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13 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
14

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

16 Plaintiffs,

17 vs.

18 CITY OF HESPERIA *et al.*,

19 Defendants.  
20

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

**PLAINTIFFS' NOTICE OF  
MOTION AND MOTION FOR  
PRELIMINARY INJUNCTION**

**CLASS ACTION**

Date: July 11, 2016  
Time: 10 A.M.  
Courtroom: 4  
Judge: Hon. André Birotte, Jr.  
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1           **TO THE CITY OF HESPERIA, ERNESTO MONTES, AND SAN**  
2 **BERNARDINO COUNTY SHERIFF JOHN MCMAHON AND THEIR**  
3 **ATTORNEYS OF RECORD:**

4           PLEASE TAKE NOTICE that at 10:00 am on July 11, 2016, or on June 27,  
5 2016 if the Court grants Plaintiffs’ concurrently-filed *ex parte* application to shorten  
6 time, or as soon thereafter as counsel may be heard before Judge André Birotte Jr.  
7 in Courtroom 4, United States District Court, Central District of California, located  
8 at 312 N. Spring St., Los Angeles, California, Plaintiffs individually and on behalf  
9 of Class Members will move this Court, pursuant to Rule 65(a) of the Federal Rules  
10 of Civil Procedure, and Rules 65-1 and 7-2 through 7-5 of the Local Rules, for an  
11 order issuing a Preliminary Injunction immediately enjoining and prohibiting  
12 Defendants and their successors, agents, officers, servants, employees, attorneys and  
13 representatives, and all persons acting in concert from taking any further action to  
14 enforce the Group Home Ordinance, Hesperia Municipal Code § 16.16.072, or the  
15 Rental Housing Ordinance, Hesperia Ordinance 2015-12 (Nov. 17, 2015), against  
16 Plaintiffs or the properties where they reside or carry out their mission. Such action  
17 to enforce shall include but is not limited to: (1) the issuance of any citation, fine, or  
18 notice for violation of section 16.16.072(C)(2); (2) the issuance of any citation, fine,  
19 or notice for failure to obtain a conditional use permit prohibited by section  
20 16.16.072(C)(2); (3) any enforcement actions or threats to enforce for alleged  
21 “criminal activity” relating to Plaintiffs under or in furtherance of Hesperia  
22 Ordinance 2015-12, and (4) any enforcement actions or threats to enforce relating to  
23 Defendants’ demand that Plaintiffs disclose private and identifying information  
24 regarding Plaintiff Victor Valley Family Resource Center’s clients.

25           This Motion for Preliminary Injunction will be made on the ground that  
26 Plaintiffs and Class Members will suffer irreparable injury unless the activities  
27 described within are enjoined. The Motion is based upon this Notice of Motion and  
28 Motion, the Complaint, and the memoranda of points and authorities, declarations

1 and exhibits filed in this matter, and upon such oral and written arguments as may  
2 be presented at the hearing on the motion.

3 This Motion is made following the conference of counsel which took place  
4 on May 25, 2016.

5

6 DATED: June 13, 2016

ACLU FOUNDATION OF SOUTHERN  
CALIFORNIA

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By: /s/ Adrienna Wong

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ADRIENNA WONG  
Counsel for Plaintiffs

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

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFFS' NOTICE OF  
MOTION AND MOTION FOR  
PRELIMINARY INJUNCTION**

21 Date: July 11, 2016  
22 Time: 10 A.M.  
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1 **I. INTRODUCTION**

2 Plaintiffs are individuals in reentry who have struggled with homelessness.  
3 They have found, in their current homes, a stable place to rest, to seek employment  
4 and education opportunities, and to begin building sustainable, productive futures  
5 for themselves. Plaintiffs’ homes are threatened, however, by the City of Hesperia  
6 and its agents, who have made it their mission to force Plaintiffs out of both  
7 residential housing and the entire city through the enactment and relentless  
8 enforcement of unconstitutional municipal ordinances.

9 The consequences of the City’s attacks on Plaintiffs’ homes have now come  
10 to a head. In the last two weeks and after the Court’s consideration of Plaintiffs’  
11 Application for a TRO, the landlords of all of Plaintiffs’ homes have taken clear,  
12 affirmative steps to evict them in response to tens of thousands of dollars in City  
13 fines. The landlord of one house—where Plaintiff Deen resides—has already filed  
14 an unlawful detainer action. Plaintiffs are thus faced with the loss of their homes  
15 and social supports during an important and vulnerable time in their lives. The  
16 nonprofit organization that provides them with housing, Plaintiff Victor Valley  
17 Family Resource Center, and its CEO Sharon Green, face the loss of their interests  
18 in their leaseholds—and more essentially, their ability to carry out their mission: to  
19 provide crucial, time-sensitive services to homeless persons in reentry.

20 Accordingly, Plaintiffs seek a preliminary injunction to prevent these  
21 irreparable harms and to preserve the status quo until the Court enters a judgment on  
22 the merits of this case.

23 **II. STATEMENT OF FACTS**

24 **A. Background**

25 The background facts of this case are set forth in detail in the Court’s previous  
26 order (Dkt. No. 25), and in Plaintiffs’ application for a temporary restraining order  
27 (Dkt. No. 12). In brief: Plaintiff Victor Valley Family Resource Center (“VVFRC”)  
28 is a nonprofit organization that rents three homes in the city of Hesperia, where it

1 provides housing to individuals in reentry who are homeless or at risk of becoming  
2 homeless. Current residents of each of the three homes—the La Crescenta House,  
3 the Azalea House, and the Hollister House—are also Plaintiffs in this case.

4 Since the beginning of 2015, the City of Hesperia has targeted Plaintiffs and  
5 their homes with code enforcement actions, a reflection of the City’s growing  
6 animus towards tenants in need of housing assistance, and people in reentry.<sup>1</sup> The  
7 City has repeatedly issued all three homes citations for alleged violations of its  
8 “Group Home Ordinance,” which requires conditional use permits for residences  
9 housing more than one individual unrelated by blood or marriage, and which flatly  
10 prohibits residences housing more than one individual on probation unrelated by  
11 blood or marriage. *See* Decl. of Sharon Green in Supp. of Plaintiffs’ *Ex Parte* App.  
12 for TRO (Dkt. No. 12-6) (“Green TRO Decl.”), ¶ 10; *id.* ¶ 12; *id.* ¶¶ 18-19; *id.* ¶ 21;  
13 *id.*, Exs. C-D, F-N; *see also* Order Den. Plaintiffs’ *Ex Parte* App. for TRO and for  
14 Order to Show Cause (Dkt. No. 25) (“TRO Order”), at 7-8.

15 The City has also issued notifications to Plaintiffs’ landlords in furtherance of  
16 its “Rental Housing Ordinance,” asserting vague allegations of “ongoing criminal  
17 activity” taking place at Plaintiffs’ homes. The Rental Housing Ordinance requires  
18 landlords to commence eviction proceedings 10 days after they receive notification  
19 of criminal activity from the Hesperia Police. *See* TRO Order at 8; *see also* TRO  
20 Memo at 6-7; Green TRO Decl., Exs. P-R.

21 As a result of the City’s enforcement actions, the landlord for the La Crescenta  
22 House served VVFCRC with a three-day Notice to Quit, and the landlords for  
23

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24 <sup>1</sup>As described in Plaintiffs’ application for a temporary restraining order, City  
25 officials have stigmatized these groups of people and conflated them as parts of the  
26 same undesirable “demographic.” *See* Memorandum of Points and Authorities in  
27 Support of Plaintiffs’ *Ex Parte* App. for a TRO (Dkt. 12) (“TRO Memo.”), at 11-14.  
28 Evidence of the City’s animus is cited in Plaintiffs’ application, *see id.*, and well-  
documented in the video exhibits submitted in support thereof. *See* Decl. of Glen  
Eichenblatt (Dkt. No. 12-5), Video Exs. A-D; Notice of Lodging (Dkt. No. 15).

