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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 EASTERN DIVISION

15 VICTOR VALLEY FAMILY
16 RESOURCE CENTER *et al.*,

17 Plaintiffs,

18 vs.

19 CITY OF HESPERIA *et al.*,

20 Defendants.
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CASE NO. 5:16-cv-00903 AB(SPx)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND FOR ORDER TO
SHOW CAUSE**

CLASS ACTION

Action Filed: May 4, 2016

Trial Date: TBD

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1 Plaintiffs Victor Valley Family Resource Center (“VVFRC”), Sharon Green
2 (“Green”) and Plaintiffs Daniel Avila (“Avila”), Harold Batts (“Batts”), Chris
3 Dowdy (“Dowdy”), David Deen (“Deen”), Renee Gullett (“Gullett”), and Nicholas
4 Holt-Francis (“Holt-Francis”) (“VVFRC’s clients”), individually and on behalf of
5 those similarly situated, (collectively “Plaintiffs”), submit this memorandum of
6 points and authorities in support of their Ex Parte Application for Temporary
7 Restraining Order and Order to Show Cause re: Preliminary Injunction to prohibit
8 Defendants City of Hesperia (“City”), John McMahon, the San Bernardino County
9 Sheriff (“Sheriff’s Dept.”), and other city and county officials, from enforcing
10 Hesperia Municipal Code § 16.16.072 and Hesperia Ordinance 2015-12 against
11 Plaintiffs or the properties where they reside or carry out their mission.¹

12 **I. INTRODUCTION**

13 Plaintiff VVFRC is a non-profit charitable organization dedicated to reducing
14 homelessness and recidivism by providing homeless and previously incarcerated
15 individuals with the skills, resources, and supports they need to successfully
16 reintegrate into the community. VVFRC rents and maintains three residential homes,
17 where they provide transitional supportive housing to people in reentry with time-
18 sensitive needs in the city of Hesperia (“City”). Plaintiffs Avila, Batts, Deen,
19 Dowdy, Gullet, Holt-Francis, and those similarly situated, are individuals who are
20 on probation, who have faced homelessness, and who benefit from VVFRC’s efforts.

21 By enacting and vigorously enforcing unlawful municipal ordinances
22 designed to rid Hesperia of social groups they deem undesirable—low-income
23 renters and people with criminal records, especially individuals in reentry—
24 Defendants infringe Plaintiffs’ basic rights and expose them to the irreparable harms
25 of eviction, homelessness, and loss of vital services. Although the three homeowners

26
27 ¹ The City contracts with the San Bernardino County Sheriff’s Department for police
28 services. *See* <http://www.cityofhesperia.us/306/Police>. The City Code Enforcement
Division also enforces Hesperia’s municipal ordinances. *Id.*

1 who rent to VVFC are all aware of and support VVFC's transitional supportive
2 housing program, they have advised Plaintiffs that eviction proceedings are
3 imminent because Defendants have issued near-daily fines of \$1,000 each for
4 asserted violations of the City's ordinances and have placed or threatened to place
5 liens on the homeowners' properties.

6 The Court's immediate intervention to enjoin Defendants' policies and
7 practices is needed to protect Plaintiffs and maintain the status quo until a hearing
8 on Plaintiffs' request for a preliminary injunction can be heard.

9 **II. STATEMENT OF FACTS**

10 Plaintiffs VVFC and Green rent and maintain three residential homes in the
11 City, where they provide transitional supportive housing. Decl. of Sharon Green
12 ("Green Decl."), ¶¶ 3, 6, 7. The three houses are owned by three separate owners
13 and are located on La Crescenta Street ("La Crescenta House"), Hollister Street
14 ("Hollister House"), and Azalea Springs Avenue ("Azalea House"). *Id.* ¶ 7. In
15 addition to providing their clients with a place to live, VVFC provides wraparound
16 support services to its clients, including case management, counseling, and referral
17 to alcohol and substance abuse programs, job centers, educational programs, and
18 financial literacy training. *Id.* ¶ 3. The organization's goal is to support clients
19 through the transition to permanent housing and/or family reunification.

20 VVFC's clients are usually referred to the organization's transitional
21 supportive housing program by the courts, the San Bernardino County Probation
22 Department, or the San Bernardino County Department of Behavioral Health. *Id.* ¶
23 5. VVFC also works in collaboration with the San Bernardino County Sheriff's
24 Department's Homeless Outreach and Protective Enforcement ("HOPE") Team,
25 whose stated objective is to "stop the revolving door of arrest, incarceration, and
26 then release regarding homeless related crimes." *Id.* ¶ 4. Currently, all of VVFC's
27 clients are on probation. *Id.* ¶ 7. VVFC has an 80 to 85 percent success rate,
28 meaning that after its clients graduate from the transitional supportive housing

1 program, they remain employed and/or enrolled in school and have permanent
2 housing. According to VVFRRC's records, approximately 94 percent of its clients in
3 reentry do not recidivate. *Id.* ¶ 6.

4 **A. The Group Home Ordinance**

5 In 2007, the City of Hesperia adopted Hesperia Ordinance 2015-12,
6 "approving regulations for group homes, parolees, and sex offender residency" (the
7 "Group Home Ordinance"). Decl. of Adrienna Wong ("Wong Decl."), Ex. A. The
8 ordinance broadly defines "group homes" as "any residential structure or unit,
9 whether operated by an individual for profit or nonprofit entity, which is not licensed
10 by the state of California, and which houses individuals not related by blood or
11 marriage." Section 4 of the ordinance, now codified in Hesperia Municipal Code §
12 16.16.072, requires a conditional use permit for certain types of "group homes."
13 HESPERIA, CAL., CODE § 16.16.072(D). The ordinance outright prohibits "group
14 homes" that house two or more individuals on probation. *Id.* § 16.17.072(C)(2).

15 **B. The Rental Housing Ordinance**

16 In November 2015, the City adopted Hesperia Ordinance 2015-12, requiring
17 "the registration and regulation of housing rental businesses for crime free rental
18 housing" (the "Rental Housing Ordinance"). Wong Decl., Ex. F. The Rental Housing
19 Ordinance, now codified in Hesperia Municipal Code ch. 8.2, requires landlords to
20 provide their tenants' personal information to the Hesperia Police Department for a
21 background check and registration of tenants in a database administered by the
22 police. HESPERIA, CAL., CODE § 8.20.050(B). Additionally, the landlord must
23 independently conduct a criminal background check on the tenant and keep the
24 results of that check on file at all times. *Id.* § 8.20.050(D).

25 The Rental Housing Ordinance also requires landlords to initiate eviction
26 proceedings within 10 days if the chief of police provides notice that a tenant has
27 engaged in "criminal activity." *Id.* § 8.20.050(C)(1). "Criminal activity" may be
28 based on any violation of federal, state, or local law; no conviction or even arrest is

1 required before the chief of police issues a notice. *See id.*, § 8.20.020; Wong Decl.,
2 ¶¶ 14; Decl. of Glen Eichenblatt (“Eichenblatt Decl.”), Ex. C, at 1:04:22. A landlord
3 is subject to fines and administrative citation if he or she does not comply with the
4 ordinance’s requirements. *Id.* § 8.20.110.

