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*Exempt from Filing Fees Pursuant to  
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

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13  
14 **ALLIANCE OF CALIFORNIANS FOR**  
**COMMUNITY EMPOWERMENT;**  
15 **POLICYLINK; STRATEGIC ACTIONS**  
**FOR A JUST ECONOMY,**

16 **Plaintiffs,**

17 **v.**

18  
19 **CALIFORNIA DEPARTMENT OF**  
**HOUSING AND COMMUNITY**  
20 **DEVELOPMENT, GUSTAVO**  
**VELASQUEZ,**

21 **Defendants.**

**Case No. 22CV012263**

**RESPONDENT DEPARTMENT OF**  
**HOUSING AND COMMUNITY**  
**DEVELOPMENT'S BRIEF IN SUPPORT**  
**OF NARROWING PRELIMINARY**  
**INJUNCTION**

*[Filed and served concurrently with Declaration  
of Jackie K. Vu, Declaration of Jessica Hayes,  
Request for Judicial Notice]*

**Date: January 19, 2023**

**Time: 3:30 p.m.**

**Dept: 17**

**Judge: Frank Roesch**

**Trial Date: February 13, 2023**

**Action Filed: June 6, 2022**

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1 **INTRODUCTION**

2 Respondents, the California Department of Housing and Community Development  
3 (“HCD”) and Gustavo Velasquez, respectfully submit a proposed modified denial notice, filed  
4 concurrently herewith, for this Court’s consideration. The proposed modified denial notice is  
5 consistent with the Court of Appeal’s December 20, 2022 order to narrow the scope of the  
6 preliminary injunction so that HCD is prohibited from denying applications only if the applicant  
7 has not been informed of the specific reason(s) for the denial or provided with the documents that  
8 HCD relied upon in denying the application, or in other categories of cases in which this Court  
9 concludes there is a likelihood that applicants are being denied due process.

10 HCD proposes a modified denial notice that not only provides applicants with specific  
11 reason(s) why the applicant does not meet ERAP’s eligibility standards, but also identifies the  
12 problematic documents that the denials were based on, including documents obtained through  
13 third parties, and informs applicants of the issues commonly associated with the problematic  
14 documents to assist applicants with their appeal efforts. With the knowledge obtained from the  
15 proposed denial notice, applicants can determine why the documents were problematic and, on  
16 appeal, either provide an explanation for the issue or submit non-problematic documents to  
17 establish eligibility.

18 The proposed modified denial notice—coupled with the right to an administrative appeal—  
19 fully satisfies due process considerations articulated in *People v. Ramirez* (1979) 25 Cal.3d 260.  
20 The proposed modified denial notice explains to the applicant the exact reason(s) why their  
21 application does not meet ERAP’s eligibility requirements—such as that a valid landlord could  
22 not be determined, the applicant failed to establish proof of residence in the unit, or the  
23 applicant’s income is over eligible limits. This satisfies Petitioners’ chief complaint, based on  
24 their prior motion papers, that HCD’s denial notice did not provide adequate notice to “inform  
25 applicants of what information they would have to provide to successfully secure rental  
26 assistance.” (Petitioners’ Motion for Preliminary Injunction, p. 15.) The proposed modified denial  
27 notice provides more than sufficient information for applicants to successfully appeal.

28 ///

1 The additional safeguards that Petitioners are requesting—for HCD to manually add in an  
2 explanation for why each specific document is defective and to produce redacted third-party  
3 documents—would not decrease the risk of erroneous deprivation of rental assistance.  
4 Significantly, the redacted documents proposed by Petitioners would not provide applicants with  
5 more information than what is in the proposed notice, but would be so costly as to squander the  
6 rest of HCD’s limited administrative funding before all of the denial notices can be processed,  
7 harming the very applicants that Petitioners purport to advocate for.

8 For all of these reasons, more fully analyzed below, Respondents respectfully request that  
9 the preliminary injunction be narrowed and that HCD be permitted to issue the proposed denial  
10 notice, a copy of which is attached as “Exhibit 1” to the Declaration of Jackie K. Vu.