1 VVFCRC's two other homes indicated that they would soon follow suit. Green TRO  
2 Decl. ¶ 24; *id.* ¶¶ 26-27; *id.* Exs. Q-R.

3 **B. Recent Developments**

4 In just the last few weeks, the threats to Plaintiffs' homes have significantly  
5 intensified. Buckling under the continuous pressure the City has exerted, the owners  
6 of all three houses have taken further steps towards evicting Plaintiffs, establishing  
7 a likelihood of irreparable injury to Plaintiffs in the near future

8 On May 31, 2016, the landlord of the La Crescenta House filed an unlawful  
9 detainer action against VVFCRC. *See* concurrently filed Decl. of Sharon Green  
10 ("Green Decl."), Ex. A. The unlawful detainer complaint attaches, as exhibits, a  
11 "notice of criminal activity" that Defendants sent to the landlord, and a citation for  
12 failure to obtain a conditional use permit. *Id.*; *see also* Green TRO Decl., Ex. R.

13 Shortly thereafter, the landlords for the Hollister House and the Azalea House  
14 e-mailed three-day Notices to Quit to Sharon Green, CEO of VVFCRC. Green Decl.,  
15 Ex. B-C. The three-day Notices have expired, so those landlords may now file  
16 unlawful detainer actions at any time. Both landlords have indicated that they will  
17 imminently file unlawful detainers, under the duress created by the City's persistent  
18 citations.<sup>2</sup> *See* concurrently filed Decl. of Elaine Huang ("E. Huang Decl."), ¶¶ 3-4;  
19 Decl. of David Huang ("D. Huang Decl."), ¶¶ 3-4. As the landlord for the Hollister  
20 House stated in his e-mail to Ms. Green attaching the three-day Notice: "The  
21 citations resulting from the code violations by the City of Hesperia ha[ve] created  
22 an undue hardship on me and it does not seem that it will resolve any time soon."  
23 Green Decl., Ex. B.

24  
25  
26 <sup>2</sup>The City issued citations to the Azalea House on May 23, May 24, May 25, June 2,  
27 June 3, June 6, June 8, and June 9, 2016, for example. The citations impose fines of  
28 \$1000 each. *See* Green Decl., Exs. D-F. Each homeowner now faces fines  
amounting to tens of thousands of dollars.

1 **III. ARGUMENT**

2 The purpose of a preliminary injunction is to preserve the status quo and the  
3 rights of the parties until a final judgment on the merits. *U.S. Philips Corp. v. KBC*  
4 *Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). Accordingly, a preliminary  
5 injunction should issue where a plaintiff establishes that she is likely to suffer  
6 irreparable harm in the absence of preliminary relief; she is likely to succeed on the  
7 merits; the balance of equities tips in her favor; and an injunction is in the public  
8 interest. *M.R. v. Dreyfus*, 697 F.3d 706, 725 (9th Cir. 2012) (citing *Winter v. Natural*  
9 *Res. Def. Council*, 555 U.S. 7, 20 (2008)). A preliminary injunction is also proper  
10 if the balance of hardships “tips sharply in favor of the plaintiff,” there are at least  
11 “serious questions going to the merits,” and the other two *Winter* elements are  
12 satisfied. *Id.* at 725 (citing *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,  
13 1131–32 (9th Cir. 2011)). The elements of the preliminary injunction standard are  
14 “balanced, so that a stronger showing of one element may offset a weaker showing  
15 of another.” *Alliance*, 632 F.3d at 1031. Here, each element weighs strongly in  
16 favor of granting Plaintiffs’ motion for a preliminary injunction.

17 **A. Plaintiffs Face Irreparable Harm In The Absence Of A**  
18 **Preliminary Injunction**

19 Plaintiffs are likely to suffer irreparable injuries before judgment in the  
20 absence of a preliminary injunction: the loss of their homes and their interests in  
21 their leaseholds; the violation of their rights to privacy and association in their  
22 homes; the disruption of valuable social supports; the interruption of crucial-time  
23 sensitive reentry services; the loss of educational and employment opportunities; and  
24 homelessness. The landlords of Plaintiffs’ homes have clearly communicated their  
25 intentions to evict Plaintiffs and have initiated the eviction process, establishing the  
26 immediacy of the harms Plaintiffs face.

27 Several courts—including the Ninth Circuit—have held that a landlord’s  
28 communication of intent to initiate eviction proceedings is sufficient to establish a

1 likelihood of immediate, irreparable harm warranting a preliminary injunction. *See,*  
2 *e.g., Park Vill. Apartment Tenants Ass’n v. Mortimer Howard Trust*, 636 F.3d 1150,  
3 1159 (9th Cir. 2011) (where Defendants “voiced an intention to . . . evict Plaintiffs,”  
4 district court correctly determined that plaintiffs were “likely to suffer irreparable  
5 harm absent preliminary relief”); *Johnson v. Macy*, No. CV-15-7165, 2015 WL  
6 7351538, \*8 (C.D. Cal. Nov. 16, 2015) (finding irreparable harm “immediate, as  
7 defendant initially communicated to plaintiff an intent to initiate eviction  
8 proceedings in a matter of days, and still expresse[d] an intent to do so”); *see also*  
9 *Miles v. Gilray*, No. 12-CV-599S, 2012 WL 2572769, \*3 (W.D.N.Y. June 29, 2012)  
10 (plaintiffs demonstrated imminent irreparable harm, where evidence showed that  
11 landlord had expressed his intention to evict and sent a notice to quit); *Harris v.*  
12 *Hous. Auth. of City of Daytona Beach*, No. 6:01-CV-254-ORL-22, 2001 WL  
13 36404273, \*4 (M.D. Fla. Apr. 25, 2001) (finding likelihood of irreparable harm and  
14 rejecting housing authority’s argument that eviction was not imminent, when it had  
15 sent plaintiff an eviction notice and placed a phone call to plaintiff to demand that  
16 she pay back rent or move).<sup>3</sup>

17 All three landlords have voiced clear intentions to evict Plaintiffs. *See E.*  
18

---

19 <sup>3</sup>Indeed, courts have held that circumstances giving rise to the threat of future  
20 eviction are enough to establish the likelihood of immediate, irreparable harm  
21 needed to support a motion for a preliminary injunction. *See, e.g., Garrett v. City*  
22 *Escondido*, 465 F. Supp. 2d 1043, 1051-53 (S.D. Cal. 2006) (risk of eviction created  
23 by enactment of ordinance requiring landlords to evict upon notice of a tenants’  
24 irregular immigration status established likelihood of immediate irreparable harm);  
25 *McNeill v. N.Y.C. Hous. Auth.*, 719 F. Supp. 233, 254 (S.D.N.Y. 1989) (risk of  
26 eviction resulting from City’s termination of Section 8 subsidies to landlords  
27 satisfied immediate irreparable injury prong of preliminary injunction standard).  
28 Here, Defendants have cited Plaintiffs’ landlords for tens of thousands of dollars,  
and they continue to issue additional citations. Defendants accused Plaintiffs of  
criminal activity in notifications sent pursuant to an ordinance that requires landlords  
to initiate eviction proceedings upon receiving a “notice of criminal activity.” These  
circumstances establish a likelihood of future eviction. *Id.*

1 Huang Decl., ¶¶ 3-4; D. Huang Decl., ¶¶ 3-4. The owner of the La Crescenta House  
2 has already filed an unlawful detainer action against VVFCR. Green Decl., Ex. A.  
3 By sending Plaintiffs notices to quit, the owners of the Hollister House and the  
4 Azalea House have also initiated the eviction process. Green Decl., Exs. B-C.  
5 Because the notices have expired, the landlords may file unlawful detainers against  
6 Plaintiffs at any time.