5 **C. Enforcement of the Group Home Ordinance**

6 Defendants never enforced the Group Home Ordinance against VVFC until
7 2015, even though they knew that VVFC had been offering transitional supportive
8 housing in Hesperia since 2011. Green Decl., ¶¶ 6, 9. In January 2015, VVFC
9 began offering transitional supportive housing at a new location, in a leased house
10 on Chase Avenue in Hesperia (the “Chase House”). Neighbors of the house
11 immediately began complaining to city officials that they felt threatened by the
12 presence of the home and its residents. *See* Eichenblatt Decl., Ex. A, at 3:45; *id.* at
13 19:20. Plaintiffs are not aware of any specific complaint of crimes allegedly
14 committed or an increase in criminal activity in the neighborhood connected to the
15 Chase House – only that neighbors complained that the residents of the house should
16 not be living in the neighborhood. Green Decl. ¶¶ 10-11.

17 In response to the negative attitudes expressed by Chase House neighbors,
18 Defendants issued notices of violation to the homeowner and to Plaintiff Green
19 under Hesperia Municipal Code sections 16.16.072(C)(2), demanding that they
20 “[c]ease operation of a group home consisting of two or more unrelated parolees,
21 sex offenders and/or two or more individuals on probation.” Green Decl., ¶¶ 9, 11;
22 *id.*, Ex. C. The notices also indicated that if they failed to comply, further action
23 would be taken and could include criminal prosecution and/or recordation of
24 property with abatement fees. *Id.*, Ex. C.

25 Defendants’ enforcement actions were not limited to the Chase House. In or
26 around May 2015, City Code Enforcement began issuing citations for violation of
27 the Group Home Ordinance to the landlords of other houses where VVFC’s clients
28 live. *See* Green Decl., Ex. D. Code Enforcement again demanded that they cease

1 operation of group homes “consisting of two or more unrelated individuals on
2 probation.” VVFC paid the fines that Code Enforcement imposed under duress.
3 Green Decl., ¶ 14.

4 After receiving numerous citations from Defendants, as well as a letter stating
5 that the City was placing a Notice of Pendency on the La Crescenta property, the
6 owner of the La Crescenta House initiated eviction proceedings against VVFC in
7 August 2015. Green Decl., ¶ 15. After negotiations with VVFC, the City agreed
8 not to prosecute the prior citations or issue new citations against VVFC for
9 violation of section 16.16.072 while it “reviewed its enforcement policies as they
10 relate[d] to transitional housing.” Green Decl., Ex. E.² The City cautioned, however,
11 that its “forbearance [was] temporary.” *Id.*

12 Defendants’ forbearance was indeed temporary. In February 2016,
13 Defendants again began enforcing the Group Home Ordinance against VVFC.
14 Defendants have issued notices of violation, notices of public nuisance, and citations
15 to each of the three homes where VVFC offers transitional housing, asserting
16 violations of the Group Home Ordinance. Green Decl., ¶ 18; *id.*, Exs. F-N.
17 Defendants now assert that VVFC is in violation of the Group Home Ordinance’s
18 conditional use permit requirement, and claim that VVFC is operating a business
19 in the City without a business license. *Id.* As Defendants know, VVFC already has
20 a business license to operate in the City, *id.*, Ex. A, and VVFC and its landlords
21 are precluded from obtaining a conditional use permit for the transitional housing
22 currently available in the three houses, because the Group Home Ordinance
23 specifically prohibits residences housing more than one person on probation. Section
24 16.16.072(C)(2); *see also* Green Decl., Exs. C-D (indicating that only group homes
25 “not prohibited” by § 16.16.072(C)(2) “may apply for a Conditional Use Permit”)

26
27
28 ² Thereafter, the La Crescenta House landlord dismissed the eviction proceedings.

1 (emphasis original). Defendants have dismissed VVFC's repeated attempts to
2 clarify the basis of its enforcement actions. Green Decl., ¶¶ 19-21.

3 Defendants have continued to escalate their enforcement of the Group Home
4 Ordinance against VVFC. Since March 2016, Defendants have issued near-daily
5 fines for asserted violations of the Group Home Ordinance at VVFC's transitional
6 homes. *Id.*, ¶ 21. Defendant Ernesto Montes, a code enforcement officer, stated that
7 he will continue to issue fines in the amount of \$1,000 per day for each house until
8 the homes are in compliance. To date, Defendants have issued citations demanding
9 fines totaling approximately \$15,000 on each of VVFC's three houses. *Id.*, ¶ 18.

10 On April 6, 2016, Plaintiff Green, by and through her legal representative,
11 sent Defendants a Notice of Violation of Constitutional Rights pursuant to Section
12 5 of the Group Home Ordinance. Green Decl., Ex. O. Section 5 states that any
13 person can give "notice to the City Manager that the provisions of this Ordinance,
14 on its face or as applied to that person, violates his or her Constitutional rights."
15 Wong Decl., Ex. A, at p.14. Upon such notice, any enforcement action must be
16 stayed until an administrative hearing is completed. *Id.* To date, Defendants have not
17 responded to Green's notice, scheduled an administrative hearing, or ceased
18 enforcement actions under the Group Home Ordinance. Green Decl., ¶ 21.
19 Defendants continue to issue citations and fines under the ordinance. *Id.*

20 **D. Enforcement of the Rental Housing Ordinance**

21 In addition to enforcing the Group Home Ordinance, Defendants are also
22 enforcing or threatening to enforce the Rental Housing Ordinance against VVFC,
23 its landlords, and its clients. In early 2016, Defendants began sending letters and
24 placing phone calls to the landlords of the houses where VVFC provides
25 transitional housing, making vague allegations of "criminal activity" taking place at
26 those residences in violation of the Rental Housing Ordinance. *See* HESPERIA, CAL.,
27 CODE § 8.20.050(C)(1); Green Decl., ¶¶ 22; *id.*, Ex. Q. By notifying the landlords of
28 unspecified and unsubstantiated "criminal activity," and by specifically invoking the

1 Rental Housing Ordinance, Defendants’ intent is to incite VVFC’s landlords to
2 evict VVFC and its clients under the ordinance.

3 Indeed, the landlord of the La Crescenta House, by and through his legal
4 representative, recently served VVFC with a notice to quit. Green Decl., ¶ 26. The
5 notice to quit asserted that VVFC was in breach of a term of its lease that required
6 it to comply with the law; the notice attached a copy of a letter that the “Hesperia
7 Sheriff’s Station” sent to the homeowner, which asserted that there was “ongoing
8 criminal activity” at the house. *Id.*, Ex. R. The letter provided no detail about any
9 alleged crime, but stated that the Rental Housing Ordinance prohibited such activity.

