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ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

DAVID RAMIREZ, SHARON  
SWEAT, STEPHENIE SAINT  
VINCENT, RAYA IVES, DEREK  
MACARTHUR, KIM GRAY, and  
ERIK TEASLEY as individuals;  
PEOPLE’S HOMELESS TASK  
FORCE, an unincorporated  
association;

Plaintiffs,

vs.

THE COUNTY OF ORANGE, a  
municipal entity;

Defendant.

Case No. 8:18-cv-00220-DOC-KES

Related Case No. 8:18-cv-00155-DOC-  
KES

***EX PARTE APPLICATION AND  
NOTICE OF MOTION FOR A  
TEMPORARY RESTRAINING  
ORDER***

Date: TBD

Time: TBD

Courtroom: TBD

1 **TO THE COURT AND DEFENDANT AND THEIR ATTORNEYS OF**

2 **RECORD:** Notice is hereby given that, on a date and time to be set by the Court, and  
3  
4 pursuant to Local Rule 7-9 of the United States District Court for the Central District  
5 of California, Plaintiffs will seek an *Ex Parte* Application for a Temporary Restraining  
6 Order to enjoin Defendants, their agents and employees, from evicting Plaintiffs from  
7 the motels in which they were placed as agreed to by the parties in *Catholic Workers v.*  
8 *County of Orange* Stipulation Between the Parties, Case No. 8:18-cv-00155 DOC  
9 KES, (SACD CA 2/14/17), ECF No. 92. In light of the imminent and irreparable harm  
10 that Plaintiffs' will face, Plaintiffs respectfully request that the Court issue a temporary  
11 restraining order requiring the County to maintain the status quo and keep Plaintiffs in  
12 disability appropriate housing, such as their current motel placements, until the County  
13 provides the appropriate resources and housing that it committed to providing under  
14 the Program.  
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19 The motion is based on this *Ex Parte* Application and Notice of Motion, the  
20 exhibit thereto advising of the notice provided to the Defendants, the concurrently filed  
21 Memorandum, a Request for Judicial Notice, all declarations and exhibits filed in  
22 support of the moving papers, as well as any additional matters that may be filed in  
23 response to pleadings filed by the Defendants, if any, and any further matters that may  
24 be presented at oral argument, if any, at a time set by the Court.  
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1 Pursuant to Local Rule 7-19, Plaintiffs' counsel provided written and oral notice  
2 via email and via telephone to Defendant's counsel of this Application, including  
3 Laura Knapp, Marianne Van Riper, Kayla Watson, Vanessa Atkins and Leon Page on  
4 behalf of the County of Orange. Kotval Decl., Ex. 1. On March 14, 2018, Plaintiffs'  
5 counsel provided written notice of its intent to file this Application by email, advising  
6 of the twenty-four (24) hour period following service of the Application to respond  
7 pursuant to the Court's rules. Kotval Decl., Ex. 1. The email contains all of the  
8 contact information for both Plaintiffs' counsel and Defendant's counsel. Kotval  
9 Decl., Ex. 1. Our main point of contact with Defendant's counsel, Marianne Van  
10 Riper, Senior Assistant County Counsel, can be reached via telephone at (714) 834-  
11 6020, via email at Marianne.vanriper@coco.ocgov.com; and via mail at 333 W. Santa  
12 Ana Blvd. Suite 407, Santa Ana, CA 92701. To date, the County of Orange has  
13 advised that it intends to oppose the motion.  
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19 Dated: March 15, 2018

20 Respectfully submitted,

21  
22 LEGAL AID SOCIETY OF ORANGE  
23 COUNTY

24  
25 /s/ Lili V Graham  
26 By: LILI V GRAHAM  
27  
28

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PEOPLE’S HOMELESS TASK  
FORCE, an unincorporated  
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Plaintiffs,

vs.

THE COUNTY OF ORANGE, a  
municipal entity;

Defendant.

Case No. 8:18-cv-00220-DOC-KES

Related Case No. 8:18-cv-00155-DOC-KES

**PLAINTIFFS’ RESPONSE TO  
COURT’S MARCH 14, 2018 ORDER  
IN *CATHOLIC WORKER, EX PARTE*  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER AND OSC RE  
FOR PRELIMINARY INJUNCTION**

[Memorandum of Point and Authorities in  
Support of Motion; Declarations of  
Ramirez, Ives, MacArthur, Ingram, Kotval,  
and Robbins; and [Proposed] Order filed  
concurrently herewith]

Date: TBD

Time: TBD

Ctrm: TBD

PLAINTIFFS’ RESPONSE TO COURT ORDER AND *EX PARTE* APPLICATION FOR TRO



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## I. INTRODUCTION

As of January 2018, Plaintiffs, seven disabled homeless individuals, were residing at the Santa Ana Riverbed (the “Riverbed”) with their tents, blankets, and other personal belongings. There, they were able to have a certain degree of privacy, protection, and comfort in a community that they called their home. On January 22, 2018, the County of Orange (the “County” or “Defendant”) began to evict Plaintiffs and other homeless individuals from the Riverbed even though the County was in the midst of implementing a state and federally funded program to relocate them to appropriate housing (the “Program”).