## 11 **FACTUAL BACKGROUND**

### 12 **I. HCD’S ADMINISTRATION OF THE EMERGENCY RENTAL ASSISTANCE PROGRAM**

#### 13 **A. The ERAP Application and Review Process**

14 HCD has received more than 635,000 unique applications for rental assistance since  
15 California’s program for administering and distributing ERAP funds began in March 2021.  
16 (Declaration of Jessica Hayes (“Hayes Decl.”), ¶ 3.) HCD stopped accepting applications on  
17 March 31, 2022. (*Ibid.*) To date, the ERAP program has approved 356,360 applications and has  
18 disbursed over \$4.33 billion in total, dwarfing all other rental assistance programs in the nation.  
19 (*Id.* at ¶ 4.)

20 Before a determination is made on an application, case managers will reach out to  
21 applicants via phone calls, emails, text messages, and task requests in the application portal to  
22 clear up any questions or inconsistencies with their application. (Vu Decl., Ex. 2, p. 280) If an  
23 applicant submits a second application to HCD, a case manager determines, through a “series of  
24 very specific steps,” whether the applicant already has an existing application for the address  
25 listed. (*Id.* at pp. 213-216.) If there is an existing application, the case manager then determines  
26 which application is farthest along and that application is marked as the active application and  
27 prioritized, while the other application is marked as a duplicate. (*Ibid.*) Importantly, applications  
28 marked as duplicates are not denials as the applicant still has an active application. (*Ibid.*)

1           **B.    ERAP’s Denial and Appeal Process**

2           An applicant who is denied can call the CA COVID-19 Rent Relief Call Center or request a  
3 call with their case manager to obtain more information regarding their denial and assistance with  
4 filing their appeal. (Hayes Decl., ¶ 5.) Tenants must appeal the decision within 30 days directly  
5 through the online portal, where they can submit additional information and documentation in  
6 support of their application. (*Ibid.*).

7           If an applicant’s appeal case manager determines that additional information or  
8 documentation is needed to decide an appeal, the case manager contacts the applicant via email,  
9 text message, or phone call to request additional documentation or to complete any missing parts  
10 of the appeal narrative. (*Id.* at ¶ 6.) Applicants also have the ability to contact their appeal case  
11 manager via email to request a call, or they can call the call center and request that the case  
12 manager call them at a scheduled time. (*Ibid.*)

13           When setting up the Program, HCD anticipated that some tenant applicants would need  
14 additional assistance with their applications, particularly due to technology or language barriers.  
15 (Request for Judicial Notice (“RJN”), Ex. 1, pp. 14, 22-23 ) To that end, HCD funded, trained,  
16 and partnered with community-based organizations, collectively called a Local Partner Network,  
17 to provide such assistance, providing over \$44 million to such networks. (*Ibid.*, Hayes Decl., ¶ 9.)

18           **II.   THE COURT OF APPEAL’S ORDER**

19           On December 20, 2022, the Court of Appeal issued an alternative writ of mandate based on  
20 the preliminary conclusion that the July 14, 2022 preliminary injunction is overbroad because “it  
21 prohibits [HCD] from denying applications for rental assistance for any reason, rather than  
22 prohibiting the Department from denying applications only in cases where there is likelihood that  
23 applicants have been denied due process.” (Order Issuing Alternative Writ of Mandate, p. 2.)

24           The Court of Appeal issued an alternative writ of mandate commanding this Court to  
25 schedule a hearing to narrow the scope of the preliminary injunction so that it prohibits HCD  
26 from denying applications only if the applicant has not been informed of the specific reason(s) for  
27 the denial or provided with the documents that HCD relied upon in denying the application, or in  
28 other categories of cases in which this Court concludes there is a likelihood that applicants are

1 being denied due process. (Alternative Writ of Mandate, p. 1-2.)

2 **III. HCD’S NEWLY PROPOSED AMENDED DENIAL NOTICE**

3 In light of the Court of Appeal’s order, HCD submits its proposed amended denial notice,  
4 attached as “Exhibit 1” to the Declaration of Jackie K. Vu, for the Court’s consideration. The  
5 proposed notice not only provides applicants with specific reasons for their denial, but also  
6 identifies the problematic documents that the denials were based on and informs applicants of the  
7 issues commonly associated with the problematic documents in relation to the specific section.