10 Defendants are also demanding that VVFC turn over its client roster and its
11 clients’ personal identifying information to comply with the Rental Housing
12 Ordinance’s tenant registration requirements. *Id.*, ¶ 25. Defendants have also
13 directed VVFC’s landlords to provide the Hesperia Police Department with “tenant
14 screening information” to comply with the Rental Housing Ordinance. *Id.*, ¶ 23; *id.*,
15 Ex. P.

16 The Rental Housing Ordinance went into effect on January 1, 2016. The
17 Hesperia Police announced that property managers, owners, and landlords would
18 have until March 31, 2016 to achieve compliance with the ordinance. Wong Decl.,
19 Ex. G. As that implementation date has passed, the threat that the City will take
20 further action to enforce the ordinance against Plaintiffs is presently very real.

21 **E. The Irreparable Harm Plaintiffs Face**

22 The City’s escalating enforcement of the Group Home Ordinance and the
23 Rental Housing Ordinance is causing and will cause irreparable harm to Plaintiffs.
24 The City’s enforcement actions have placed the organization at serious risk of losing
25 the transitional home sites where it provides housing and services to individuals in
26 reentry like Mr. Avila, Mr. Batts, Mr. Deen, Mr. Dowdy, Ms. Gullett, and Mr. Holt-
27 Francis. On April 20, 2016, the attorney for the landlord of the La Crescenta House
28 sent VVFC a notice to quit, asserting that VVFC’s right to possession of the

1 premises will be terminated. Green Decl., Ex. R. He attached to the notices copies
2 of (1) the City's January 13, 2016 letter regarding the Rental Housing Ordinance and
3 unspecified "criminal activity" at the La Crescenta House, and (2) a notice of public
4 nuisance the City posted at that house, alleging violations of the Group Home
5 Ordinance. *Id.* The notice threatens legal proceedings "to declare a forfeiture of the
6 rental/lease agreement" and "to recover possession of the premises." *Id.*

7 VVFCRC has so far managed to appease its other landlords and prevent the
8 eviction of the organization and its clients by voluntarily paying the fines that Code
9 Enforcement has imposed under the Group Home Ordinance. Green Decl., ¶ 14. As
10 a small nonprofit organization, however, VVFCRC cannot afford to pay the rapidly
11 mounting amount of fines the City now demands. *Id.*, ¶¶ 28-29. It does not have the
12 resources to continue operating while paying the thousands of dollars in fines that
13 Code Enforcement has threatened to impose on a daily basis. *Id.* Nor are its landlords
14 willing or able to pay those fines. *Id.*, ¶ 24. The landlords of VVFCRC's homes have
15 all stated that Ms. Green must do something to immediately address the City's
16 citations for violation of the Group Home Ordinance and notifications of criminal
17 activity pursuant to the Rental Housing Ordinance, or they will be forced to take
18 legal action. *Id.*, ¶ 27; *see also id.*, Ex. P.

19 VVFCRC's clients are individuals who would be homeless if not for the
20 housing provided by the organization. The City's enforcement actions place the
21 organization's clients, including Mr. Avila, Mr. Batts, Mr. Deen, Mr. Dowdy, Ms.
22 Gullett, and Mr. Holt-Francis in peril of homelessness. Decl. of Daniel Avila ("Avila
23 Decl.") ¶¶ 2, 4; Decl. of Harold Batts ("Batts Decl.") ¶¶ 3, 4, 6; Decl. of David Deen
24 ("Deen Decl.") ¶¶ 2-3, 6; Decl. of Chris Dowdy ("Dowdy Decl.") ¶¶ 2, 6; Decl. of
25 Renee Gullett ("Gullett Decl.") ¶¶ 2, 4; Decl. of Nicholas Holt-Francis ("Holt-
26 Francis Decl.") ¶ 2. VVFCRC's clients also face interruption of crucial time-sensitive
27 services, and the accompanying loss of job, rehabilitative, and educational
28 opportunities. Green Decl., ¶¶ 3, 28. Mr. Avila and the other Plaintiff residents are

1 also at risk of losing opportunities to associate with one another in the intimate,
 2 mutually supportive re-entry environment of their current homes. Avila Decl., ¶¶ 12-
 3 13; Batts Decl., ¶ 6; Dowdy Decl, ¶¶ 4-5; Gullet Decl., ¶6; Holt-Francis Decl., ¶ 3.

4 **III. ARGUMENT**

5 Plaintiffs are entitled to immediate interim relief. Under Federal Rule of Civil
 6 Procedure 65, the Court may grant a temporary restraining order in order to prevent
 7 “immediate and irreparable injury.” FED. R. CIV. P. 65(b). A plaintiff seeking such
 8 interim relief “must establish that he is likely to succeed on the merits, that he is
 9 likely to suffer irreparable harm in the absence of preliminary relief, that the balance
 10 of equities tips in his favor, and that an injunction is in the public interest.” *Winter*
 11 *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Moreover, the purpose of a
 12 temporary restraining order is to preserve the status quo and prevent irreparable harm
 13 before a preliminary injunction hearing may be held. *Granny Goose Foods, Inc. v.*
 14 *Bhd. of Teamsters & Auto Truck Drivers Local 70*, 415 U.S. 423, 438–39 (1974)
 15 (“Ex parte temporary restraining orders are no doubt necessary in certain
 16 circumstances”). Here, Plaintiffs can demonstrate each of these elements.³

17 **A. Plaintiffs Are Likely To Succeed on Their Equal Protection**

18 **Claims.**

19 Plaintiffs are likely to succeed on the merits of their claims that the ordinances
 20 at issue violate their rights to equal protection under article I, section 7 of the
 21

22 ³ This Court has the authority to issue the requested interim relief without requiring
 23 Plaintiffs to post a security. *See See, e.g., People ex rel. Van De Kamp v. Tahoe*
 24 *Reg'l Planning Agency*, 766 F.2d 1319, 1325-26 (9th Cir. 1985), *modified*, 775 F.2d
 25 998 (9th Cir. 1985). Among the factors supporting waiving the security requirement
 26 are a strong likelihood of success on the merits; a plaintiff’s limited financial
 27 resources; a finding that the security requirement would hamper plaintiff’s ability to
 28 enforce a federal right in court; and a speculative fiscal impact of an injunction on a
 defendant. *See id.*; *see also Smith v. Bd. of Election Comm’rs for Chicago*, 591 F.
 Supp. 70, 71-72 (N.D. Ill. 1984); *Orantes-Hernandez v. Smith*, 541 F. Supp. 351,
 385-86 n.42 (C.D. Cal. 1982). These reasons support waiving any security in this
 case. Green Decl., ¶ 29.