On February 14, 2018, the parties in *Orange County Catholic Worker v. Orange County* (“*Catholic Worker*”), 18-cv-00155 DOC (KESx), executed a stipulation modifying the Program to provide that the County would relocate homeless individuals, including Plaintiffs, from the Riverbed to motel rooms for a *minimum* of 30 days while the County completed clinical assessments to determine each person’s housing needs and appropriate resources to accommodate those needs (the “Stipulation”). *Catholic Worker*, ECF No. 92. However, the County proceeded to move Plaintiffs and others to motels that were far from their familiar surroundings and failed to provide adequate access to food, transportation, and services. At least one Plaintiff was evicted during his motel stay and had to sleep on the sidewalk in temperatures dropping to the mid-40s without any tent, blanket, or protection from the

1 cold. Other Plaintiffs were not provided with any guidance or explanation as to the  
2 services that were available to them or did not receive necessary food vouchers or  
3 transportation passes.  
4

5 At least three Plaintiffs have now received notices that they will be evicted from  
6 the motels on Saturday, March 17 and Monday, March 19. Additional Plaintiffs and  
7 other disabled homeless individuals will be displaced next week. Plaintiffs have  
8 undergone clinical assessments by an independent practitioner, Dr. Brenda Ingram,  
9 who has concluded that people with trauma-based mental health conditions, including  
10 Plaintiffs, will experience adverse health consequences if they are relocated to  
11 temporary shelters. *See* Ingram Decl. ¶¶ 10-36.  
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15 Without access to their motel rooms, Plaintiffs and others will be forced back on  
16 the streets—only this time they will be worse off and in far more danger than when  
17 they were on the Riverbed because they face sleeping outside in the rain and cold  
18 weather without their tents, blankets, and necessary survival items, which they were  
19 required to leave on the Riverbed when they were displaced by the County. Plaintiffs  
20 in *Catholic Worker* expressed similar concerns (*see Catholic Worker*, ECF Nos. 119,  
21 121).  
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25 The Court has issued a minute order setting a hearing on Saturday, March 17  
26 and has invited briefing by interested parties. *Id.*, ECF No. 120. In response to the  
27 Court's order and in light of the imminent and irreparable harm Plaintiffs face,  
28

1 Plaintiffs respectfully request that the Court issue a temporary restraining order  
2 requiring the County to maintain the status quo and keep Plaintiffs in disability  
3 appropriate housing, such as their current motel placements, until the County provides  
4 appropriate resources and housing that it committed to providing under the Program.  
5 Plaintiffs also request that the Court issue a temporary restraining order requiring the  
6 County to maintain the status quo and keep individuals that reported a disability to the  
7 County during clinical assessments, or who the County otherwise has reason to believe  
8 has a disability, in disability appropriate housing, such as their current motel  
9 placements, until the County provides the appropriate resources and housing that it  
10 committed to providing under the Program. Plaintiffs also request that the Court set an  
11 order to show cause why a preliminary injunction should not issue.  
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## 16 **II. STATEMENT OF FACTS**

### 17 **A. Plaintiffs Are Vulnerable Homeless Individuals With Disabilities** 18 **Who Had Built A Relatively Safe And Familiar Home At The** 19 **Riverbed.**

20 Plaintiffs are seven homeless individuals with various disabilities and the  
21 People's Homeless Task Force ("PHTF"), a grassroots association formed to assist and  
22 advocate on behalf of homeless residents of Orange County. Robbins Decl. ¶¶ 2-3.  
23 Plaintiffs suffer from a diverse range of mental health disabilities, including anxiety,  
24 depression, delusions, traumatic flashbacks, and schizophrenia. Ingram Decl. ¶¶ 18-  
25 19, 24, 26. Prior to the County's actions, as detailed below, Plaintiffs had lived at the  
26 Riverbed for significant periods of time, ranging from a few months to fourteen years,  
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1 and considered the Riverbed their home. Kotval Decl., Exs. 4-10; Ramirez Decl. ¶ 12;  
2 MacArthur Decl. ¶ 10; Ives Decl. ¶ 2. Although not ideal, for many Plaintiffs, the  
3 Riverbed was the only constant in their chaotic lives, providing a source of familiar  
4 community, environmental stability, and protection in the form of tents and blankets.  
5 Ramirez Decl. ¶ 11; MacArthur Decl. ¶ 11; Ives Decl. ¶ 6.