7 Unlawful detainer actions are summary proceedings that move quickly  
8 towards judgment and eviction. *See* J. Terry B. Friedman (Ret.), J. David A. Garcia  
9 (Ret), and Mark Hagarty, California Practice: Guide Landlord-Tenant, § 8-1 (Rutter  
10 Group 2015) (unlawful detainer actions are “virtually the fastest civil trial  
11 proceeding” and offer landlords “a speedy ‘summary eviction’ remedy”).<sup>4</sup> A  
12 landlord’s motion for summary judgment may be heard on *five days* notice. Cal.  
13 Code Civ. Proc. § 1170.7. A defendant tenant in an unlawful detainer action must  
14 request trial when she files her Answer, five days after service of the unlawful  
15 detainer.<sup>5</sup> Trial must take place *within 20 days* after the first request for trial,  
16 whereupon “judgment shall be entered,” and a “writ of execution . . . issued  
17 immediately.” Cal. Code Civ. Proc. § 1170.5(a). Thus, it is almost certain that  
18 unlawful detainer actions brought by all three landlords will conclude, forcing  
19 Plaintiffs to leave their homes, well before judgment on the merits in this case.

20 This Court is not required to wait for an eviction to take place before granting  
21 preliminary relief. Such a requirement would defeat the purpose of a preliminary  
22

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23 <sup>4</sup> *See also* Superior Court of California, County of Santa Clara, “Landlord/Tenant  
24 Unlawful Detainer (UD) Overview,” [http://www.sccourt.org/self\\_help/civil/ud/ud\\_overview.shtml](http://www.sccourt.org/self_help/civil/ud/ud_overview.shtml) (last visited Jun. 8, 2016) (“An Unlawful Detainer case is really  
25 fast.”); Superior Court of California, County of Santa Clara, “For the Tenant:  
26 Answering a UD,” [http://www.sccourt.org/self\\_help/civil/ud/ud\\_answering.shtml](http://www.sccourt.org/self_help/civil/ud/ud_answering.shtml)  
(last visited Jun. 8, 2016) (eviction proceedings “are on ‘fast-tracks’”).

27 <sup>5</sup> Plaintiff Victor Valley Family Resource Center requested trial in its Answer to the  
28 Unlawful Detainer filed by the owner of the La Crescenta house. Green Decl. ¶ 3.

1 injunction, which is to *prevent* parties from suffering irreparable harm during the  
2 pendency of proceedings. As courts have recognized, a party has *already* suffered  
3 irreparable harm the moment she is forced to vacate her home. *See, e.g., Johnson*,  
4 2015 WL 7351538 at \*8 (noting that the court could not return plaintiff to her home  
5 if she were evicted and a third party rented the property); *see also Jackmon v. Am.’s*  
6 *Servicing Co.*, No. C 11-03884 CRB, 2011 WL 3667478, \*3 (N.D. Cal. Aug. 22,  
7 2011) (“Defendants stated in their Opposition that they are in the process of  
8 preparing the eviction complaint . . . . Plaintiff will suffer irreparable harm if the  
9 eviction proceedings are commenced.”).

10         The irreparable harms to Plaintiffs are multifaceted and severe. Plaintiffs  
11 Avila, Batts, Deen, Dowdy, Gullett, and Holt-Francis face the loss of their homes.  
12 Without their current housing, they will be homeless. Decl. of Daniel Avila (Dkt.  
13 No. 12-1) (“Avila Decl.”) ¶¶ 2-4; Decl. of Harold Batts (Dkt. No. 12-2) (“Batts  
14 Decl.”) ¶¶ 3, 7; Decl. of David Deen (Dkt. No. 12-3) (“Deen Decl.”) ¶ 3; Decl. of  
15 Chris Dowdy (Dkt. No. 12-4) (“Dowdy Decl.”) ¶¶ 2; Decl. of Renee Gullett (Dkt.  
16 No. 12-7) (“Gullett Decl.”) ¶¶ 3-4; Decl. of Nicholas Holt-Francis (Dkt. No. 12-8)  
17 (“Holt-Francis Decl.”) ¶¶ 2, 6. Thus, the threat of eviction against Plaintiffs  
18 establishes irreparable harm. *See Garrett*, 465 F. Supp. 2d at 1052; *Johnson*, 2015  
19 WL 7351538 at \*8; *Jones v. Upland Hous. Auth.*, No. EDCV 12-02074-VAP, 2013  
20 WL 708540, \*15 (C.D. Cal. Feb. 21, 2013); *Sinisgallo v. Islip Hous. Auth.*, 865 F.  
21 Supp. 2d 307, 328 (E.D.N.Y. 2012) (“courts have held that the ‘threat of eviction  
22 and the realistic prospect of homelessness constitute a threat of irreparable harm and  
23 satisfy the first prong of the test for preliminary injunctive relief”).<sup>6</sup>

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24  
25 <sup>6</sup> *See also Johnson v. U.S. Dep’t of Agric.*, 734 F.2d 774, 788 (11th Cir. 1984)  
26 (“irreparable injury is suffered when one is wrongfully ejected from his home,”  
27 especially if the plaintiff “must live in inadequate . . . housing for any period of  
28 time”); *Harris*, 2001 WL 36404273, at \*4 (“Simply put, there is no more basic human  
need than shelter. It suffices to say that eviction from . . . housing of a person of  
[limited] financial means would constitute irreparable injury.”).



1 Eviction will also interrupt Plaintiffs’ access to the time-sensitive reentry  
2 services provided by VVFCR, and impede their access to jobs, rehabilitation, and  
3 education opportunities. *See, e.g.*, Green TRO Decl. ¶¶ 3, 28; Dowdy Decl. ¶ 6;  
4 Avila Decl. ¶ 10 (describing the importance of a stable home address in the job  
5 search process). Because Plaintiffs are at a vulnerable, transitional juncture,  
6 setbacks now may “haunt [them] for the rest of their lives.” *See Arizona Dream Act*  
7 *Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014) (loss of professional and  
8 employment opportunities constituted irreparable harm, heightened by plaintiffs’  
9 fragile socioeconomic position). Moreover, Plaintiffs will lose their existing social  
10 supports and opportunities to associate with other residents if forced out of their  
11 current homes. None of these injuries can be addressed, after the fact, by remedies  
12 available at law. *See Johnson*, 2015 WL 7351538 at \*8 (when plaintiff’s eviction  
13 from her home “would be disruptive to [her] life” and social connections, no remedy  
14 at law could repair the injury); *see also Mitchell v. U.S. Dep’t of Hous. & Urban*  
15 *Dev.*, 569 F. Supp. 701, 705 (N.D. Cal. 1983).

16 Plaintiffs value the opportunities they have to associate with one another in  
17 the mutually supportive reentry environment of their current homes. *See Avila Decl.*  
18 ¶¶ 12-13; Batts Decl. ¶ 6; Dowdy Decl ¶¶ 4-5; Gullet Decl. ¶ 6; Holt-Francis Decl.  
19 ¶ 3. These associations are not only beneficial to Plaintiffs’ reintegration into  
20 society—but they are also constitutionally protected. *See infra* at 13-15 (describing  
21 the constitutional right to freedom of association in one’s home, which encompasses  
22 the right to choose one’s household companions); *U. S. Dep’t of Agric. v. Moreno*,  
23 413 U.S. 528, 541-42 (1973) (Douglas, J., concurring) (“The poor are congregating  
24 in households where they can better meet the adversities of poverty. This banding  
25 together is an expression of the right of freedom of association that is very deep in  
26 our traditions.”). The potential invasion of Plaintiffs’ constitutional rights is  
27 sufficient to establish irreparable harm. *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006,  
28 1029 (9th Cir. 2013); *see also Assoc. Gen. Contractors of Cal., Inc. v. San Francisco*,

1 748 F. 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.”).