1 California Constitution and the Fourteenth Amendment.⁴ These equal protection
2 provisions enforce the principle that the law “neither knows nor tolerates classes
3 among citizens.” *Romer v. Evans*, 517 U.S. 620, 623 (1996) (quoting *Plessy v.*
4 *Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting)). The Ordinances violate
5 the core principle of equal protection by creating disfavored subclasses among the
6 Hesperia residents. They create such class distinctions by imposing unique restraints
7 and obligations on particular groups with respect to their housing in the city and by
8 using municipal law to stigmatize members of those groups. *See Parr v. Mun. Ct.*, 3
9 Cal. 3d 861, 864-65, 868 (1971).

10 The Supreme Court has held that equal protection prohibits such
11 discriminatory laws, which constitute “expressions of hostility or antagonism to
12 certain groups of people.” *Id.* at 864. Although equal protection analysis commonly
13 focuses on the relationship between the classifications drawn by a statute and the
14 purpose of the statute, “there is an additional dimension to equal protection which
15 requires that statutory classifications be related to permissible purposes.” *Id.* Long
16 standing equal protection jurisprudence holds that the bare desire to harm,
17 marginalize, or drive out a politically unpopular group is not a legitimate
18 government interest. *Lawrence v. Texas*, 539 U.S. 558, 580 (2003) (O’Connor, J.,
19 concurring) (citing *Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446–47 (1985);
20 *Romer*, 517 U.S. at 632). When laws exhibit such desires, courts will strike them
21 down under the Equal Protection Clause – even when the singled-out group is not a
22 “suspect class.” *Id.*; *see also Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973).

23 The illegitimate discriminatory purpose of a law may reveal itself in the plain
24 language of a statute, *Parr*, 3 Cal. 3d at 864-65, or in the legislative record. *Moreno*,

25 ⁴Plaintiffs are likely to succeed on the merits of each claim asserted in the Complaint,
26 including their claims that state law preempts the challenged ordinances, and that
27 the ordinances violate the Constitutionally-protected rights to travel and to be free
28 from unreasonable search and seizure. In the interest of judicial economy, however,
Plaintiffs do not discuss those claims herein.

1 413 U.S. at 534; *see also Cleburne*, 473 U.S. at 448. The plain language of both the
2 Group Home Ordinance and the Rental Housing Ordinance, as well as their
3 legislative histories, demonstrate that the City enacted the ordinances for the express
4 purpose of marginalizing and driving out specifically-named and politically-
5 stigmatized groups of people: people who live in rental housing in Hesperia (who
6 City officials perceive to be of a lower socio-economic status), people with past
7 criminal records, and people on probation. This is not constitutionally permissible.
8 Because the ordinances are motivated by an illegitimate discriminatory purpose,
9 they violate equal protection and are legally invalid.⁵

10 **1. The Rental Housing Ordinance violates Equal Protection.**

11 The Rental Housing Ordinance discriminates against residential tenants and
12 their families. The law requires tenants to: (a) undergo a criminal background check
13 in order to secure housing; (b) register in the Hesperia Police Department’s “Crime
14 Free” database, which maintains files associating tenants’ personal information and
15 present and past home addresses with information culled from police call logs; and
16 (c) leave their homes if the Police Chief provides a notice of criminal activity to their
17 landlords, regardless of whether they have been convicted, charged, or even arrested
18 of any crime. The ordinance does not impose such burdens on individuals who own
19 their homes or on commercial renters.

20 The plain terms of the Rental Housing Ordinance reflect the prejudicial
21 assumption that people whose financial situations require them to live in rental

22 ⁵ The legislative language and history discussed herein establish that the true purpose
23 of both ordinances is the City’s desire to exclude stigmatized groups from residential
24 neighborhoods and the city at large. Accordingly, the Court may find that the
25 ordinances violate equal protection without considering their connection to any
26 legitimate municipal purposes the City may pretextually claim. The ordinances are
27 also invalid because they impinge fundamental rights and are not narrowly tailored
28 to serve a compelling government interest, and because they bear no rational
relationship to any purported municipal interest. In the interest of judicial economy,
however, Plaintiffs do not elaborate on those arguments here.

1 housing are particularly inclined to engage in criminal behavior. The legislative
2 history reveals that the City Council acted on such prejudices in adopting the
3 ordinance.⁶ This alone makes the ordinance constitutionally invalid: “Legislation
4 predicated on such prejudice is . . . incompatible with the constitutional
5 understanding that each person is to be judged individually and is entitled to equal
6 justice under the law.” *Plyler v. Doe*, 457 U.S. 202, 218 n. 14 (1982); *see also*
7 *Cleburne*, 473 U.S. at 435 (zoning ordinance based on prejudice and negative
8 stereotypes about individuals with mental disabilities violated the Equal Protection
9 Clause).

10 But the Rental Housing Ordinance does more than impose requirements
11 premised on the stereotype that residential renters are likely criminals. The ordinance
12 also uses the language of municipal law to explicitly single out residential renters
13 for stigma and marginalization. The ordinance’s declaration of purpose identifies
14 occupants of residential rental properties as the cause of illegal activity, public
15 nuisances, decline in property values, and “a disproportionate share of code
16 enforcement and law enforcement calls for service.”⁷ Wong Decl., Ex. F, at p. 1.

17
18 ⁶ At a City Council meeting, the Mayor Pro Tem stated, in support of the ordinance:
19 “it seems to be . . . that homeowners are victimized by those who rent.” Eichenblatt
20 Decl., Ex. B, at 45:34. Later, he elaborated on a profile of the residential tenants he
21 intended the Rental Housing Ordinance to target: “The people who aggravate us . . .
22 come here for affordable housing because the state forces us to give them affordable
23 housing. They come here for a lot of reasons. But we all know there’s a significant
24 number of them that come from somewhere else with their tainted history.” *Id.* at
25 58:35. Council member Leonard stated: “[W]e have a lot of issues with the Section
26 8 housing I think this [ordinance] will help our Sheriff’s office straighten things
27 out.” *Id.* at 53:32.

28 ⁷ This assertion is inaccurate, according to evidence received by the City Council
during consideration of the Rental Housing Ordinance. The staff report and the
report of then-Captain of the Hesperia Police Department Nils Bentsen indicated that
roughly one third of law enforcement calls for service came from rental properties.
According to data collected by the U.S. Census Bureau, roughly one third of
Hesperia residents live in rental properties. Wong Decl., Ex. H, at p.2. The City

1 In *Parr*, the California Supreme Court held that a municipal ordinance that
2 prohibited sitting on monuments, sidewalks, steps, or lawns violated the Equal
3 Protection Clause, where the “Declaration of Urgency” accompanying the ordinance
4 stated that its purpose was to respond to an “extraordinary influx of undesirable and
5 unsanitary visitors to the City, sometimes known as ‘hippies.’” 3 Cal. 3d at 862. The
6 court held: “By using official Municipal code language to single out a social group
7 and stigmatize its members . . . the city council violated the constitutional guaranty
8 of the equal protection of the laws.” *Id.* at 868. Like the ordinance in *Parr*, the Rental
9 Housing Ordinance expressly identifies a specific group of people – residential
10 renters – as the cause of a decline in public safety and property values in the city.
11 Thus, it reveals itself as “unconstitutional class legislation.” *Id.* at 863. The Rental
12 Housing Ordinance’s declaration of purpose, like the “declaration of urgency” in
13 *Parr*, “indelibly express[s]” its discriminatory basis. *Id.* at 865.