8 **B. The County Announces Plans To Evict The Homeless From The**  
9 **Riverbed Even Though It Was in the Midst of Implementing a Long-**  
10 **Term Plan for Relocating the Homeless Population to Appropriate**  
11 **Housing.**

12 On June 6, 2017, the Orange County Board of Supervisors approved \$750,000  
13 to enter into a contract with City Net, a nonprofit service provider, to facilitate  
14 enhanced provision of services and housing to Riverbed residents. Request for Judicial  
15 Notice (“RJN”) at ¶ 3. On June 28, 2017, the Orange County Board of Supervisors  
16 approved funding to expand the County’s Whole Person Care (WPC) services to  
17 include additional recuperative care for the County’s homeless population. RJN at ¶ 5.

19 On July 1, 2017, the County announced a “Building a System of Care” initiative  
20 that included “increased investments in outreach, services, and affordable housing  
21 developments.” RJN at ¶ 3. This System of Care initiative included an award of \$22  
22 million to renew critical resources under various housing initiatives, including  
23 homeless housing such as permanent supportive housing, an award of \$31.1 million to  
24 participate in the Whole Person Care Initiative for services to people experiencing  
25 homelessness and mental illness, and funding to build out the capacity of existing  
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shelters, all of which were part of the County's Program to assist homeless residents.

RJN at ¶ 4.

Although the County was in the midst of implementing the Program and had not yet made contact with hundreds of Riverbed residents, on January 3, 2018, the County announced plans to abruptly evict all homeless individuals from the Riverbed. Kotval Decl., Ex. 2. On January 8, 2018, the County posted Work Notices along the Riverbed, giving residents two weeks to vacate. Ramirez Decl. ¶ 15; MacArthur Decl. ¶ 14. The Work Notices stated that individuals who remain on or return to the Riverbed after January 22, 2018 would be prosecuted under California law. *Id.*

**C. The County Again Promises To Provide Appropriate Long-Term Solutions, But Plaintiffs Are Displaced From The Riverbed To Motels Where Their Disability Conditions Worsen.**

On February 13, 2018, the County stated that it would relocate the homeless living at the Riverbed to motels or shelters for a "minimum" of 30 days while the County continued to implement its Program. *Catholic Worker*, ECF No. 92. The Stipulation required the County to provide services, including food, health, and transportation services, and to store the personal property of homeless individuals for 90 days. *Id.* at ¶¶ 3-5. The County also agreed to complete clinical assessments of each person's needs and appropriate resources. *Id.* at ¶ 2. At the conclusion of the 30 days, the County promised to provide "appropriate resources." *Id.* at ¶ 8.

1 On or about February 14, 2018, the County began relocating the homeless  
2 population living at the Riverbed. Over the next ten days, the County relocated  
3 Plaintiffs to various motels throughout Orange County without giving Plaintiffs any  
4 time to pack up essential living items that they relied on to survive, including blankets,  
5 clothes, and tents. Kotval Decl., Ex. 13; Ramirez Decl. ¶ 18; MacArthur Decl. ¶¶ 14,  
6 15; Ives Decl. ¶10; *see also* ECF No. 23, 25. To date, Plaintiffs have not been able to  
7 retrieve their personal belongings. The County assured Plaintiffs that they would be  
8 reintegrated into society and would have access to the County's services and housing  
9 options if they accepted the motel vouchers. Ramirez Decl. ¶ 18; MacArthur Decl. ¶  
10 21; Ives Decl. ¶ 8-9.

11 Since relocating to their respective motel rooms, Plaintiffs have been re-  
12 traumatized and their mental health symptoms have been exacerbated by the County's  
13 assessment process and its treatment of homeless individuals. Ingram Decl. ¶¶ 20, 28,  
14 32, 36. First, although the Stipulation required the County to provide food resources to  
15 relocated individuals, the County did not provide food to Plaintiffs on a consistent  
16 basis. Robbins Decl. ¶¶ 8-9. Plaintiffs, in fact, did not initially receive food vouchers  
17 for over a week and lived in rooms in which the microwaves or refrigerators had been  
18 removed. Ives Decl. ¶ 9; MacArthur Decl. ¶ 16. This was the case even though  
19 Plaintiffs' counsel informed the County that Plaintiffs had not received food vouchers  
20 and were in desperate need of food. Kotval Decl., Ex. 14.



1        Second, although the County committed to providing transportation to medical,  
2 social service, or housing appointments, Plaintiff Sweat missed a medical appointment  
3 because the County did not provide a bus pass in a timely manner. Kotval Decl., Ex.