5 Plaintiffs VVFC and Ms. Green are in danger of losing their interests in their  
6 leaseholds; this loss is a form of irreparable injury. *See Park Village Apartment*  
7 *Tenants Ass’n*, 636 F.3d at 1159 (“[i]t is well established that the loss of interest in  
8 real property constitutes irreparable harm.”); *Johnson*, 2015 WL 7351538 at \*8.  
9 This loss, in turn, will prevent them from carrying out a core element of their  
10 organizational mission: to provide homeless individuals in reentry with transitional  
11 supportive housing. The City’s enforcement actions have *already* required VVFC  
12 and Ms. Green to divert substantial time and resources away from providing their  
13 clients with time-sensitive reentry services. Green TRO Decl. ¶¶ 28. This ongoing  
14 interference with the organization’s mission also constitutes irreparable harm. *Valle*  
15 *del Sol*, 732 F.3d at 1029.

16 **B. The Balance of Hardships Tips Sharply In Favor of Plaintiffs**

17 The balance of hardships strongly favors a preliminary injunction. As detailed  
18 above, the City’s aggressive enforcement of the Group Home Ordinance and the  
19 Rental Housing Ordinance threatens Plaintiffs with serious and irreparable harms.  
20 In contrast, a preliminary injunction will cost Defendants nothing; no harm will  
21 befall them if the Court grants Plaintiffs’ motion.

22 Under the narrow preliminary injunction Plaintiffs seek, Defendants will  
23 simply have to refrain from enforcing the Group Home Ordinance and the Rental  
24 Home Ordinance against Plaintiffs and their homes until a judgment in this case.  
25 Defendants are “in no way harmed by the issuance of an injunction that prevents  
26 [them] from enforcing unconstitutional restrictions.” *Legend Night Club. v. Miller*,  
27 637 F.3d 291, 302-03 (4th Cir. 2011). The preliminary injunction will not interfere  
28 with Defendants’ ability to ensure public safety through existing, legally appropriate

1 means—such as the enforcement of criminal laws.<sup>7</sup> See *Puente Ariz. v. Arpaio*, 76  
2 F. Supp. 3d 833, 861 (D. Ariz. 2015); *Kincaid v. Fresno*, No. 106 CV-1445 OWW  
3 SMS, 2006 WL 3542732, \*40-41 (E.D. Cal. Dec. 8, 2006) (“City [would] not suffer  
4 undue hardship in having to . . . afford due process” to homeless persons, where it  
5 could pursue other law enforcement efforts).

6 Even if Defendants can identify some hardship they will suffer as a result of  
7 the requested injunction, the threat that Plaintiffs will imminently be displaced and  
8 rendered homeless “tips the balance of equities in [Plaintiffs’] favor[.]” *Jones*, 2013  
9 WL 708540 at \*16; see also *Price v. Stockton*, 390 F.3d 1105, 1116-17 (9th Cir.  
10 2004) (“Despite the hardships the City may face in delaying some of its development  
11 plans . . . it is a far more severe hardship for someone to be displaced from his or her  
12 home”); *Lancor v. Lebanon Hous. Auth.*, 760 F.2d 361, 363-64 (1st Cir. 1985) (harm  
13 to tenant of imminent eviction from home . . . . outweighed housing authority’s  
14 claimed loss of control over housing project). And the hardship resulting from  
15 Plaintiffs’ loss of housing is compounded by the loss of employment and education  
16 opportunities, the disruption of social supports, and the violation of constitutional  
17 rights. See *Thalheimer v. San Diego*, 645 F.3d 1109, 1129 (9th Cir. 2011) (interest  
18 in upholding association rights outweighed the interest in continued enforcement of  
19 city law). Thus, the balance of hardships tips sharply in favor of Plaintiffs.

### 20 **C. The Public Interest Favors A Preliminary Injunction**

21 The Ninth Circuit has recognized that “[o]ur society as a whole suffers when  
22 we neglect the poor, the hungry, the disabled, or when we deprive them of their  
23 rights or privileges.” *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983). As  
24 described above, Plaintiffs—some of Hesperia’s most vulnerable residents—will  
25 face homelessness, threats to their prospects for obtaining housing and employment,  
26 and interference with important civil rights if the court does not issue a preliminary

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27 <sup>7</sup> Defendants will not be restrained from enforcing the Group Home Ordinance and  
28 the Rental Housing Ordinance against residences other than Plaintiffs’.

1 injunction. Allowing such harm to occur during the pendency of this litigation  
2 would be against the public interest. *Consol. Delta Smelt Cases*, 717 F. Supp. 2d  
3 1021, 1069 (E.D. Cal. 2010) (noting a public interest in reducing conditions that lead  
4 to homelessness).

5 Enjoining the enforcement of the challenged ordinances will serve the public  
6 interest. State and county agencies will be able to carry out their core duties and the  
7 mandates of state laws like A.B. 109, in furtherance of public safety, without undue  
8 interference from Defendants. *See Green TRO Decl., Ex. B*, at 1 (“the County  
9 desires to provide housing services for those Post Release Community Supervision  
10 (PCRS) and mandatory supervision adults considered homeless and under the  
11 supervision of the County’s Probation Department”). They and VVFCRC will be able  
12 to join in regional and nationwide efforts to enhance public safety and prevent crime  
13 by providing housing and support to people in reentry.<sup>8</sup> *See id.*; *see also* Complaint  
14 (Dkt. No. 1), ¶ 36. VVFCRC and Ms. Green will be able to play their part in  
15 addressing California’s homelessness crisis by providing transitional supportive  
16 housing, as contemplated by state law.<sup>9</sup>

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17  
18 <sup>8</sup> *See* Dep’t of Housing & Urban Development, “HUD and Justice Department  
19 Announce New Efforts to Ease Transition from Prison and Expand Opportuniites  
20 for Jobs and Housing,” HUD.gov, (Nov. 2015) *available at*  
21 [http://portal.hud.gov/hudporta/HUD?src=/press/press\\_releases\\_med\\_advisories/20](http://portal.hud.gov/hudporta/HUD?src=/press/press_releases_med_advisories/2015/HUDNO_15-140)  
22 [15/HUDNO\\_15-140](http://portal.hud.gov/hudporta/HUD?src=/press/press_releases_med_advisories/2015/HUDNO_15-140) (“providing meaningful support through housing opportunities,  
23 prevention programs and other critical services is vital to our ongoing efforts to  
reduce recidivism, promote public safety, and foster positive results in communities  
across the country”).

24 <sup>9</sup> *See* Cal. Dep’t of Housing & Community Dev., “Memorandum, Senate Bill 2 --  
25 Legislation Effective January 1, 2008: Local Planning and Approval for Emergency  
26 Shelters and Transitional and Supportive Housing” (May 7, 2008), *available at*  
27 [http://www.hcd.ca.gov/housing-policy-development/sb2\\_memo050708.pdf](http://www.hcd.ca.gov/housing-policy-development/sb2_memo050708.pdf)  
28 (describing transitional housing as a tool to combat homelessness, and outlining a  
state policy to prevent local entities from using zoning law to limit the availability  
of such housing).