14 The legislative history of the Rental Housing Ordinance also establishes that
15 the law is based on discriminatory animus. As Council member Blewett openly
16 stated at a City Council meeting, the purpose of the ordinance is “to correct a
17 demographical problem” in Hesperia – by uprooting groups deemed undesirable by
18 the City Council from the community. Eichenblatt Decl., Ex. C, at 42:18; *see also*
19 *id.* (“What kind of community do you want, a community that’s loaded with law
20 violators? . . . Baloney. That’s not my attitude.”); *id.* at 43:23 (“We better improve
21 our demographic”). Specifically, the legislative record shows that City officials
22 adopted the ordinance for the purpose of forcing out a perceived excess of renters
23
24
25
26

27 Council was made aware of these facts prior to adopting the Rental Housing
28 Ordinance. Eichenblatt Decl., Ex. C, at 1:07:52.

1 who (a) live in low-income or affordable housing,⁸ or (b) have criminal records.⁹
2 *See, e.g., id.* at 2:04:50 (Leonard: “[O]ur rental housing, and our section 8 housing
3 . . . is just crazy high. And you know we’ve had a lot of people from over the hill
4 move up here who are not very friendly people. We need to work on getting them
5 out of here. . . . [T]hese people who are sucking up section 8 housing, we need to get
6 ‘em out.”); *id.* at 57:55 (Blewett: “People who commit criminal acts . . . frankly I
7 want them the hell out of my town, and I don’t care where they go. Because those
8 kinds of people, I don’t care what fair housing says about them, but those people are
9 of no addition and no value to the community.”).

10 In *Dep’t of Agric. v. Moreno*, 413 U.S. 528 (1973), the Supreme Court
11 invalidated a federal statute that excluded individuals living with unrelated persons
12 from receiving food stamps, where the legislative record revealed legislators’ intent
13 to prevent “hippies” and “hippie communes” from participating in the federal food
14 stamp program. *Id.* at 534. The Court held that the statute violated equal protection
15 because it had an illegitimate purpose: to “discriminate against hippies.” *Id.* Here,
16 similarly, the legislative record reveals that the intent of the City Council in adopting

17

18 ⁸The Rental Housing Ordinance operates – and is intended to operate – as economic
19 discrimination. The law does not surveil, punish, and drive out those persons most
20 likely to commit crimes or create nuisances, but only those persons who are not
21 financially able to purchase their own residences. *See Moreno*, 413 U.S. at 541
22 (striking challenged regulation that “in practical operation” affected not those
23 persons most likely to commit fraud, but “only those persons . . . so desperately in
24 need of aid that they cannot even afford to alter their living arrangements[.]”).

25 ⁹The perspective of the City Council conflates the two groups (low-income renters
26 and people with criminal records). *See supra*, n.3; *see also* Eichenblatt Decl., Ex. D
27 at 1:31:31 (suggesting that someone with a low credit score probably has a criminal
28 record). The City Council’s discussions illustrate that the Rental Housing Ordinance
was primarily motivated by opinions about the changing character of “the
community,” rather than any legitimate interest in public safety. Indeed, testimony
presented to the City Council during their consideration of the ordinance indicated
that criminal background checks are not an effective way to determine who will be
a good, law-abiding tenant. *Id.* at 1:26:30.

1 the Rental Housing Ordinance was to exclude certain groups from housing in
2 Hesperia. Because the Rental Housing Ordinance is based on this illegitimate
3 discriminatory purpose, it is invalid under the Equal Protection Clause. *Id.*; *see also*
4 *People v. Blakeman*, 170 Cal. App. 2d 596, 597 (1959) (“banishment is proscribed
5 by the fundamental policy of not permitting one political division to dump
6 undesirable persons upon another”).

7 **2. The Group Home Ordinance violates Equal Protection.**

8 The Group Home Ordinance plainly discriminates against persons on
9 probation. It allows individuals not related by blood or marriage to share a residence
10 – unless they are on probation. The City adopted and has enforced the Group Home
11 Ordinance for the purpose of excluding persons on probation – particularly those in
12 need of housing assistance – from residential neighborhoods. This illegitimate
13 purpose is evident on the face of the ordinance and in the legislative record.

14 The ordinance does not merely enact a rule of general applicability that
15 disadvantages individuals on probation; it explicitly names them to impose special
16 restrictions on their housing. *See* HESPERIA, CAL., CODE § 16.16.072(C)(2). In
17 *Romer*, the Supreme Court held that laws “singling out a certain class of citizens”
18 for disfavored status or hardship are constitutionally suspect, because they “raise the
19 inevitable inference that the disadvantage imposed is born of animosity towards the
20 class of persons affected.” *Romer*, 517 U.S. at 634-35. Like the law struck down in
21 *Romer*, the Group Home Ordinance “has the peculiar property” of imposing a
22 blanket, “undifferentiated disability” on a specific named group.¹⁰ *Id.* at 632. It
23 “identifies persons by a single trait,” *id.* at 633, then limits their ability to secure an
24 essential need (adequate and affordable housing), while denying them an important

25
26 ¹⁰ By imposing a blanket residency restriction on all probationers, the Group Home
27 Ordinance differs from and conflicts with state law, which requires an individualized
28 determination of what residency restrictions, if any, are appropriately placed on an
individual as a term of probation. Cal. Penal Code § 1203.1(j).

1 liberty (the freedom to choose one’s household companions). *See Moore v. E.*
2 *Cleveland*, 431 U.S. 494, 505 (1977) (constitutional rights to privacy and intimate
3 association protect the ability of individuals “in times of adversity, such as economic
4 need . . . to come together for mutual sustenance and to maintain or rebuild a secure
5 home life”). Thus, the plain language of the Group Home Ordinance indicates that
6 the City adopted the “probationer home” prohibition in service of a “bare desire” to
7 marginalize and harm this politically unpopular group.

8 The legislative history of the Group Home Ordinance also shows that the
9 targeted prohibition set forth in section 16.16.072(C)(2) is based on discriminatory
10 animus against persons on probation, and by association, organizations like VVFCRC
11 that provide services to them. The staff report on the ordinance opined that the
12 prohibition against parolee and probationer group homes was preferable to a
13 prohibition against all new group homes, because the latter would “prohibit types of
14 group homes providing legitimate services.” Wong Decl., Ex. A. Thus, the ordinance
15 is based on the assumption that homes and services for probationers are inherently
16 “illegitimate”;¹¹ its purpose is to exclude persons on probation who would live in
17 such homes and benefit from such services from residential neighborhoods.