4  
5        1. Third, Plaintiffs were in need of critical services but did not have a way of  
6 communicating these needs to the County. Indeed, some of the motels, including the  
7 Baymont Inn, stripped the motel rooms of telephones, leaving Plaintiffs isolated and  
8 without means of communicating or requesting services from the County. Kotval  
9 Decl., Ex. 1.  
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12        Fourth, Plaintiff Ramirez was moved to three different motels during the 30-day  
13 period and was evicted from one of the motels, forcing him to sleep on the streets until  
14 he was housed in a different motel. Ramirez Decl. ¶ 20. In short, Plaintiffs have been  
15 living in uncertainty and unstable conditions that have further exacerbated their mental  
16 illnesses and disabilities. Ingram Decl. ¶¶ 20, 28, 32, 36; Ramirez Decl. ¶¶ 26-28 (“I  
17 am fearful and I am becoming increasingly paranoid . . . . I am constantly thinking  
18 about what is going to happen to me . . . . This situation has exacerbated all of these  
19 symptoms.”); MacArthur Decl. ¶ 22 (“My depression and anxiety have left me feeling  
20 hopeless and helpless.”); Ives Decl. ¶ 9 (“Since moving from the Riverbed, my PTSD  
21 symptoms have been continually getting worse.”).  
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**D. The County Has Not Provided Adequate Accommodation For Plaintiffs' Physical Disabilities, and Plaintiffs Will Be Forced Back On The Streets In A Condition That Is Worse Than Before.**

Under the Program and Stipulation, the County also was obligated to perform clinical assessments to evaluate Plaintiffs' needs and appropriate resources (*Catholic Worker*, ECF No. 92), but the County did not keep Plaintiffs informed of the appropriate housing and services available to them and failed to address the housing solution after the 30-day motel stay. Kotval Decl., Ex. 14. At best, Plaintiffs were given a list of potential landlords with phone numbers and were told to find housing on their own. Ramirez Decl. ¶ 23; MacArthur Decl. ¶ 18. Those options were not viable for Plaintiffs who have severe mental disabilities and do not even meet the requirements of the landlords on the County's housing list. Ingram Decl. ¶ 31; Ramirez Decl. ¶ 23.

In the meantime, Plaintiff Ramirez received a notice indicating that he will be evicted from his motel on Saturday, March 17, 2018. Ramirez Decl. ¶ 22. Two other Plaintiffs received notices indicating that they will be evicted from their motels on Monday, March 19, 2018. MacArthur Decl. ¶ 20; Ives Decl. ¶ 16. Other Plaintiffs will be displaced next week and back on the streets, but this time they will not have any of their necessary belongings needed to survive on the streets. Robbins Decl. ¶ 13.

**III. ARGUMENT**

Plaintiffs seeking a TRO must establish: (1) likelihood of success on the merits; (2) irreparable harm; (3) a balance of equities in their favor; and (4) public interest.

1 *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Carrillo v. Schneider*  
2 *Logistics, Inc.*, 823 F. Supp. 2d 1040, 1042 (C.D. Cal. 2011). Requests for preliminary  
3 relief are evaluated on a sliding scale – where plaintiffs make a strong showing of  
4 irreparable harm, they need not make as great a showing with respect to likelihood of  
5 success on the merits. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-  
6 35 (9th Cir. 2011). “The urgency of obtaining a [TRO also] necessitates a prompt  
7 determination and makes it difficult to obtain affidavits from persons who would be  
8 competent to testify at trial.” *Flynt Distrib. Co., Inc. v. Harvey*, 734 F.2d 1389, 1394  
9 (9th Cir. 1984). Therefore, courts can “give even inadmissible evidence some weight,  
10 when to do so serves the purpose of preventing irreparable harm.” *Id.*; *see also*  
11 *Johnson v. Couturier*, 572 F.3d 1067, 1083 (9th Cir. 2009).

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16 **A. Absent A TRO, Plaintiffs Will Suffer Serious Irreparable Harm.**

17 Absent a temporary restraining order, Plaintiffs will suffer immediate irreparable  
18 harm. Irreparable harm has “traditionally [been] defined as harm for which there is no  
19 adequate legal remedy, such as an award of damages.” *Arizona Dream Act Coal. v.*  
20 *Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014); *see also Small v. Avanti Health Sys.,*  
21 *LLC*, 661 F.3d 1180, 1191 (9th Cir. 2011) (a plaintiff “need not prove that irreparable  
22 harm is certain or even nearly certain,” but must demonstrate only a “likelihood” of  
23 irreparable harm).  
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1 Without the Court's intervention, the County's eviction of Plaintiffs from their  
2 motels will cause irreparable harm to Plaintiffs by forcing them to choose between  
3 shelters that exacerbate their disabilities or sleeping on the streets without the tents and  
4 blankets they used to protect themselves when they lived on the Riverbed. Plaintiff  
5 Ramirez has been told that he must leave his motel by Saturday, March 17. Ramirez  
6 Decl. ¶ 22. Likewise, Plaintiffs MacArthur and Ives have received notices indicating  
7 that they will be evicted from their motels by Monday, March 19. MacArthur Decl. ¶  
8 20; Ives Decl. ¶ 16. Other Plaintiffs will be evicted from their motels in the following  
9 week. Kotval Decl., Ex. 1. Despite these imminent evictions, the County has not  
10 provided any viable alternative housing. As a result, Plaintiffs will have no choice but  
11 to sleep on the streets in the rain and cold weather without any protection from the  
12 elements, exposing Plaintiffs to illnesses such as hypothermia and putting their health  
13 and well-being at risk.