1 Defendants cannot credibly claim that their ongoing enforcement actions  
2 serve the public interest. Allowing Defendants to pursue their reckless mission of  
3 driving vulnerable individuals out of safe, stable housing and into homelessness can  
4 only lead to negative impacts on public health and safety in the City and County. It  
5 will make it more difficult for the Probation Department to find suitable housing for  
6 individuals in reentry and to monitor their residences. *See* Holt-Francis Decl. ¶ 5;  
7 *cf. In re Taylor*, 60 Cal. 4th 1019, 1038 (2015). And “it is clear that it would not be  
8 equitable or in the public’s interest to allow [Defendants] to violate the requirements  
9 of federal law.” *Valle del Sol*, 732 F.3d at 1029. Therefore, the public interest  
10 weighs in favor of granting Plaintiffs’ requested preliminary injunction.

11 **D. Plaintiffs Are Likely To Succeed On The Merits**

12 As set forth above, the balance of equities tips sharply in favor of a  
13 preliminary injunction; Plaintiffs are likely to suffer irreparable harm; and the public  
14 interest favors a preliminary injunction. Accordingly, Plaintiffs need only show that  
15 there are “serious questions” going to the merits to obtain preliminary relief.  
16 *Dreyfus*, 697 F.3d at 725. The facts and the law presented by Plaintiffs do more than  
17 raise “serious questions,” however; they establish a strong likelihood that Plaintiffs  
18 will ultimately succeed on the merits.

19 The evidence and arguments supporting Plaintiffs’ claims are set forth in the  
20 memorandum in support of their application for a temporary restraining order and in  
21 the accompanying exhibits. TRO Memo at 9-21. For ease of reference, Plaintiffs  
22 revisit the merits of their claims below.<sup>10</sup>

23 **1. Plaintiffs Are Likely To Succeed On Their Privacy and**  
24 **Association Claims**

25 \_\_\_\_\_  
26 <sup>10</sup> Plaintiffs are likely to succeed on the merits of each claim asserted in the  
27 Complaint, including their claims that state law preempts the challenged ordinances,  
28 and that the ordinances violate the constitutionally-protected rights to travel, to  
privacy, and to be free from unreasonable search and seizure. In the interest of  
judicial economy, however, Plaintiffs do not discuss those claims herein.

1 Plaintiffs are likely to succeed on the merits of their claim that the Group  
2 Home Ordinance violates article 1, section 1 of the California Constitution. Article  
3 1, section 1 protects several interrelated privacy rights, including the right to privacy  
4 in one’s home, and the rights to free communion and association. *White v. Davis*,  
5 13 Cal. 3d 757, 774 (1975). These rights encompass the “right to live with  
6 whomever one wishes,” including “persons not related by blood, marriage or  
7 adoption.” *City of Santa Barbara v. Adamson*, 27 Cal. 3d 123, 130 (1980).

8 The Group Home Ordinance violates article 1, section 1 in several ways. First,  
9 it imposes a conditional use permit requirement on residences housing individuals  
10 who are not related by blood or marriage, while imposing no such requirement on  
11 residences housing multiple related individuals. Hesperia Municipal Code §  
12 16.16.072(B), (D). Second, it prohibits residences that house multiple individuals  
13 on probation not related by blood or marriage. *Id.*, § 16.16.072(C)(2). It is well-  
14 established that the California Constitution does not permit these types of housing  
15 restrictions, which irrationally privilege the biological family. *Adamson*, 27 Cal. 3d  
16 at 132. The Constitution recognizes the value in alternative forms of association in  
17 the home and protects them accordingly. *Id.* at 127 (describing household of 12  
18 unrelated but “congenial” adults, who “rotate chores and eat evening meals  
19 together”); *see also Elysium Inst. Inc. v. Cty. of Los Angeles*, 232 Cal. App. 3d 408,  
20 425-26 (1991) (“[T]he right of privacy under the California Constitution  
21 comprehends the right of three nudists, not members of the same family, to assemble  
22 together in a home . . . .”); *cf. Moreno*, 413 U.S. at 541.

23 In *Adamson*, the California Supreme Court considered a municipal zoning  
24 ordinance that required the occupants of certain houses to be related by blood,  
25 marriage, or legal adoption. The court held that the ordinance’s restriction on  
26 communal living was invalid under article 1, section 1 of the California Constitution.  
27 It found that the distinction the ordinance drew between biologically or legally  
28 related housemates and other residents did not serve any compelling public interest.

1 The court stated:

2 The [ordinance] might reflect an assumption that an unrelated group  
3 will be noiser [sic], generative of more traffic and parking problems, or  
4 less stable than a related group of the same size. But none of these  
5 observations reflects a universal truth. Family groups are mobile today,  
6 and not all family units are internally stable and well-disciplined.

7 *Id.* at 133 (internal quotation marks omitted). The court also held that the ordinance  
8 could not be justified by the “assumption . . . that groups of unrelated persons hazard  
9 an immoral environment for families with children”; such an assumption would be  
10 legally illegitimate. *Id.* (citing *Atkisson v. Kern Cty. Hous. Auth.*, 59 Cal. App. 3d  
11 89, 97 (1976) (striking public housing regulation that presumed that unmarried  
12 cohabitation was immoral, irresponsible, or demoralizing to tenant relations)).

13 The *Adamson* court stated that “zoning ordinances are much less suspect,”  
14 from a constitutional perspective, when they focus on the use than when they  
15 command inquiry into who are the users. 27 Cal. 3d at 133-34. The Group Home  
16 Ordinance’s prohibition against “probationer homes” impermissibly regulates  
17 residences based on the *identity* of the occupants. *Id.*; *City of Chula Vista v. Pagard*,  
18 115 Cal. App. 3d 785, 795 (1981) (ordinance failed the constitutional standards set  
19 forth in *Adamson* because it “focus[ed] on who are the users”). The Group Home  
20 Ordinance does not prohibit all residential uses of homes like Plaintiffs’, or even all  
21 shared residential uses. It does not prohibit using a private residence to gather  
22 individuals with shared experiences to support one another through challenging  
23 times. The Ordinance prohibits Plaintiffs from living together because they are  
24 members of a stigmatized group—because of *who they are*. The Ordinance thus  
25 infringes upon the right to “live with whomever [one] wishes,” in violation of article  
26 1, section 1 of the California Constitution.<sup>11</sup>

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27 <sup>11</sup> On this ground alone, the Court may determine that Plaintiffs are likely to prevail  
28 on the merits. *See Vernon v. City of Los Angeles*, 27 F.3d 1385, 1391-92 (9th Cir.  
1994). As discussed herein, however, the Group Home Ordinance is invalid under

1                   **2. Plaintiffs Are Likely To Succeed on their Procedural Due**  
2                   **Process Claims**

3                   Plaintiffs are likely to succeed on their claims that the Rental Housing  
4 Ordinance violates the procedural due process protections guaranteed by the  
5 Fourteenth Amendment and article 1, section 7 of the California Constitution.  
6 *Mathews v. Eldridge*, 424 U.S. 319 (1976); *People v. Ramirez*, 25 Cal. 3d 260, 263  
7 (1979). The ordinance threatens to deprive current and prospective tenants, like  
8 VVFCRC, Ms. Green, Ms. Gullett, and others, of their property interests in their  
9 leaseholds, without due process. *See Garrett*, 465 F. Supp. 2d at 1059 (procedural  
10 due process protects interest in tenancy); *Mitchell*, 569 F. Supp. at 701 (describing  
11 tenant’s property interest created by lease); *see also Park Village Apartment Tenants*  
12 *Ass’n*, 636 F.3d at 1159.