8 The proposed denial notice clearly identifies the specific reason why the applicant failed to  
9 meet ERAP’s eligibility requirements. HCD’s proposed denial notice would include the following  
10 bases for denial: 1) the applicant’s property is ineligible because a landlord would not be  
11 determined, 2) the property address is not located in an eligible area, 3) the unit is not a  
12 residential rental unit, 4) the applicant failed to establish a rental relationship, the applicant failed  
13 to establish proof of residence in the unit, 5) the applicant’s monthly rents are more than 400% of  
14 fair-market value, 6) the applicant has no documented need for assistance because no rents are  
15 owed for the eligible period, 7) the requested assistance exceeds the eligible time period, 8) the  
16 applicant has failed to establish COVID-19 impact, 9) the applicant’s income is ineligible because  
17 the income is over eligible limits, 10) the income could not be determined, or 11) the household  
18 size could not be determined. (*Ibid.*) Each of the bases for denial in the proposed denial notice  
19 clearly identifies why an application is being denied and provides applicants with the necessary  
20 information to appeal the decision.

21 In addition, the proposed notice will identify all of the supporting documents with issues on  
22 which Horne, HCD’s program administration contractor, bases its denial determination, including  
23 documents submitted by applicants and those obtained by third-parties. Lastly, for each denial  
24 basis, the notice will inform the applicant of issues common to the documents used to support that  
25 specific denial basis so the applicant can determine what information and documents they can  
26 submit on appeal.

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1 **LEGAL ARGUMENT**

2 **I. HCD’S PROPOSED DENIAL NOTICE COMPORTS WITH THE COURT OF APPEAL’S**  
3 **ORDER TO INFORM THE APPLICANT OF THE SPECIFIC REASON FOR THEIR DENIAL**

4 In accordance with the Court of Appeal’s order, HCD proposes a modified denial notice  
5 that clearly informs the applicant of the specific reason(s) why the application was denied. In  
6 their prior motion papers, Petitioners were most concerned about the denial basis that only  
7 identified the defective section of an application but did not explain the defect, arguing that it did  
8 not provide adequate notice to “inform applicants of what information they would have to provide  
9 to successfully secure rental assistance.” (Petitioners’ Motion for Preliminary Injunction, p. 15.)  
10 The proposed denial notice removes that basis for denial. Instead, all of the bases for denial in the  
11 proposed notice explain to the applicant the exact reason(s) why their application does not meet  
12 ERAP’s eligibility requirements—such as that a valid landlord could not be determined, the  
13 applicant failed to establish proof of residence in the unit, or the applicant’s income is over  
14 eligible limits. The proposed notice complies with the Court of Appeal’s order to inform the  
15 applicant of the specific reason(s) for denial.

16 The proposed notice goes beyond the Court of Appeal’s directive and also identifies the  
17 document(s) that the specific denial reason is based upon, as well as listing all of the common  
18 issues typically associated with the problematic documents for the specific denial basis. Reading  
19 the issues common to documents submitted in support of the specific denial reason provides  
20 applicants with further information about what documents they can submit on appeal to cure the  
21 defect. For example, if an applicant is denied because they failed to establish proof of residence in  
22 the unit and both the applicant’s driver’s license and utility bill are identified as the documents  
23 with issues, the applicant can read the list of common issues with proof of residence documents to  
24 determine what defects the identified documents contained. The list of common issues indicates  
25 that the addresses on the documents must match the address in the application, the document must  
26 belong to either the applicant or the applicant’s household members, and the document must be  
27 dated within the eligible time period. With this knowledge, an applicant can determine why the  
28 documents submitted were defective and, on appeal, provide an explanation for the defect or



1 submit non-problematic documents to establish proof of residence.

2 The proposed denial notice will also identify documents obtained from an applicant's  
3 landlord and a property title search, which are the only types of documents used in a denial  
4 determination that are not submitted by the applicant. Though HCD will not produce these  
5 documents due to privacy, fraud, and cost concerns, neither the Court of Appeal's order nor due  
6 process requires production of documents as long as the applicant is provided with the specific  
7 reason for their denial. The Court of Appeal's Order states that the scope of the preliminary  
8 injunction should be narrowed to prohibit HCD "from denying applications for rental assistance  
9 only if the applicant has not been informed of the specific reason(s) for the denial or provided  
10 with the documents that the Department relied upon in denying the application." (Court of Appeal  
11 Order, p. 2, emphasis added.) The Court of Appeal's order is consistent with California case law  
12 finding that due process does not require an agency to provide applicants for with all of the  
13 documents the agency relied on in making determinations, if the specific reasons for denial are  
14 clear. (See *California Consumer Health Care Council, Inc. v. Department of Managed Health*  
15 *Care* (2008) 161 Cal.App.4th 684, 692 [due process does not require that the Department provide  
16 claimants with records submitted by health care services to an independent medical review  
17 organization before the review organization considers the claimants' grievances].)