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19 Moreover, Plaintiffs' imminent eviction from the motels puts their mental health  
20 at risk by re-traumatizing Plaintiffs, aggravating existing mental health issues, and  
21 causing serious psychological and physiological distress. Ingram Decl. ¶¶ 32-36. This  
22 uncertainty is causing Plaintiffs immediate and ongoing harm, including immense  
23 anxiety, stress, depression, paranoia, and fear due to the imminent threats to their  
24 health and safety at the prospect of being without housing and shelter yet again at the  
25 hands of the County. Ramirez Decl. ¶¶ 24, 26-27; MacArthur Decl. ¶ 22 ("My  
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1 depression and anxiety have left me feeling hopeless and helpless. I cannot manage  
2 my disabilities under these circumstances and feel overwhelmed by my situation.”).

3  
4 Plaintiffs’ very lives will be in danger if they are evicted from their motels, and  
5 Plaintiffs have therefore established irreparable harm. *Chalk v. U.S. Dist. Court Cent.*  
6 *Dist. Of California*, 840 F.2d 701, 710 (9th Cir. 1988) (“Such an injury cannot be  
7 adequately compensated by a monetary award after trial.”); *see also* *Michell v. City of*  
8 *Los Angeles*, 16-CV-01750 SJO (GJSx), ECF No. 51 at 10 (C.D. Cal. Apr. 13, 2016)  
9 (granting an ex parte TRO application filed by plaintiffs, a group of homeless  
10 individuals, and finding that the plaintiffs “may not survive without some of the  
11 essential property that [was] confiscated” from them); *Wood v. County of Alameda*,  
12 No. C 94 1557, 1995 WL 705139, at \*16 (N.D. Cal. 1995) (“[T]he imminent loss of  
13 one’s home and destitute financial circumstances are the type of truly extraordinary  
14 circumstances which can cause sufficient irreparable injury.”).

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19 **B. The Balance Of Hardships Tips Sharply In Plaintiffs’ Favor.**

20 The concurrently submitted Declarations provide concrete examples of the life-  
21 threatening irreparable harm that will take place each day that the Plaintiffs are forced  
22 to fend for themselves on the street as a result of the County’s movement of Plaintiffs  
23 from the Riverbed to motels, failure to preserve Plaintiffs’ property, and current  
24 eviction of Plaintiffs from motels with no viable alternative solution in place. Ingram  
25 Decl. ¶¶ 31-36; Ramirez Decl. ¶ 24 (“I am completely stressed out by my current  
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1 situation and traumatized by the continual false promises by the County.”); MacArthur  
2 Decl. ¶ 22 (“I am once again confronted with returning to homelessness, but this time  
3 I have absolutely nowhere to go and have lost the items I rely on to survive while  
4 living outdoors.”). No countervailing interest of the County outweighs the dire impact  
5 on Plaintiffs, who are homeless. The County, which has immense financial resources,  
6 faces little to no burden if required to maintain the status quo and keep Plaintiffs in  
7 their current motels. Indeed, this Court has never found that monetary resources are  
8 more valuable than the opportunity to save a human life. In short, the balance of  
9 hardships tips sharply in Plaintiffs’ favor.  
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### 13 **C. A TRO Is In The Public Interest.**

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15 As discussed above, Plaintiffs are some of Orange County’s most vulnerable  
16 residents, and they are experiencing severe, ongoing violations of their rights that will  
17 cause irreparable harm to their mental health and future prospects for obtaining  
18 housing and employment. Ingram Decl. ¶¶ 31-36. Allowing these violations to  
19 continue is against the public interest. This is especially true given the interests  
20 protected by the American with Disabilities Act (“ADA”). “In enacting the ADA,  
21 Congress demonstrated its view that the public has an interest in ensuring the  
22 eradication of discrimination on the basis of disabilities.” *Enyart v. Nat’l Conference*  
23 *of Bar Exam’rs, Inc.*, 630 F.3d 1153, 1167 (9th Cir. 2011). “This public interest is  
24 served by requiring entities to take steps to ‘assure equality of opportunity’ for people  
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1 with disabilities.” *Id.* It also “is always in the public interest to prevent the violation  
2 of a party’s constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.  
3 2012).