13                   In evaluating procedural due process claims, courts consider several factors:  
14 the private interest that will be affected by the official action; the risk of an erroneous  
15 deprivation of such interest through the procedures used, and the probable value, if  
16 any, of additional or substitute procedural safeguards; and the government’s  
17 interests. *Mathews*, 424 U.S. at 335. Procedural due process requires, at a minimum,  
18 notice and a hearing before a state actor deprives a person of a property interest. *Id.*  
19 at 332-33; *Garrett*, 465 F. Supp. 2d at 1058 (citing *Mullane v. Cent. Hanover Bank*  
20 *& Tr. Co.*, 339 U.S. 306, 313 (1950)).

21                   The Rental Housing Ordinance is procedurally deficient on its face because it  
22 requires landlords to initiate eviction proceedings against tenants, interfering with  
23 the property rights of both (and imposing litigation expenses on both), without  
24 sufficient notice of the allegations against the tenant or a pre-deprivation opportunity  
25 for the landlord or tenant to dispute the allegations. The ordinance requires landlords  
26 to initiate eviction proceedings: (a) prior to any hearing on the cause for eviction;

27 \_\_\_\_\_  
28 the Fourteenth Amendment to the U.S. Constitution, in addition to violating article  
1, sections 1 and 7 of the California Constitution.



1 (b) upon receipt of a general “notice” of criminal activity from the Chief of Police,  
2 (c) containing limited information about the alleged criminal activity; (d) within 10  
3 days—too short an interval of time for the landlord to conduct a full investigation  
4 into the allegations of the police. Courts have held that nearly identical notice and  
5 eviction procedures fail to satisfy constitutional due process requirements. *Cook v.*  
6 *City of Buena Park*, 126 Cal. App. 4th 1, 6 (2005); *Garrett*, 465 F. Supp. 2d at 1058-  
7 59; Decl. of Adrienna Wong in Support of Plaintiffs’ *Ex Parte* App. for TRO  
8 (“Wong TRO Decl.”), Ex. I, at 18 (order in *Peters v. City of Wilkes Barre*, No. 3:15-  
9 cv-00152-JMM (M.D. Pa. Jan. 27, 2016)).

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

20 In *Garrett*, the court granted a temporary restraining order against a municipal  
21 ordinance that required landlords to terminate their leases with a tenant upon  
22 receiving notice from the city that the tenant was an “illegal alien.” 465 F. Supp. 2d

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23 <sup>12</sup> Justice Bedsworth joined in the majority’s conclusion that the ordinance violated  
24 procedural due process. He wrote a concurring opinion, however, to express  
25 “concern [that] the ordinance [might] have more carcinogenic problems.” 126 Cal.  
26 App. 4th at 10. Specifically, he expressed concern that the ordinance suffered from  
27 “more fundamental constitutional infirmities” arising from the disparate treatment  
28 of property owners and renters, the “sweeping requirement that *all* occupants of the  
premises . . . be evicted for the sins of one,” and the impact of the ordinance on  
substantive due process rights. *Id.*

1 at 1058. The court held that the ordinance raised “serious concerns . . . under the  
2 Due Process clause,” reasoning that the ordinance did not give tenants notice or an  
3 opportunity to be heard before the city issued the notice that triggered the landlords’  
4 obligation to terminate the lease. *Id.* at 1059.

5 The due process infirmities of the Rental Housing Ordinance are apparent in  
6 the City’s enforcement actions against Plaintiffs. The City sent a letter to the  
7 landlord of the La Crescenta House pursuant to the Rental Housing Ordinance to  
8 notify him of “ongoing criminal activity” at the property. Green TRO Decl., Ex. Q.  
9 The letter claimed to have “documentation of the activity” but did not otherwise  
10 provide details about any alleged crime. The letter did, however, assert that the  
11 Rental Housing Ordinance prohibited such activity in rental properties. The City  
12 never provided VVFCRC or any of the home’s residents notice or an opportunity to  
13 be heard before it proceeded to send the notification to the landlord. And the letter  
14 fails to give adequate notice of the nature of the alleged criminal activity to the  
15 landlord or to any tenant or resident of the home.

16 The Hesperia Police Department’s public statements also indicate that its  
17 future enforcement of the Rental Housing Ordinance will create an “unreasonably  
18 high risk of erroneous deprivation.” *Cook*, 126 Cal. App. 4th at 6. In City Council  
19 meetings and in public trainings on the ordinance, officers have emphasized that  
20 they will issue notices of “criminal activity” to landlords, requiring the initiation of  
21 eviction proceedings within 10 days, even if the tenant is never convicted, charged,  
22 or even arrested for any crime. Wong TRO Decl. ¶ 14; Eichenblatt Decl., Ex. D, at  
23 1:04:22. For all of these reasons, the Rental Housing Ordinance violates procedural  
24 due process.

25 **3. Plaintiffs Are Likely to Succeed On The Merits Of Their**  
26 **Equal Protection Claims**

27 Plaintiffs are likely to succeed on the merits of their claims that the Group  
28 Home Ordinance and the Rental Housing Ordinance violate the Equal Protection

1 provisions of the Fourteenth Amendment and article 1, section 7 of the California  
2 Constitution. The City enacted both Ordinances not to serve any legitimate  
3 government purpose, but to marginalize, drive out, and stigmatize certain politically  
4 unpopular groups of people. The Ordinances thus violate Equal Protection and are  
5 legally invalid.

6 Although equal protection analysis commonly focuses on the relationship  
7 between the classifications drawn by a statute and the purpose of the statute, there is  
8 an additional, more fundamental equal protection requirement: the purpose of the  
9 statute must be a permissible one.<sup>13</sup> *Parr v. Monterey-Carmel Mun. Ct.*, 3 Cal. 3d  
10 861, 864 (1971). Long standing equal protection jurisprudence holds that the desire  
11 to marginalize, harm, or drive out a politically unpopular group is not a legitimate  
12 government purpose. *Lawrence v. Texas*, 539 U.S. 558, 580 (2003) (O'Connor, J.,  
13 concurring) (citing *Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446-47 (1985);  
14 *Romer v. Evans*, 517 U.S. 620, 623 (1996)); *see also Parr*, 3 Cal. 3d at 864. When  
15 laws are based on such desires, courts will strike them down under the Equal  
16 Protection Clause—even when the singled-out group is not a “suspect class.” *Id.*;  
17 *see also Moreno*, 413 U.S. at 534.

18 The illegitimate purpose of a law may be found in the legislative record.  
19 *Moreno*, 413 U.S. at 534; *see also Cleburne*, 473 U.S. at 448. It may also reveal  
20 itself in the plain language of the statute. *Parr*, 3 Cal. 3d at 864-65. The plain  
21 language of both the Group Home Ordinance and the Rental Housing Ordinance, as  
22 well as their legislative histories, establish that the City enacted the Ordinances for

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23 <sup>13</sup>As discussed herein, the true purpose of both Ordinances is to exclude stigmatized  
24 groups of people from residential neighborhoods and the city at large. Accordingly,  
25 the Court may conclude that the ordinances violate equal protection without  
26 considering the strength of their relationship to any legitimate municipal purposes  
27 the City may pretextually claim. But the ordinances are also invalid because they  
28 impinge fundamental rights and are not narrowly tailored to serve any compelling  
government interest, and because they bear no rational relationship to any purported  
municipal interest.

1 the express purpose of marginalizing and driving out of Hesperia people that City  
2 officials deem undesirable: people who live in rental housing (whom City officials  
3 perceive to be of a lower socio-economic status) and people with criminal records  
4 (including people supervised in the community by Probation).

