice.**

3                   In addition to enjoining HCD from issuing denials of rental assistance, this Court’s  
4 preliminary injunction stopped the clock on denials issued 30 days prior to the Court’s order and  
5 restrained HCD from denying pending appeals. Tenants whose denials have not yet become final  
6 due to the injunction and tenants with pending appeals must receive a denial notice meeting due  
7 process standards (*i.e.*, providing at least as much notice as that proposed by Petitioners in Exhibit  
8 2 to the Howard Declaration), so that they have a meaningful opportunity to appeal.

9                   **3. Tenants whose applications are denied as duplicates should receive a**  
10                  **denial notice.**

11                  HCD’s proposed notice does not contemplate providing notice to tenants whose  
12 applications are denied based on a finding that they are purportedly duplicative of another  
13 application. While HCD may attempt to address applications it finds to be duplicates by folding  
14 later-filed applications into earlier ones, some tenants may be erroneously denied assistance when  
15 their application is folded into that of a different individual with a similar name or address. Tenants  
16 whose applications are denied on the basis they are duplicates should simply be notified of this  
17 determination, so they can contest any erroneous determination.

18                  **4. Tenants who receive only some of the rental assistance they requested**  
19                  **should receive a constitutionally adequate partial denial notice**  
20                  **explaining the basis for the decision and providing clear notice of the**  
21                  **right to appeal.**

22                  HCD’s proposed denial notice does not address the need to provide due process to tenants  
23 who are denied part of their requested rental assistance. Tenants like Abdelwahab Bechiri illustrate  
24 the problem with HCD’s current system for partial awards. Mr. Bechiri was awarded only part of  
25 the funds he requested, but the notice he received is framed as an approval notice, with the appeal  
26 language easy to miss, and no explanation for why he did not receive the full amount. Declaration  
27 of Abdelwahab Bechiri in Support of Petitioners’ Opposition to Respondents’ Motion to Dissolve  
28 or Modify Preliminary Injunction at ¶¶ 4-7. Mr. Bechiri later faced eviction for the remaining rental

1 debt, and when he was able to obtain legal assistance and attempted to appeal, he was unable to do  
2 so. *Id.* at ¶¶8-19.

3 Tenants who are partially denied rental assistance are entitled to know the bases for any  
4 partial denial and to view the third-party documents that HCD/Horne relied upon in issuing that  
5 partial denial—just the same as any tenant who is outright denied rental assistance. A form  
6 substantially similar to Petitioners’ proposed partial denial notice would accomplish this with the  
7 same format of checkboxes, coupled with space for brief individualized explanations and the  
8 attachment of third-party documents. *See* Ex. 3 to Howard Dec.

9 **E. HCD should not be permitted to withdraw its agreement to send a request for**  
10 **information before denying an application on grounds of missing information.**

11 The original preliminary injunction invited HCD to facilitate the approval of applications,  
12 and Petitioners have long sought HCD’s agreement to tell applicants how to address problems with  
13 their applications. When HCD sought to modify or dissolve the injunction, the Department  
14 proposed sending a notice requesting further information before denying applications, implicitly  
15 admitting that it was unfair to deny assistance to tenants who have never been informed of the  
16 problem with their application.

17 HCD has now changed its tune. Its current proposed denial notice will not be preceded by  
18 any notice informing people of what they need to do to fix their application. Nor does the proposed  
19 denial notice allow HCD or Horne to request additional documents that have not been submitted at  
20 all. Now that the injunction is being narrowed and HCD will begin denying tenants, the  
21 Department should honor its previous representation to this Court and send a Request for Further  
22 Information (or similar pre-denial notice), informing tenants about specific problems with their  
23 applications and warning tenants that they will be denied absent a timely response.

24 Sending a Request for Further Information to all pending applicants would also allow HCD to  
25 resolve minor problems with applications that are not proper bases for denial. For example, it is not  
26 appropriate for a tenant to be denied emergency rental assistance based on “typos or mistakes in  
27 address and zip codes” as listed under HCD’s category “Property address is not located in an  
28 eligible area.” If the Department believes there is a typo in the application, it should request that the



1 mistaken information be corrected or resubmitted, and should not deny tenants the help they need  
2 to avoid eviction on this hyper-technical basis. This is particularly true where so many tenants  
3 have been prevented from accessing rental assistance due to language or disability-related barriers.

4 Moreover, the burden of implementing the Request for Information step should be  
5 relatively minimal: Horne apparently already has a system set up for sending these types of notices  
6 as evidenced by the notice sent to Gabrielle Hoffman. Ms. Hoffman received a “task” email from  
7 Horne requesting a 1099 form in August 2022. Declaration of Gabrielle Hoffman in Support of  
8 Petitioners’ Opposition to Respondent Motion to Modify or Dissolve Preliminary Injunction at ¶¶6-  
9 10. Once advocates called to the attention of HCD senior staff that a 1099 was not necessary for  
10 approval at all, Ms. Hoffman was summarily approved. *Id.* Indeed, it is highly likely that  
11 addressing these minor issues before the denial stage would (1) enable Horne to determine that  
12 many still-pending applications should in fact be approved, and (2) reduce the administrative  
13 burden of processing a high number of appeals for denials that should have never been issued.

#### 14 CONCLUSION

15 As suggested by the Court of Appeal, this Court should modify the preliminary injunction  
16 to prohibit HCD from denying rental assistance applications without specifying specific reasons for  
17 denial and attaching any third-party documents relied upon. The Order should declare that HCD’s  
18 proposed denial notice fails to meet due process standards, but should further specify that use of a  
19 denial notice substantially similar to the notice proposed by Petitioners would constitute  
20 compliance with the injunction.

21 Dated: January 13, 2023

WESTERN CENTER ON LAW & POVERTY

22  
23 By: 

24 Madeline Howard  
25 Attorneys for Petitioners  
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**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 3701 Wilshire Blvd, Suite 2308, Los Angeles, CA 90010.

On January 13, 2023, I served the within document(s) described as:

**PETITIONERS' BRIEF RE: NARROWING PRELIMINARY INJUNCTION**

on the interested parties in this action as stated on the attached mailing list.

(BY E-MAIL) By transmitting a true copy of the foregoing document(s) to the e-mail addresses set forth on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 13, 2023, at San Los Angeles, California.

\_\_\_\_\_  
Lisa Shaw  
(Type or print name)

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*Lisa Shaw*  
(Signature)

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