18 For the reasons set forth, it is evident the City enacted both the Group Home
19 Ordinance and the Rental Housing Ordinance to carry out illegitimate discriminatory
20 objectives, not legitimate municipal purposes.¹² The ordinances thus violate equal

21 _____
22 ¹¹The legislative record does not contain evidence supporting such an assumption.
23 Nor does the record support any connection between the ordinance and legitimate
24 public safety interests. Rather, the ordinance appears to be based on sweeping and
25 amorphous anxiety relating to the presence of parolees and sex offenders in
26 residential neighborhoods, which the ordinance extended to persons on probation.
27 *See Wong Decl., Exs. D-E.* Such undifferentiated fear of various groups of
28 “undesirables” is not a constitutionally permissible basis for treating the homes of
persons on probation differently than other homes. *Cleburne*, 473 U.S. at 448-49.

¹² There is no rational connection between enhancing public safety and excluding
people from housing. *Cf. In re Taylor*, 60 Cal. 4th 1019, 1038 (2015) (blanket

1 protection and are invalid. *Diaz v. Brewer*, 656 F.3d 1008 (9th Cir. 2011); *Parr*, 3
2 Cal. 3d at 870 (striking ordinance whose “transparent, indeed . . . avowed purpose”
3 was “to discriminate against an ill-defined social caste whose members [we]re
4 deemed pariahs by the city fathers”).

5 **B. Plaintiffs Are Likely to Succeed On Their Right to Privacy and**
6 **Association Claims.**

7 Plaintiffs are likely to succeed on the merits of their claim that the Group
8 Home Ordinance violates article I, section 1 of the California Constitution. Article
9 I, section 1 protects several interrelated privacy rights, including the right to privacy
10 in one’s home, and the rights to free communion and association. *See White v. Davis*,
11 13 Cal. 3d 757, 774 (1975) (Article I, section 1 “protects our homes, our families,
12 our thoughts, our emotions, our expressions, our personalities, our freedom of
13 communion and our freedom of association with the people we choose”); *see also*
14 *Santa Barbara v. Adamson*, 27 Cal. 3d 123, 130 (1980) (Article I, section 1
15 “ensure[s] a right of privacy not only in one’s family but also in one’s home”).

16 Specifically, Article I, section 1 protects the “right to live with whomever one
17 wishes” which includes “persons not related by blood, marriage, or adoption.”
18 *Adamson*, 27 Cal.3d at 130. Accordingly, courts have held, on several occasions,
19 that zoning ordinances violate the California Constitution when they restrict the
20 residents of dwellings to families, limit occupancy based on whether residents are
21 related by blood or marriage, or otherwise regulate the types of social units that can
22 inhabit residences. *See, e.g., id.* (ordinance was unconstitutional because it limited
23 occupancy of homes to persons related by blood, marriage or adoption, or no more
24 than five persons); *Chula Vista v. Pagard*, 115 Cal. App. 3d 785 (1981) (city’s
25 _____
26 enforcement of the mandatory residency restrictions could not survive even the more
27 deferential rational basis standard review, because it “imposed harsh and severe
28 restrictions and disabilities on the affected parolees’ liberty and privacy rights . . .
while producing conditions that hamper, rather than foster, efforts to monitor,
supervise, and rehabilitate these persons”).

1 enforcement against religious commune of ordinance limiting occupants of houses
2 to members of a family, or no more than three persons violated Article 1, section 1);
3 *Elysium Inst. v. County of Los Angeles*, 232 Cal. App. 3d 408, 425-26 (1991)
4 (striking ordinance’s prohibition against nudist camps, to the extent it covered
5 private residences).

6 The Group Home Ordinance violates article I, section 1 in several ways. First,
7 it imposes a conditional use permit requirement on residences housing individuals
8 who are not related by blood or marriage, while imposing no such requirement on
9 residences housing multiple individuals who are. HESPERIA, CAL., CODE §
10 16.16.072(D) (requiring conditional use permits for “group homes”); *id.* §
11 16.16.072(B) (defining “group home” as a residence for two or more persons not
12 related by blood or marriage). It is well-established that this type of regulation, which
13 irrationally privileges the biological family, is not permitted under the California
14 Constitution. *Adamson*, 27 Cal. 3d at 132 (finding rule privileging family relations
15 not rationally tied to restricting noise, traffic, parking congestion, or other
16 neighborhood conditions); *id.* at 133 (“the assumption . . . that groups of unrelated
17 persons hazard an immoral environment for families with children” is not a
18 legitimate basis for a zoning regulation); *Pagard*, 115 Cal. App. 3d at 795.

19 Second, the Group Home Ordinance prohibits residences that house multiple
20 persons on probation not related by blood or marriage. HESPERIA, CAL., CODE §
21 16.16.072(C)(2). Like the conditional use permit requirement, this prohibition
22 violates article I, section 1 because it irrationally privileges blood and marital
23 relations above other legitimate, constitutionally-protected forms of association.
24 *Adamson*, 27 Cal. 3d at 132-33 (citing *Atkisson v. Kern Cty. Housing Auth.*, 59
25 Cal.App.3d 89, 97 (1976); *Moreno*, 413 U.S. at 534-535, n. 7); *Pagard*, 115 Cal.
26 App. 3d at 795. The Constitution recognizes the value in alternative forms of
27 association, such as those described in the declarations attached hereto, and protects
28 them accordingly. *Id.*; see *Avila Decl.*, ¶¶ 12-13; *Batts Decl.*, ¶ 6; *Dowdy Decl.*, ¶¶

1 4-5; Gullet Decl., ¶ 6; Holt-Francis Decl., ¶ 3.

2 The prohibition is also unconstitutional because it impermissibly seeks to
3 regulate homes based on the *identity* of the residents. *See Adamson*, 27 Cal. 3d at
4 133-34 (“In general, zoning ordinances are much less suspect when they focus on
5 the use than when they command inquiry into who are the users.”); *Pagard*, 115 Cal.
6 App. 3d at 795 (ordinance failed the constitutional standards set forth in *Adamson*
7 because it “focus[ed] upon who are the users”). The Group Home Ordinance does
8 not prohibit all residential uses of homes like Plaintiffs’, or even all shared
9 residential uses. It does not prohibit using a private residence to gather individuals
10 with shared experiences to support one another through challenging times, nor does
11 it prohibit connecting people to social services within homes. The Ordinance
12 prohibits Plaintiffs’ homes because of *who Plaintiffs are*.

13 In short, the Group Home Ordinance is invalid because it violates the privacy
14 and association rights of persons on probation – by prohibiting their co-habitation
15 unless they are related by blood or marriage, and by denying them the ability to live
16 in the type of close and mutually supportive reentry environment VVFC facilitates
17 within its transitional homes.