5 **a. The Rental Housing Ordinance Violates Equal Protection**

6 The Rental Housing Ordinance discriminates against residential tenants. The  
7 law requires tenants to: (a) undergo a criminal background check to secure housing;  
8 (b) register in the Hesperia Police Department’s “Crime Free” database, which  
9 maintains files associating tenants’ personal information and present and past home  
10 addresses with information culled from police call logs; and (c) leave their homes if  
11 the Police Chief provides a notice of “criminal activity” to their landlords, regardless  
12 of whether they have been convicted of, charged with, or even arrested for any crime.  
13 The Ordinance does not impose such burdens on individuals who own their homes  
14 or on commercial renters.<sup>14</sup> By excluding homeowners and commercial renters from  
15 the Ordinance’s scope, the City expresses hostility towards a disfavored group,  
16 residential renters, and communicates the presumption that individuals belonging to  
17 that group are uniquely inclined to engage in “criminal” behavior.<sup>15</sup>

18 The legislative history of the Rental Housing Ordinance establishes that the  
19 City enacted it to serve an impermissible discriminatory purpose. Council member  
20 Blewett openly stated at a City Council meeting that the purpose of the ordinance is  
21 to uproot groups deemed undesirable by the City Council from the community “to  
22 correct a demographical problem” in Hesperia. Eichenblatt Decl., Ex. B, at 42:13;

23 \_\_\_\_\_  
24 <sup>14</sup> See *Cook v. City of Buena Park*, 126 Cal. App. 4th 1, 10 (2005) (Bedsworth,  
25 Acting P.J., concurring) (expressing concern that an ordinance similar to the Rental  
26 Housing Ordinance suffered from “fundamental constitutional infirmities” due to its  
“disparate treatment of property owners and renters”).

27 <sup>15</sup> This presumption is not constitutional, *Plyler v. Doe*, 457 U.S. 202, 216 n. 14  
28 (1982), nor supported by the legislative record. See *infra* at 21-22.

1 *see also id.* at 43:23 (“We better improve our demographic”). Specifically, the  
2 legislative record shows that City officials adopted the ordinance for the purpose of  
3 forcing out a perceived excess of renters who (a) live in low-income or affordable  
4 housing,<sup>16</sup> or (b) have criminal records.<sup>17</sup> *See, e.g., id.*, Ex. C at 2:04:50 (Leonard:  
5 “[O]ur rental housing, and our section 8 housing . . . is just crazy high. And you  
6 know we’ve had a lot of people from over the hills move up here who are not very  
7 friendly people. We need to work on getting them out of here . . . . [T]hese people  
8 who are sucking up section 8 housing, we need to get ‘em out.”); *id.*, Ex. D at 55:55  
9 (Blewett: “People who commit criminal acts . . . frankly I want them the hell out of  
10 my town, and I don’t care where they go. Because those kinds of people, I don’t  
11 care what fair housing says about them, but those people are of no addition and no  
12 value to the community . . .”).

13 In *U.S. Dep’t of Agric. v. Moreno*, 413 U.S. 528 (1973), the Supreme Court  
14 invalidated a federal statute that excluded individuals living with unrelated persons  
15

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16 <sup>16</sup> The Rental Housing Ordinance operates—and is intended to operate—as  
17 economic discrimination. The law does not surveil, punish, and drive out those  
18 persons most likely to commit crimes or create nuisances, but only those persons  
19 who are not financially able to purchase their own residences in the city. *See*  
20 *Moreno*, 413 U.S. at 541 (striking challenged regulation that “in practical operation”  
21 affected not those persons most likely to commit fraud, but “only those persons . . .  
22 so desperately in need of aid that they cannot even afford to alter their living  
23 arrangements”). The City Council’s discussions illustrate that the Rental Housing  
24 Ordinance was primarily motivated by council members’ opinions about the  
25 changing character of “the community,” rather than any legitimate interest in public  
26 health or safety.

27 <sup>17</sup> The City Council conflated the two groups (low-income renters and people with  
28 criminal records). *See* Eichenblatt Decl., Ex. B, at 58:17 (Mayor Pro Tem: “The  
people who aggravate us come here for affordable housing because the state forces  
us to give them affordable housing . . . . [W]e all know there’s a significant number  
of them that come from somewhere else with their tainted history”); *id.*, Ex. C, at  
1:31:31 (suggesting that someone with a low credit score probably has a criminal  
record).

1 from receiving food stamps, where the legislative record revealed legislators’ intent  
2 to prevent “hippies” and “hippie communes” from participating in the federal food  
3 stamp program. *Id.* at 534. The Court held that the statute violated equal protection  
4 because it had an illegitimate purpose: to “discriminate against hippies.” *Id.*

5 Here, similarly, the legislative record reveals that the intent of the City  
6 Council in adopting the Rental Housing Ordinance was to exclude low-income  
7 renters and people with criminal records from housing in Hesperia. Because the  
8 Rental Housing Ordinance is based on this illegitimate discriminatory purpose, it is  
9 invalid under the Equal Protection Clause. *Id.*; *see also People v. Blakeman*, 170  
10 Cal. App. 2d 596, 597 (1959) (“[B]anishment is proscribed by the fundamental  
11 policy of not permitting one political division to dump undesirable persons upon  
12 another . . . .”)

13 The plain language of the Rental Housing Ordinance “indelibly express[es]  
14 its discriminatory basis.” *Parr*, 3 Cal. 3d at 865. The Ordinance’s declaration of  
15 purpose describes occupants of residential rental properties as the cause of illegal  
16 activity, public nuisances, decline in property values, and “a disproportionate share  
17 of code enforcement and law enforcement calls for service.” Wong TRO Decl., Ex.  
18 F, at 1. But the declaration’s assertions are not supported by the legislative record.<sup>18</sup>  
19 According to evidence that the City Council received during consideration of the  
20 Rental Housing Ordinance, roughly one third of Hesperia’s law enforcement calls  
21 for service come from rental properties, and roughly one third of Hesperia residents  
22 live in rental properties. Eichenblatt Decl., Ex. C, at 1:07:50; *see also* Wong TRO

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23  
24 <sup>18</sup> At best, the Ordinance is based on City Council members’ unfounded assumptions  
25 about the criminal propensities of residential renters. “Legislation predicated on  
26 such prejudice is . . . incompatible with the constitutional understanding that each  
27 person is to be judged individually and is entitled to equal justice under the law.”  
28 *Plyler*, 457 U.S. at 216 n. 14; *see also Cleburne*, 473 U.S. at 435 (zoning ordinance  
based on prejudice and negative stereotypes about individuals with mental  
disabilities violated the Equal Protection Clause).

1 Decl., Ex. H, at 2. The declaration of purpose does not, therefore, reveal a legitimate  
2 basis for the Rental Housing Ordinance. Rather, it demonstrates the City’s  
3 impermissible intent to stigmatize residential tenants.

4 In *Parr*, the California Supreme Court held that a municipal ordinance that  
5 prohibited sitting on monuments, sidewalks, steps, or lawns violated the Equal  
6 Protection Clause, where the “Declaration of Urgency” accompanying the ordinance  
7 stated that its purpose was to respond to an “extraordinary influx of undesirable and  
8 unsanitary visitors to the City, sometimes known as ‘hippies.’” 3 Cal. 3d at 863.  
9 The court held: “By using official Municipal Code language to single out a social  
10 group and stigmatize its members . . . the city council violated the constitutional  
11 guaranty of the equal protection of the laws.” *Id.* at 868. Like the ordinance in *Parr*,  
12 the Rental Housing Ordinance employs the language of municipal law to single out  
13 a specific group of people and stigmatize them—by characterizing them as bad  
14 residents and likely criminals. Equal Protection prohibits such laws, which  
15 constitute “expressions of hostility or antagonism to certain groups of individuals.”  
16 *Id.* at 864.