18 Here, the proposed notice's common issues section further explains to applicants  
19 information in the relevant documents that would commonly be used as the basis for denial. For  
20 example, if a denial notice indicates that the applicant is being denied because they have no rent  
21 due for the eligible period and the ledger submitted by the landlord is marked the problematic  
22 document, then the applicant would know that the ledger submitted by the landlord indicates that  
23 they have no rent due for the eligible period. To further assist the applicant in making this  
24 connection, the common issues will explain to the applicant that "the ledger provided by the  
25 landlord shows no rents due for the eligible period." Similarly, if a denial notice indicates that the  
26 applicant is being denied because a valid landlord could not be determined and the property title  
27 is marked as the document with issues, the applicant can read the common issues to help deduce  
28 that a "property ownership search shows the property owner does not match the landlord

1 information.” The applicant does not need to be provided with the actual documents since that is  
2 not required by the Court of Appeal’s order and because, after redaction for personal identifying  
3 information, they would not provide the applicant with any more information than what they can  
4 learn from the denial notice. Based on the information provided in the proposed denial notice,  
5 applicants are provided more than enough information to adequately appeal their denial.

6 **II. DETERMINING WHETHER HCD’S DENIAL AND APPEAL PROCEDURES PROVIDE**  
7 **ADEQUATE DUE PROCESS REQUIRES AN ANALYSIS OF THE *RAMIREZ* FACTORS**

8 The California Supreme Court established the test for determining what process is due in a  
9 particular set of circumstances in *People v. Ramirez* (1979) 25 Cal.3d. 260. In *Ramirez*, the  
10 Supreme Court explained that four factors must be considered to determine the requirements of  
11 due process: “(1) the private interest that will be affected by the official action, (2) the risk of an  
12 erroneous deprivation of such interest through the procedures used, and the probable value, if any,  
13 of additional or substitute procedural safeguards, (3) the dignitary interest in informing  
14 individuals of the nature, grounds and consequences of the action and in enabling them to present  
15 their side of the story before a responsible government official, and (4) the governmental interest,  
16 including the function involved and the fiscal and administrative burdens that the additional or  
17 substitute procedural requirement would entail.” (*Id.* at p. 269.) Thus, “courts must evaluate the  
18 extent to which procedural protections can be tailored to promote more accurate and reliable  
19 administrative decisions in light of the governmental and private interests at stake” when  
20 assessing a due process claim. (*Ibid.*)

21 **III. HCD’S PROPOSED DENIAL NOTICE AND APPEAL PROCEDURES MORE THAN**  
22 **SATISFY DUE PROCESS UNDER THE CALIFORNIA CONSTITUTION**

23 **A. The first *Ramirez* factor—the private interest at stake—varies significantly**  
24 **and does not automatically equate to loss of home**

25 As to the first *Ramirez* factor, there is no dispute that rental assistance could be an  
26 important private interest. However, the private interest at stake can vary significantly depending  
27 on the application. Petitioners have argued that denial of ERAP rental assistance equates to  
28 thousands of dollars and “the immediate prospect of eviction.” (Petitioners Motion for a  
Preliminary Injunction, p. 16.) However, since landlords have been free to proceed with evictions

1 regardless of a tenant’s pending application for rental assistance since June 30, 2022 when State  
2 COVID-19-related evictions protections ended (see A.B. No. 2179, (2021-2022 Reg. Sess.), Stats.  
3 2022, ch. 13), the denial of ERAP rental assistance does not amount to automatic eviction.  
4 Furthermore, in many cases, the private interest at stake may be no more than a few hundred  
5 dollars for utilities assistance. Moreover, ERAP is not funded to provide assistance to all eligible  
6 applicants. It is a temporary, emergency rental assistance program subject to statutory  
7 prioritization requirements, whereby even applicants who meet all program eligibility criteria are  
8 not guaranteed rental assistance.