4  
5 **D. Plaintiffs Will Likely Succeed On The Merits Of Their Claims.<sup>1</sup>**

6 ***1. Defendant Has Discriminated Against Plaintiffs On The Basis***  
7 ***Of Their Disability In Violation Of The ADA And***  
8 ***Rehabilitation Act.***

9 To establish a Title II claim under the ADA, Plaintiffs must show that they are  
10 (1) qualified individuals with disabilities who were (2) denied the benefit of  
11 Defendant’s services, programs, or activities, or were otherwise discriminated against  
12 by Defendant, (3) by reason of their disability. *Weinreich v. Los Angeles County*  
13 *Metro. Transp. Auth.*, 114 F.3d 976, 978 (9th Cir. 1997). The same requirements  
14 apply to claims under Section 504 of the Rehabilitation Act (“Section 504”) with the  
15 additional requirement that the program at issue receives federal financial assistance.  
16 29 U.S.C. § 794; *McGary v. City of Portland*, 386 F.3d 1259, 1269 n. 7 (9th Cir.  
17 2004). Here, the Program is funded in part by the U.S. Department of Housing and  
18 Urban Development, (Answer ¶ 38) so analysis of the remaining elements of the Title  
19 II and Section 504 claims is identical.  
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28 <sup>1</sup> For purposes of this TRO, Plaintiffs address the First, Second, and Third Causes of  
Action asserted in their complaint.

1                   a. Plaintiffs Are Qualified Individuals With Disabilities.

2           Under the ADA, a disability is defined as a “physical or mental impairment that  
3 substantially limits one or more of the major life activities,” such as caring for oneself,  
4 concentrating, thinking, and communicating. 42 U.S.C. §§ 12102(1), (2)(A); 29 CFR  
5 § 1630.2(j)(3)(iii). Here, Plaintiffs are qualified individuals with disabilities under the  
6 ADA because they suffer from severe mental and physical impairments that limit their  
7 ability to work or adequately care for themselves. Ingram Decl. ¶ 31.  
8

9  
10                   b. Plaintiffs Were Excluded From Participation In And Denied  
11 Benefits Of The Program And Otherwise Discriminated Against  
12 By Defendant.

13           The Program is subject to the broad scope of Title II and Section 504. *Fortyune*  
14 *v. City of Lomita*, 766 F.3d 1098, 1101-02 (9th Cir. 2014) (any program that “is a  
15 normal function of a government entity” is subject to Title II and Section 504). A  
16 plaintiff may establish a violation of Title II and Section 504 if they were denied  
17 “meaningful access to state services by reason of their disability,” even if the allegedly  
18 discriminatory program is facially neutral. *Crowder v. Kitagawa*, 81 F.3d 1480, 1485  
19 (9th Cir. 1996). A program denies meaningful access to individuals with disabilities  
20 where it fails to address or provide for their unique needs. *Communities Actively*  
21 *Living Independent and Free v. City of Los Angeles*, No. CV 09-0287 CBM, 2011 WL  
22 4595993, at \*13 (C.D. Cal. 2011) (plaintiffs established lack of meaningful access  
23 “due to the City’s failure to address or provide for their unique needs”). A public  
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1 entity is required to make reasonable accommodations to avoid discriminating against  
2 persons with disabilities, unless it would be unduly burdensome or would  
3 fundamentally alter the nature of the program it provides. 28 C.F.R. § 35.130(b) (7);  
4 *Cohen v. City of Culver City*, 754 F.3d 690, 695 (9th Cir. 2014). A plaintiff can  
5 establish intentional discrimination where the defendant knew an accommodation was  
6 required, and still failed to act. *Duvall v. County of Kitsap*, 260 F. 3d 1124, 1139 (9th  
7 Cir. 2001).

10 Here, Plaintiffs were denied meaningful access to the Program because the  
11 Program failed to provide accommodations that would make it accessible to people  
12 with disabilities, thereby excluding Plaintiffs from the benefits of the Program, such as  
13 adequate mental health services and appropriate housing options. Robbins Decl. ¶ 5.  
14 For example, the County's assessments failed to include any in-depth evaluation about  
15 the individual's medical background, mental health, experience with trauma, or how  
16 their disabilities inform their housing needs. Ramirez Decl. ¶¶ 12-14; Robbins Decl. ¶  
17 12. These assessments were conducted without any attempt to build trust or rapport by  
18 uniformed HCA staff who were meeting these individuals for the first time. The  
19 assessments lasted between 10 to 45 minutes and were often conducted in rushed  
20 manner, and individuals were provided with little to no information about their  
21 options. MacArthur Decl. ¶¶ 18, 19. In most instances, Plaintiffs were only offered a  
22 phone number to call City Net for information about temporary shelters and were  
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1 denied access to more appropriate housing options to accommodate their disabilities.  
2 MacArthur Decl. ¶ 19. No guidance or assistance was provided to them to help  
3 navigate the procedural hurdles associated with securing placement at such an entity,  
4 thereby functionally denying them any access to a purported benefit. Ingram Decl. ¶  
5 31.  
6