18 **C. Plaintiffs Are Likely To Succeed On Their Due Process Claim.**

19 Plaintiffs are likely to succeed on their claim that the Rental Housing
20 Ordinance violates the procedural due process protections guaranteed by the
21 Fourteenth Amendment and article 1, section 7 of the California Constitution.
22 *Mathews v. Eldridge*, 424 U.S. 319 (1976); *People v. Ramirez*, 25 Cal. 3d 260, 263
23 (1979). The ordinance threatens to deprive current and prospective tenants like
24 VVFC, Ms. Green, Ms. Gullett, and others of their constitutionally protected
25 interests in their leaseholds, without due process.

26 The Rental Housing Ordinance is procedurally deficient on its face because it
27 requires landlords to initiate eviction proceedings against tenants, interfering with
28 the property rights of both, without sufficient notice of the allegations against the

1 tenant, or a pre-deprivation opportunity for the landlord or tenant to dispute those
2 allegations. The ordinance requires landlords to initiate eviction proceedings: (a)
3 prior to any hearing on the cause for eviction; (b) upon receipt of a general “notice”
4 of criminal activity from the Chief of Police, (c) containing limited information
5 about the alleged criminal activity; (d) within 10 days – too short an interval of time
6 for the landlord to conduct a full investigation into the allegations of the police.
7 Courts have held that nearly identical notice and eviction procedures are
8 constitutionally invalid. *Cook v. Buena Park*, 126 Cal. App. 4th 1, 6 (2005); *see also*
9 *Garrett v. Escondido*, 465 F. Supp. 2d 1043, 1058-59 (S.D. Cal. 2006); Wong Decl.,
10 Ex. I, at p.18.

11 In *Cook*, the court of appeals considered an ordinance that required landlords
12 to initiate eviction proceedings against a tenant within 10 days if the chief of police
13 sent written notice to the landlord stating that the tenant had engaged in criminal
14 activity on or near the rental property. The court held that the ordinance “violate[d]
15 procedural due process, creating an unreasonably high risk of erroneous deprivation
16 of . . . property interests.” 126 Cal. App. 4th at 6. The court stated that a notice from
17 the chief of police did not provide reasonable assurance that the tenant had actually
18 engaged in criminal activity that would be grounds for eviction. *Id.* The court also
19 held that the ordinance violated due process by forcibly exposing the parties to the
20 litigation costs of a potentially unwarranted eviction proceeding. *Id.*

21 In *Garrett*, the court granted a temporary restraining order against a municipal
22 ordinance that required landlords to terminate their leases with a tenant upon
23 receiving notice from the city that the tenant was an “illegal alien.” 465 F. Supp. 2d
24 at 1058. The court held that the ordinance raised “serious concerns . . . under the
25 Due Process clause,” observing that the ordinance did not give tenants notice or an
26 opportunity to be heard before the city issued the notice that triggered the landlords’
27 obligation to terminate the lease. *Id.* at 1059.

28 The due process infirmities of the Rental Housing Ordinance are apparent in

1 the City's enforcement actions against Plaintiffs. The City sent a letter to the landlord
2 of a transitional home housing clients of VVFC, notifying him of "ongoing
3 criminal activity" at the property. Green Decl., Ex. Q. The letter claimed to have
4 "documentation of the activity" but did not otherwise provide details about any
5 alleged crime. The letter did, however, assert that the Rental Housing Ordinance
6 prohibited such criminal activity in rental properties. The City never provided
7 VVFC or any of the home's residents notice or an opportunity to be heard before
8 it proceeded to send the notification of "criminal activity" to the landlord. And the
9 notification letter fails to give adequate notice of the nature of the alleged criminal
10 activity to the landlord or to any tenant or resident of the home.

11 The Hesperia Police Department's public statements also indicate that its
12 future enforcement of the Rental Housing Ordinance will create an "unreasonably
13 high risk of erroneous deprivation." In City Council meetings and in public trainings
14 on the ordinance, officers have emphasized that they will issue notices of "criminal
15 activity" to landlords, requiring the initiation of eviction proceedings within 10 days,
16 even if the tenant was never convicted, charged, or even arrested for any crime.
17 Wong Decl., ¶ 14; Eichenblatt Decl., Ex. C, at 1:04:22. For all of these reasons, the
18 Rental Housing Ordinance violates procedural due process, such that the City should
19 be enjoined from enforcing it against Plaintiffs.

20 **D. Plaintiffs Face Immediate Irreparable Harm In the Absence of a**
21 **Temporary Restraining Order.**

22 A temporary restraining order is necessary to preserve the status quo and
23 prevent irreparable harm to Plaintiffs. It is well-established that the loss of an interest
24 in real property, such as the loss of an interest in a leasehold, constitutes an
25 irreparable injury. *Park Village Apartment Tenants Ass'n v. Mortimer Howard*
26 *Trust*, 636 F.3d 1150, 1159 (9th Cir. 2011); *see also Johnson v. Macy*, ___
27 F.Supp.3d___, 2015 WL 7351538, *8 (C.D. Cal. Nov. 16, 2014) ("A wrongful
28 eviction may give rise to irreparable injury."). And a landlord's expression of intent

1 to initiate eviction proceedings is sufficient proof of the immediate, irreparable harm
2 necessary to justify the issuance of a temporary restraining order. *Johnson*, 2015 WL
3 7351538 at *8; *cf. Garrett*, 465 F. Supp. 2d at 1052 (threat of litigation related to
4 wrongful eviction sufficient to establish imminent irreparable harm).

5 VVFC and Ms. Green are at risk of losing their interests in their leaseholds
6 in the transitional homes. The landlord of the La Crescenta house has already sent
7 VVFC notices to vacate, and the landlords of the other transitional homes have
8 indicated that they will take similar action to evict the organization if the City's
9 present enforcement actions continue. Thus, Ms. Green and her organization are at
10 risk of suffering immediate irreparable harm unless the court grants their application
11 for a temporary restraining order.

12 VVFC's clients, including Plaintiffs Avila, Batts, Deen, Dowdy, Gullett, and
13 Holt-Francis face homelessness and the interruption of important reentry services if
14 they are forced to leave their current homes. *Id.* They are thus at risk of real and
15 immediate irreparable harm. *See Garrett*, 465 F. Supp.2d at 1052 (finding
16 irreparable harm due to threat of eviction resulting from enactment of Ordinance,
17 where Plaintiffs would have a difficult time finding alternative housing); *Sinisgallo*
18 *v. Islip Hous. Auth.*, 865 F. Supp. 2d 307, 328 (E.D.N.Y. 2012) ("courts have held
19 that the threat of eviction and the realistic prospect of homelessness constitute a
20 threat of irreparable harm and satisfy the first prong of the test for preliminary
21 injunctive relief"). Moreover, they will lose the social supports and opportunities to
22 associate with other residents currently available to them. None of these injuries can
23 be addressed, after the fact, by remedies available at law. *See Johnson*, 2015 WL
24 7351538 at *8 (where plaintiff's eviction from her home "would be disruptive to
25 [her] life" and social connections, no remedy at law could repair the injury).