9 **B. An analysis of the second *Ramirez* factor weighs in favor of finding that**  
10 **HCD’s proposed denial notice and appeal procedures comport with due**  
11 **process**

12 The second *Ramirez* factor requires the court to evaluate the risk of an erroneous  
13 deprivation of rental assistance through the procedures used, and the probable value, if any, of  
14 additional or substitute procedural safeguards. *Marquez v. State Dep’t of Health Care Servs.*  
15 (2015) 240 Cal.App.4th 87, is instructive in this regard. In *Marquez*, the Court of Appeal  
16 determined that California’s due process principles do not require the Department of Health Care  
17 Services (“Department”) to provide a hearing or notice whenever it assigns a new or different  
18 health coverage code. In analyzing the second factor of the *Ramirez* test, the *Marquez* court found  
19 that the Department’s coding event did not violate Medi-Cal recipients’ due process rights, in part  
20 because petitioners failed to show a high risk that Medi-Cal beneficiaries would be adversely  
21 affected by any particular coding event. The Court of Appeal explained that petitioners had not  
22 included anything in the record that actually quantified the alleged risk of erroneous deprivation  
23 of benefits, including evidence of the percentage of erroneous coding events or the number or  
24 percentage of Medi-Cal beneficiaries affected by erroneous coding events. An analysis of these  
25 factors demonstrates that HCD’s procedures satisfy due process and outweigh any speculative  
26 value of additional or substitute procedural safeguards.

26 ///

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1                   **1. Petitioners have not shown a meaningful risk of erroneous**  
2                   **deprivation under HCD’s processes or the value of additional**  
3                   **procedures**

4                   Petitioners have failed to produce any evidence quantifying or otherwise demonstrating a  
5                   meaningful risk of erroneous deprivation of rental assistance to tenants under HCD’s proposed  
6                   denial and appeal procedures. Petitioners have “assisted literally thousands of tenants with rental  
7                   assistance applications” (Petitioners’ Opposition to Petition for Extraordinary Writ, p. 33) and  
8                   have received multiple datasets regarding ERAP applications and denials in response to an  
9                   ongoing Public Records Act request. Despite this, Petitioners have been unable to show any  
10                  number or percentage of applicants affected by HCD’s alleged due process violations, or even  
11                  that a significant number of applicants were adversely affected by HCD’s prior denial and appeals  
12                  process. Instead, Petitioners have merely put forth speculative worst-case scenarios and  
13                  allegations of due process violations that have since been debunked.

14                  To support their requested relief, Petitioners have filed ten declarations by low-income  
15                  applicants or advocates assisting applicants in this matter. However, HCD reviewed the  
16                  applications of the 10 applicants identified by name in the various declarations submitted by Real  
17                  Parties in support of the relief they have sought. (Hayes Decl., ¶ 21.) Of those 10 applicants,  
18                  which were hand-picked by Petitioners and in no way provide a statistically representative sample  
19                  of the applicant pool, four in fact received full funding, one is under investigation for fraud, one  
20                  received rental assistance but failed to follow instructions for submitting a request for additional  
21                  assistance, two failed to timely appeal, but were able to get subsequent appeals in under the  
22                  appeal tolling period and are currently approved pending payment, and two had open appeals that  
23                  have since been approved and are pending payment. (*Ibid.*) Accordingly, Petitioners have failed  
24                  to show evidence of even one applicant who was erroneously deprived of rental assistance after  
25                  exhausting ERAP’s appeals process. Even if some of the ten declarants were erroneously  
26                  denied—which Petitioners have not established—a handful of erroneous denials out of 635,000  
27                  applicants does not demonstrate a meaningful risk of erroneous deprivation of benefits as a result  
28                  of HCD’s procedures.