17 **b. The Group Home Ordinance Violates Equal Protection**

18 The Group Home Ordinance plainly discriminates against persons on  
19 probation. It allows individuals not related by blood or marriage to share a residence  
20 —unless they are on probation. The City adopted and has enforced the Group Home  
21 Ordinance for the purpose of excluding persons on probation—particularly those in  
22 need of housing assistance—from the city’s residential neighborhoods. This  
23 illegitimate purpose is evident on the face of the ordinance and in the legislative  
24 record.

25 The Ordinance does not merely enact a rule of general applicability that  
26 disadvantages people on probation; it explicitly names them to impose special  
27 restrictions on their housing. *See* Hesperia Municipal Code § 16.16.072(C)(2). In  
28 *Romer*, the Supreme Court held that laws “singling out a certain class of citizens”

1 for disfavored status or hardship are constitutionally suspect, because they “raise the  
2 inevitable inference that the disadvantage imposed is born of animosity towards the  
3 class of persons affected.” *Romer*, 517 U.S. at 634-65. Like the law struck down in  
4 *Romer*, the Group Home Ordinance “has the peculiar property” of imposing a  
5 blanket, “undifferentiated disability” on a specific named group.<sup>19</sup> *Id.* at 632. It  
6 “identifies persons by a single trait,” *id.* at 633, then limits their ability to secure an  
7 essential need (adequate and affordable housing), while denying them an important  
8 liberty (the freedom to choose one’s household companions). *See Adamson*, 27 Cal.  
9 3d at 133. Thus, the plain language of the Group Home Ordinance indicates that the  
10 City adopted the “probationer home” prohibition in service of a “bare desire” to  
11 marginalize and harm this politically unpopular group. *Romer*, 517 U.S. at 634.

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

22 The legislative record does not contain evidence of a legitimate basis for the

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23  
24 <sup>19</sup> By imposing a blanket residency restriction on all probationers, the Group Home  
25 Ordinance differs from and conflicts with state law, which requires an individualized  
26 determination of what residency restrictions, if any, are appropriately placed on an  
27 individual as a term of probation. Cal. Pen. Code § 1203.1(j); *c.f. Cleburne*, 473  
28 U.S. at 473 (“[The] ordinance sweeps too broadly to dispel the suspicion that it rests  
on a bare desire to treat the retarded as outsiders, pariahs who do not belong in the  
community.”)



1 City's determination that "probationer group homes" are "illegitimate." Nor does  
2 the record support any connection between the ordinance and any legitimate public  
3 safety concerns.<sup>20</sup> Rather, the record reveals that the Ordinance is based on sweeping  
4 and amorphous anxiety relating to the mere presence of parolees and sex offenders  
5 in residential neighborhoods, which the Ordinance extends, without justification, to  
6 people on probation. *See Wong TRO Decl., Exs. D-E.* Such broad and  
7 undifferentiated fear of living in proximity to "undesirables" is not a constitutionally  
8 permissible basis for treating the homes of people on probation differently than other  
9 homes. *Cleburne*, 473 U.S. at 448-49.

10 For the reasons stated, it is evident that the City enacted both the Group Home  
11 Ordinance and the Rental Housing Ordinance to carry out illegitimate discriminatory  
12 purposes, not legitimate municipal objectives. The Ordinances thus violate equal  
13 protection and are invalid. *Diaz v. Brewer*, 656 F.3d 1008 (9th Cir. 2011); *Parr*, 3  
14 Cal. 3d at 870 (striking ordinance whose "transparent, indeed . . . avowed purpose"  
15 was "to discriminate against an ill-defined social caste whose members [we]re  
16 deemed pariahs by the city fathers").

#### 17 **IV. CONCLUSION**

18 For the foregoing reasons, preliminary relief is necessary and warranted.  
19 Accordingly, Plaintiffs respectfully request that the Court grant their motion for a  
20 preliminary injunction.<sup>21</sup>

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21  
22 <sup>20</sup>There is no rational connection between enhancing public safety and excluding  
23 people from housing. *Cf. In re Taylor*, 60 Cal. 4th 1019, 1038 (2015) (blanket  
24 enforcement of mandatory residency restrictions could not survive deferential  
25 rational basis standard of review, because it "imposed . . . disabilities on the affected  
26 parolees' liberty and privacy rights . . . while producing conditions that hamper,  
27 rather than foster, efforts to monitor, supervise, and rehabilitate these persons").

28 <sup>21</sup>This Court has the authority to issue a preliminary injunction without requiring  
Plaintiffs to post a security. *See People ex rel. Van de Kamp v. Tahoe Reg'l Planning  
Agency*, 766 F.2d 1319, 1325-26 (9th Cir. 1985), *modified*, 775 F.2d 998 (9th Cir.

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DATED: June 13, 2016

ACLU FOUNDATION OF SOUTHERN CALIFORNIA

By: /s/ Adrienna Wong  
ADRIENNA WONG  
Counsel for Plaintiffs

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1985). Factors that support waiving the security requirement for preliminary relief include a strong likelihood of success on the merits; the plaintiff's limited financial resources; a finding that the security requirement will hamper the plaintiff's ability to enforce a federal right in court; and a speculative fiscal impact of the injunction on the defendant. *Id.*; see also *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 385-86 n.42 (C.D. Cal. 1982). These reasons support waiving any security requirement in this case. Green TRO Decl., ¶ 29.

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11 *Attorneys for Plaintiffs*

12 UNITED STATES DISTRICT COURT  
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
14

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

16 Plaintiffs,

17 vs.

18 CITY OF HESPERIA *et al.*,

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

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

1           Having reviewed the Complaint, Plaintiff’s Motion for Preliminary  
2 Injunction, the memorandum of points and authorities, declarations, and exhibits in  
3 support thereof, and all other filings in this case, the Court rules that Plaintiffs are  
4 entitled to a preliminary injunction. Plaintiffs face irreparable harm in the form of  
5 eviction, homelessness, and interruption of crucial, time-sensitive services, as well  
6 as the potential violation of their constitutional rights, in the absence of preliminary  
7 relief. In contrast, Defendants will not be seriously harmed by the issuance of a  
8 preliminary injunction. Accordingly, the balance of equities weighs heavily in favor  
9 of Plaintiffs’ motion. Plaintiffs have shown a likelihood of success on the merits,  
10 and a preliminary injunction is in the public interest.

11           **ACCORDINGLY, IT IS ORDERED** that Defendants and their officials,  
12 agents, and employees, pending a judgment on the merits, refrain from:

13           1.     Taking any action to enforce Hesperia Municipal Code § 16.16.072  
14 against Plaintiffs or the properties occupied by Plaintiffs on Azalea Springs Avenue,  
15 La Crescenta Street, and Hollister Street, including but not limited to issuing any  
16 citation, fine, or notice for violation of section 16.16.072(C)(2) or failure to obtain a  
17 conditional use permit prohibited by section 16.16.072(C)(2); and

18           2.     Taking any action to enforce or threaten to enforce Hesperia Ordinance  
19 2015-12 (Nov. 17, 2015) against Plaintiffs or the properties occupied by Plaintiffs  
20 on Azalea Springs Avenue, La Crescenta Street, and Hollister Street, including but  
21 not limited to the issuance of any notification of “criminal activity” relating to  
22 Plaintiffs under or in furtherance of Ordinance 2015-12, and any demand for  
23 disclosure of private and identifying information regarding Plaintiffs and those  
24 similarly situated.

25           As Plaintiffs have limited financial resources and Defendants are unlikely to  
26 suffer any damage as a result of this restraining order, no bond is required.

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1 IT IS SO ORDERED.

2

3 DATED: \_\_\_\_\_

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\_\_\_\_\_  
THE HONORABLE ANDRE BIROTTE, JR.  
UNITED STATES DISTRICT JUDGE

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