7  
8 Plaintiffs are unable to access shelters due to their disabilities. The County's  
9 shelters are crowded, noisy, unsanitary, and often violent, and lack the privacy that  
10 Plaintiffs need to manage their disabilities. Ingram Decl. ¶¶ 15, 35. The Plaintiffs  
11 who have attempted to stay in emergency shelters, including Plaintiffs Ramirez, Ives,  
12 and MacArthur, become psychologically triggered and re-traumatized by these  
13 conditions, resulting in the deterioration of their health. Ingram Decl. ¶ 35; MacArthur  
14 Decl. ¶ 13; Ives Decl. ¶ 7. While temporary shelters may be appropriate housing  
15 solutions for non-disabled homeless, they are not appropriate for mentally ill homeless  
16 individuals who are triggered by conditions in the shelters and suffer deteriorating  
17 mental health symptoms when subject to them. Ingram Decl. ¶ 15; Robbins Decl. ¶¶ 7,  
18 15; MacArthur Decl. ¶ 13; Ives Decl. ¶ 7.  
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23 Defendant knew that an accommodation was required in order for mentally  
24 disabled homeless to have meaningful access to the Program. According to a county-  
25 commissioned study, 51% of homeless individuals residing in the Riverbed had  
26 disabilities and 42% had mental health concerns. RJN at ¶ 6. Moreover, in January  
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1 and February 2018, Plaintiffs submitted multiple reasonable modification requests to  
2 the County, informing the County of Plaintiffs' disabilities and their inability to access  
3 emergency and transitional shelters, and requesting a reasonable modification of the  
4 Program to accommodate their disabilities. Kotval Decl., Exs. 4-10; Ramirez Decl. ¶  
5 12; MacArthur Decl. ¶ 14; Ives Decl. ¶ 8. However, the County has denied or ignored  
6 all of Plaintiffs' reasonable modification requests, excluding Plaintiffs from  
7 participating in its Program and Stipulation by reasons of Plaintiffs' disabilities.  
8  
9 Kotval Decl., Exs. 1, 11; Ramirez Decl. ¶ 12.

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12 None of Plaintiffs' requested accommodations fundamentally alter the nature of  
13 the Program, nor are they unduly burdensome. All of the accommodations seek to  
14 further the Program's goal of providing appropriate housing for chronically homeless  
15 individuals. The County has applied for and received substantial financial resources  
16 for homeless services and housing resources, including \$786,481,342 in fiscal year  
17 2016-2017 alone.<sup>2</sup> It is also estimated that the County has roughly \$230 million in  
18 unused funds that can be used to address homelessness.<sup>3</sup> Even accepting the County's  
19 estimation that each permanent housing unit costs between \$100,000 and \$110,000,  
20 using just half of the available \$230 million could provide permanent housing for  
21 1,000 homeless residents. The costs of homelessness to the County actually declines  
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26 <sup>2</sup> County of Orange, County Executive Office, *An Assessment of Homeless Services in Orange*  
27 *County* at 42 (Oct. 18, 2016).

28 <sup>3</sup> Nick Gerda, Orange County Has at Least \$230 Million It Could Use to Address Homelessness,  
*Voice of Orange County*, (March 8, 2018) county-government-has-at-least-230-million-it-could-use-  
to-address-homelessness.

1 when the homeless are housed, even taking into consideration the program costs of  
2 permanent supportive housing.<sup>4</sup>

3  
4 **2. The Program Violates Substantive Due Process.**

5 Under the Substantive Due Process Clause of the Fourteenth Amendment, the  
6 state deprives a person of a substantive due process right if it affirmatively places the  
7 person in a position of danger. *Wood v. Ostrander*, 879 F.2d 583, 583 (9th Cir. 1989).  
8 Liability under substantive due process requires: (1) official state action that  
9 affirmatively places an individual in danger; and (2) deliberate indifference to that  
10 danger. *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1062 (9th Cir. 2006). State  
11 action affirmatively places an individual in danger when it leaves the person “in a  
12 situation that was more dangerous than the one in which they found him.” *Kennedy*,  
13 439 F.3d at 1062. Deliberate indifference requires proof of (1) serious risk of harm,  
14 (2) defendant’s actual knowledge of that risk, and (3) defendant’s failure to take  
15 obvious steps to address that risk. *L.W. v. Grubbs*, 92 F.3d 894, 900 (9th Cir. 1996).  
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20 Although not ideal, for years the Riverbed provided Plaintiffs with stability, a  
21 private space, and community, which allowed Plaintiffs to better manage their  
22 disabilities. Ramirez Decl. ¶ 11; MacArthur Decl. ¶ 11. Plaintiffs lived in  
23 encampments where they had access to tents and blankets that protected them from the  
24 cold, were able to access nearby food resource, and built a community to rely on one  
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28 <sup>4</sup> D. Snow, R. Goldberg, *Homelessness in Orange County: The Costs to Our Community* at 7, 26 (2017).