///

1                   **2. The record demonstrates that the Program and appeals process work**  
2                   **effectively to approve eligible applicants**

3                   The record not only shows that there is no significant risk of erroneous deprivation through  
4 ERAP's processes, but that the Program and appeals process work effectively. Petitioners' own  
5 submitted declarations show that denied applicants can have their determination overturned on  
6 appeal when they properly engage in the appeal process. Petitioners' declarations submitted in  
7 support of their Motion for Preliminary Injunction demonstrate that HCD's appeals process and  
8 Local Partner Network system work as they were intended to. (See Declaration of Edna Monroy,  
9 p. 6, ["All of the appeals that I have helped with have been approved"]; Declaration of Jackie  
10 Zaneri, p. 8 ["I can usually get these denials reversed by emailing senior HCD staff until I can  
11 figure out what actually happened, and then submitting documents to address the issue in an  
12 appeal."] Petitioners own supporting declarations only show that HCD's collaboration with Local  
13 Partners served its intended purpose of assisting applicants most in need of obtaining rental  
14 assistance, and that applicants who properly appealed could often ultimately demonstrate  
15 eligibility.

16                   Despite Petitioners' access to multiple advocates, thousands of applicants, and data  
17 regarding applications and denials through an ongoing PRA request, they have failed to  
18 demonstrate a meaningful risk of deprivation to tenants due to HCD's processes. What they have  
19 instead shown is that the applicants in need of assistance are able to reach out to Local Partners  
20 and the call center for assistance with their applications as intended, and that applicants who  
21 believe their denials to be in error and who engage in the process and properly file an appeal often  
22 are able to demonstrate their eligibility and get assistance.

23                   **3. There is no meaningful value in implementing Petitioners' requested**  
24                   **additional safeguards**

25                   Petitioners will likely argue that HCD should be required to (1) produce redacted third-  
26 party documents and (2) explain why each problematic document is defective. However, there is  
27 little to no value in implementing these additional safeguards because the denial notice already  
28 provides the relevant information. If HCD were required to produce a property title document, the

1 personal information of the property owner would need to be redacted to protect the owner’s  
2 privacy. The applicant would be provided with a useless document that lists the address and  
3 nothing more. This would provide the applicant with less information than what can be gleaned  
4 from the proposed denial notice’s common issues section, which informs the application that “a  
5 property ownership search shows that the property owner does not match the landlord  
6 information.” Producing a redacted ledger from the landlord would similarly not provide the  
7 applicant with any more information than what is provided in the denial notice. Accordingly,  
8 Petitioners’ request for the production of third-party documents has no value.

9 Further, the burden of detailing the defects of every problematic document outweighs any  
10 speculative value it might add. The proposed notice’s common issues section already informs the  
11 applicant of all issues common to the problematic documents that are specifically tailored for  
12 each separate denial basis, giving applicants more than enough information to determine what  
13 was problematic with the documents they submitted. Petitioners’ requested safeguards would  
14 significantly increase the financial and operational burden while adding little, if any, value to  
15 applicants.

16 **C. HCD’s proposed denial notice and appeal procedures satisfy the third**  
17 ***Ramirez* factor because they provide applicants with sufficient notice and a**  
18 **chance to be heard**

18 The third *Ramirez* factor—the dignitary interest in informing individuals of the nature,  
19 grounds, and consequences of the action and in enabling them to “tell their side of the story”—  
20 weighs in favor of finding that HCD’s proposed denial notice comports with due process. As  
21 demonstrated in Section I of Legal Argument, HCD’s proposed notice provides applicants with a  
22 reasoned explanation for their denial, identifies the documents with issues upon which the denial  
23 is based, and helps applicants understand why the documents identified led to the denial. The  
24 proposed notice also notifies an applicant of the consequence of the action by informing that they  
25 can appeal the denial determination within 30 days and if they fail to do so, the denial notice shall  
26 be considered a final decision. Applicants can also reach out to members of the Local Partner  
27 Network, the call center, or their case manager to obtain more information regarding their denial.

28 ///

1 Further, HCD provides applicants with ample opportunity to be heard through the appeals  
2 process and explain why they think HCD erred. When filing an appeal, applicants are able to  
3 provide a narrative in support of their appeal and submit additional documentation. Applicants  
4 can reach out to members of the Local Partner Network or the call center for assistance with filing  
5 their appeal. If an applicant’s appeal case manager determines that additional information or  
6 documentation is needed to decide an appeal, the case manager will contact the applicant via  
7 email to request additional documentation. Even after filing an appeal, applicants still have the  
8 ability to contact their appeal case manager via email to request a call, or they can contact the call  
9 center to request that the case manager call them. These opportunities more than satisfy the third  
10 *Ramirez* factor by promoting the dignitary interests of applicants seeking to appeal a denial  
11 determination. (See *Rodriguez v. Department of Real Estate* (1996) 51 Cal.App.4th 1289, 1298-  
12 1299 [broker’s dignitary interest was satisfied because they could oppose suspension of their  
13 license with a written statement].)