26 Finally, the potential invasion of constitutional rights alone is sufficient to
27 establish irreparable harm. *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th
28 Cir. 2013); *see also Assoc. Gen. Contractors of Cal., Inc. v. San Francisco*, 748 F.

1 Supp. 1443, 1447 (N.D. Cal. 1990), *aff'd*, 950 F.2d 1401 (9th Cir. 1991)
2 (“Constitutional rights are so basic to our society that their deprivation must be
3 redressable by equitable remedies. Injury from their deprivation is almost by
4 definition irreparable.”). The City’s present enforcement of the Group Home
5 Ordinance violates Plaintiffs’ rights to privacy, association, and equal protection
6 under the law. The City’s current and threatened enforcement of the Rental Housing
7 Ordinance violates Plaintiffs’ rights to procedural due process and equal protection.
8 The invasion of these rights constitutes irreparable harm.

9 **E. The Balance of Equities Favors A Restraining Order.**

10 The balance of equities weighs heavily in Plaintiffs’ favor. The City’s
11 aggressive enforcement of the Group Home Ordinance and the Rental Housing
12 Ordinance will cause serious and irreparable harms to Plaintiffs. These harms
13 outweigh any limited hardship to Defendants that might result from the narrowly
14 tailored restraining order Plaintiffs seek.

15 If the Court grants Plaintiffs’ application, Defendants would merely be
16 required to stop enforcing the Group Home Ordinance and the Rental Home
17 Ordinance against Plaintiffs and their homes until a hearing on a motion for a
18 preliminary injunction may be held. The City is “in no way harmed by the issuance
19 of an injunction that prevents [it] from enforcing unconstitutional restrictions.”
20 *Legend Night Club v. Miller*, 637 F.3d 291, 302-03 (4th Cir. 2011). Moreover, a
21 restraining order would not interfere with the City’s ability to ensure public safety
22 through existing, legally appropriate means – such as the enforcement of criminal
23 laws. *See Puente Ariz. v. Arpaio*, 76 F. Supp. 3d 833, 861 (D. Ariz. 2015); *Kincaid*
24 *v. Fresno*, No. 106CV-1445 OWW SMS, 2006 WL 3542632, at *40-41 (E.D. Cal.
25 Dec. 8, 2006) (“City [would] not suffer undue hardship in having to . . . afford due
26 process” to homeless persons, where it could pursue other law enforcement efforts).

27 Indeed, allowing Defendants to pursue their reckless mission of driving
28 vulnerable individuals out of safe, stable housing and into homelessness can only

1 lead to negative impacts on public health and safety in the City; at the very least, it
2 would make it more difficult for the Probation Department to find suitable housing
3 for individuals in reentry and to monitor their residences. *See* Holt-Francis Decl., ¶
4 5; *cf. In re Taylor*, 60 Cal. 4th at 1038.

5 In contrast, Plaintiffs face great hardships in the absence of preliminary relief.
6 The central hardship to Plaintiffs – imminent displacement and homelessness – “tips
7 the balance of equities in their favor[.]” *Jones*, 2013 WL 708540 at *16; *see also*
8 *Price v. Stockton*, 390 F.3d 1105, 1116-17 (9th Cir. 2004) (“Despite the hardships
9 the City may face in delaying some of its development plans . . . it is a far more
10 severe hardship for someone to be displaced from his or her home”); *Lancor v.*
11 *Lebanon Hous. Auth.*, 760 F.2d 361, 363-64 (1st Cir. 1985) (harm to tenant of
12 imminent eviction from home outweighed housing authority’s claimed loss of
13 control over housing project). The hardships to Plaintiffs also include the negative
14 impact that loss of housing will have on their ability to secure employment,
15 education, and permanent housing, as well as the violation of their constitutional
16 rights. *Thalheimer v. San Diego*, 645 F.3d 1109, 1129 (9th Cir. 2011) (public interest
17 in upholding association rights outweighed the interest in continued enforcement of
18 city law). Therefore, the balance of equities tips in favor of granting Plaintiffs’
19 requested preliminary injunctive relief.

20 **F. The Public Interest Favors A Restraining Order.**

21 As the Ninth Circuit has recognized, “Our society as a whole suffers when we
22 neglect the poor, the hungry, the disabled, or when we deprive them of their rights
23 or privileges.” *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983). Plaintiffs—
24 some of Hesperia’s most vulnerable residents—will face homelessness, threats to
25 their prospects for obtaining housing and employment, and interference with
26 important civil rights if the court does not grant this application. Allowing such harm
27 to occur during the pendency of this litigation would be against the public interest.
28 *Consol. Delta Smelt Cases*, 717 F. Supp. 2d 1021, 1069 (E.D. Cal. 2010) (noting a

1 public interest in reducing conditions that lead to homelessness).

2 Enjoining the enforcement of the challenged ordinances will serve, not harm,
3 the public interest. State and county agencies will be able to carry out their core
4 duties and the mandates of state laws like A.B. 109 in furtherance of public safety
5 without undue interference from Defendants. They and VVFC will be able to join
6 in nationwide efforts to enhance public safety by providing housing and supports to
7 people in reentry.¹³ Tenants in Hesperia will be able to report incidents of crime at
8 or near their properties without fear of eviction or other penalty. *Forro Precision,*
9 *Inc.*, 673 F.2d at 1060 (reporting to law enforcement is in the public interest because
10 “it would be difficult indeed for law enforcement authorities to discharge their duties
11 if citizens were in any way discouraged from providing information”).

12 In contrast, the public interest is not served by maintaining Defendants’
13 enforcement actions. Any purported injury to public health and safety resulting from
14 enjoining enforcement would be weak and unsubstantiated. And “it is clear that it
15 would not be equitable or in the public's interest to allow the state to violate the
16 requirements of federal law.” *Valle del Sol*, 732 F.3d at 1029. Therefore, the public
17 interest weighs in favor of granting Plaintiffs’ requested preliminary injunction.

18 **IV. CONCLUSION**

19 Plaintiffs respectfully request that the Court enjoin Defendants from enforcing
20 Hesperia Municipal Code § 16.16.072 or Hesperia Ordinance 2015-12 against
21 Plaintiffs or the properties where they reside or carry out their mission.
22
23

24 ¹³ See Dep’t of Housing & Urban Development, “HUD and Justice Department
25 Announce New Efforts to Ease Transition from Prison and Expand Opportunities
26 for Jobs and Housing,” *available at* http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2015/HUDNo_15-140 (“providing meaningful
27 support through housing opportunities, prevention programs and other critical
28 services is vital to our ongoing efforts to reduce recidivism, promote public safety,
and foster positive results in communities across the country”).

1 DATED: May 10, 2016

ACLU FOUNDATION OF SOUTHERN
CALIFORNIA

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By: /s/ Adrienna Wong

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Counsel for Plaintiffs

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