1 another for basic survival. Ramirez Decl. ¶ 11; MacArthur Decl. ¶ 11. In its abrupt  
2 eviction of Plaintiffs, the County affirmatively placed Plaintiffs in danger by uprooting  
3 Plaintiffs from their community and cutting them off from the resources they rely on  
4 for survival and placing them in temporary motel rooms without access to food,  
5 telephones, transportation, or health services, all of which exacerbates their mental  
6 health symptoms. Plaintiffs now are in locations that are unfamiliar to them, which is  
7 harmful to their health. Ingram Decl. ¶¶ 20, 28, 32, 36; Robbins Decl. ¶ 8; MacArthur  
8 Decl. ¶ 16; Ives Decl. ¶ 9.

12 Further, the County's eviction of Plaintiffs from the motels forces Plaintiffs to  
13 choose between shelters that aggravate their disabilities or sleeping on the streets  
14 without the community or the protective tents and blankets they were forced to leave at  
15 the Riverbed. Either choice immediately threatens each Plaintiff's fragile health.  
16 Ingram Decl. ¶¶ 31-36; *see also Sanchez v. City of Fresno*, No. 1:12-CV-00428, 2014  
17 WL 2042058 (E.D. Cal. 2014) (finding that the availability of alternative shelter was  
18 not enough to avoid liability if the action left Plaintiffs in more dangerous situations);  
19 *Munger v. City of Glasgow*, 227 F.3d 1082 (9th Cir. 2000) (finding officials liable for  
20 hypothermia death of visibly drunk bar patron after ejecting him from a bar on a  
21 bitterly cold night).

26 The County acted with deliberate indifference because it knew of the serious  
27 risk to Plaintiffs' health and well-being and failed to take action to address that risk.

1 *Kennedy*, 439 F.3d at 1064. Indeed, Plaintiffs submitted reasonable modification  
2 requests to the County in January 2018, before Plaintiffs' eviction from the Riverbed,  
3 and the County was therefore on notice of Plaintiffs' disabilities and their requested  
4 accommodations. Kotval Decl., Exs. 4-10. Plaintiffs explained to the County that the  
5 conditions at the emergency shelters made them inaccessible to Plaintiffs because the  
6 shelters would aggravate their mental health issues and traumatize them. Kotval Decl.,  
7 Exs. 4-10. Further, the County conducted its own health assessments of the Plaintiffs  
8 before they were displaced and was therefore aware of Plaintiffs' various disabilities,  
9 yet the County failed to take actions that would mitigate the danger to Plaintiffs'  
10 health. Ramirez Decl. ¶¶ 12-14.

11  
12 By evicting Plaintiffs from their motels without any appropriate housing  
13 option—and without any of the tents, blankets, and other items they used for protection  
14 from the elements—the County is affirmatively exposing Plaintiffs to hypothermia and  
15 other physical harm from exposure to cold weather. *Sanchez*, 2014 WL 2042058, at  
16 \*11 (acknowledging that danger and serious risk of harm can be created by  
17 environmental exposure to weather or injury by a third party). Plaintiffs have therefore  
18 established a likelihood of success on their substantive due process claim.

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24 **E. A Bond Is Not Required.**

25 “Although Federal Rule of Civil Procedure 65(c) generally provides that a  
26 preliminary injunction will not issue except upon the giving of security, it is not  
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1 required where plaintiffs are indigent or where considerations of public policy make  
2 waiver of a bond appropriate.” *Miller v. Carlson*, 768 F. Supp. 1331, 1340 (N.D. Cal.  
3 1991) (citing, *inter alia*, *California ex rel. Van De Kamp v. Tahoe Regional Planning*  
4 *Agency*, 766 F.2d 1319, 1325-26 (9th Cir. 1985), *modified*, 775 F.2d 998.) As  
5  
6 Plaintiffs are indigent, no bond should be required.  
7

#### 8 **IV. CONCLUSION**

9  
10 For each of the foregoing reasons, Plaintiffs respectfully request that the Court  
11 issue a temporary restraining order requiring the County to maintain the status quo and  
12 keep Plaintiffs in disability appropriate housing, such as their current motel  
13 placements, until the County provides appropriate resources and housing that it  
14 committed to providing under the Program. Plaintiffs also request that the Court issue  
15 a temporary restraining order requiring the County to maintain the status quo and keep  
16 individuals that reported a disability to the County during the clinical assessments, or  
17 who the County otherwise has reason to believe have a disability, in disability  
18 appropriate housing, such as their current motel placements, until the County provides  
19 the appropriate resources and housing that it committed to providing under the  
20 Program. Plaintiffs also request that the Court set an order to show cause why a  
21 preliminary injunction should not issue.  
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1 Dated: March 15, 2018

2 Respectfully submitted,  
3 LEGAL AID SOCIETY OF ORANGE  
4 COUNTY

5  
6 /S/ Lili V Graham  
7 By: LILI V GRAHAM  
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