14 **D. An analysis of the governmental interest at stake, the fourth *Ramirez***  
15 **factor, weighs in favor of finding that HCD’s proposed denial notice**  
16 **comports with due process**

17 The fourth *Ramirez* factor requires the court to evaluate the government interest at stake,  
18 including the fiscal and administrative burdens that the additional procedural safeguards would  
19 entail. An analysis of these factors weighs heavily in finding that Petitioners’ proposed safeguards  
20 are unnecessary in light of the additional information provided in HCD’s proposed notice, would  
21 significantly increase the risk of fraud, and are so costly that they would expend the remainder of  
22 HCD’s limited administrative budget before all of the remaining applications can be processed.

23 **1. Fiscal and administrative burden of Petitioners’ requested**  
24 **safeguards**

25 The Court must evaluate the fiscal and administrative burden that the additional or  
26 substitute procedural requirements would entail. Petitioners have insisted due process requires  
27 that HCD provide all denied applicants with the documentation the denial is based upon, and  
28 identify the defects in each problematic document. “However, under the fourth *Ramirez* factor,  
these potential benefits cannot be considered in isolation without accounting for the weighty

1 fiscal and administrative burdens that [the safeguards] would impose on the government.” (*In re*  
2 *Kavanaugh* (2021) 61 Cal.App.5th 320, 358 [finding that in-person parole hearings would be  
3 exceptionally costly for the government as they would cost tens of millions of dollars annually  
4 and would consume substantially more of staffers’ time].) The fiscal and administrative burden of  
5 implementing these procedures would expend all of HCD’s limited administrative funding before  
6 the majority of applicants would even receive their denial notice, and almost certainly before any  
7 applicant has a chance to appeal.

8 HCD has approximately \$177 million remaining in funding to operate the program, which  
9 includes both rental assistance funding and administrative funding. (Hayes Decl., ¶ 13.)<sup>1</sup> HCD is  
10 planning to obligate the approximately \$110 million in funding as part of HCD’s contract with its  
11 Program contractor to address its additional administrative needs, including implementation of  
12 HCD’s proposed denial notice. (*Ibid.*) HCD does not anticipate any significant additional state or  
13 federal reallocations of funding. (*Ibid.*) Currently, HCD expends approximately \$7 million a  
14 month for program administration but that amount will increase significantly with any additional  
15 procedures, including implementing HCD’s proposed denial notice. (*Id.* at ¶ 15.) That is because  
16 any change to the current denial procedure will require HCD’s Program contractor to significantly  
17 modify the underlying technology, workflows, and processes used in the program. (*Id.* at ¶ 16.) A  
18 new review module will need to be coded, to align with the data that will be required to populate  
19 the new denial notice. New review steps will need to be included in to module so that the denial  
20 data is identified and collected in the module. New communication forms will need to be  
21 templated and coded to the new module. Staff will need to be trained on the new procedure, and  
22 a new quality control process will need to be developed to ensure the new process is being  
23 followed correctly. The new module and notification process will need to be tested for  
24 technological glitches or issues, and staff will need to complete troubleshooting exercises to make  
25 sure the new technology and process works as intended. Further, call center staff will need to be  
26 trained on the new notifications and the new process to be able to answer questions about the

27 \_\_\_\_\_  
28 <sup>1</sup> The Program now employs approximately 460 staffers to run the Program, down from  
1,200 staffers in early October 2022, and does not have the funding to hire and train new staffers.  
(*Hayes Decl.*, ¶ 14.)



1 process, and LPN staff will need to be trained so that they can support applicants effectively.

2         Simply implementing HCD’s proposed denial notice for the remaining applications, and the  
3 anticipated appeals that will arise from sending out the denial notices, will expend the remainder  
4 of HCD’s funding. (*Id.* at ¶ 18.) In fact, HCD expects that all of the program funding will run out  
5 before HCD can process all of the remaining denials and appeals. (*Ibid.*) Adding in even minor  
6 additional requirements, such as new categories of denials or checked boxes, will require HCD to  
7 use more of the remaining \$177 million on administrative funding, leaving less rental assistance  
8 available for eligible applicants. (*Ibid.*)

9         In prior motions, Petitioners have argued that HCD should be required to explain why  
10 documents are defective and produce redacted application documents in connection with their  
11 denial notices. However, requiring reviewers to manually add in information regarding  
12 documentation accuracy will cost approximately \$150 million and will add between 8 and 10  
13 hours to each application. (*Id.* at ¶ 19.) Most of these applications have more than a dozen  
14 documents, and many have upwards of 30 documents that will need to be reviewed. (*Id.* at ¶ 17.)  
15 Further, it would substantially increases the risk of error in the review process because manually-  
16 inputted information always increases the risk of error. (*Ibid.*) Case managers will need to take  
17 notes, compare documents and make judgement calls as to whether or not documents meet  
18 program standards. Information manually entered by case managers will require much more  
19 extensive quality control review because of both the increased risk of error, and the substantially  
20 increased risk of reviewer bias. In addition, regarding Petitioners’ proposal for redacted  
21 documents, HCD estimates that it would cost approximately \$104 million and take approximately  
22 26 months for HCD to redact and produce all documents that HCD relied on to make its denial  
23 determination for the existing applicant pool. (*Id.* at ¶ 20.)

24         Ultimately, Petitioners additional safeguards would not significantly decrease the risk of  
25 erroneous deprivation of rental assistance (and actually increases the risk of erroneous denials)  
26 while squandering the rest of HCD’s limited administrative funding before all of the remaining  
27 applications can be processed, essentially rendering HCD’s denial and appeals processes useless.

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1           **E. Governmental interest in preventing fraud**

2           HCD has a statutory obligation to safeguard public funds by preventing fraud. (See Health  
3 & Saf. Code, § 50897.4, subd. (c).) The proposed denial notice identifies why the applicant does  
4 not meet ERAP eligibility and what documents are defective, while not specifying in every case  
5 why HCD believes a document is problematic. Informing the applicant in every case of the  
6 specific reason the document is defective is unnecessary and would disclose ERAP’s fraud  
7 prevention measures, significantly increasing the risk of fraud on appeal.

8           The potential harm of disclosing ERAP’s fraud detection mechanisms are substantial. HCD  
9 staff estimates that approximately 1.4 percent of the total funds disbursed by the program involve  
10 fraudulent claims, and an additional \$1.9 billion of suspected fraud claims have been detected  
11 during the application review process. (Hayes Decl., ¶ 12.) The amount of remaining rental  
12 assistance funding is quickly depleting, and disbursement to fraudsters takes limited rental  
13 assistance funding away from legitimate applicants.

14           **F. Balancing the *Ramirez* factors demonstrates that HCD’s proposed denial  
15 notice and appeals process are consistent with due process**

16           A consideration of the various *Ramirez* factors to be balanced weigh in favor of finding that  
17 HCD’s proposed denial notice, in conjunction with its appeals procedure, affords applicants  
18 sufficient due process. Petitioners’ interest in ERAP rental assistance, even if they meet eligibility  
19 criteria, varies greatly and is not guaranteed due to the temporary nature of the Program and its  
20 limited funding. Petitioners have not established any meaningful risk of erroneous deprivation of  
21 benefits as a result of HCD’s procedures, nor established that their proposed additional safeguards  
22 have any meaningful additional value. HCD’s procedures promote the dignitary interests of  
23 applicants by informing them of the nature of the denial and providing the applicant with multiple  
24 opportunities to be heard. And lastly, unlike Petitioners’ requested safeguards, HCD can actually  
25 implement its proposed denial notice within the constraints of its limited administrative funding.  
26 The processes afford applicants with “reasonable notice and a reasonable opportunity to be heard.  
27 That is all due process requires.” (*In re Kavanugh, supra*, 61 Cal.App.5th at 359.)  
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**CONCLUSION**

For all of the foregoing reasons, Respondents respectfully requests that the Court narrow the preliminary injunction and allow HCD to issue the proposed denial notices attached as “Exhibit 1” to the Declaration of Jackie K. Vu.

Dated: January 13, 2023

Respectfully submitted,

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