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APARTMENT ASSOCIATION OF LOS
7 ANGELES COUNTY, INC., dba "APARTMENT
ASSOCIATION OF GREATER LOS ANGELES,"
8 APARTMENT OWNERS ASSOCIATION OF
CALIFORNIA, INC.
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES, CENTRAL JUSTICE CENTER

12 APARTMENT ASSOCIATION OF
LOS ANGELES COUNTY, INC., dba
13 "APARTMENT ASSOCIATION OF
GREATER LOS ANGELES,"
14 APARTMENT OWNERS
ASSOCIATION OF CALIFORNIA,
15 INC.,

16 Plaintiff,

17 vs.

18 COUNTY OF LOS ANGELES and
DOES 1 through 25, inclusive,

19 Defendant.
20

Case No. 22STCV08225

Judge:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF TO
ENJOIN ENFORCEMENT OF
COUNTY OF LOS ANGELES'
RENEWED COVID-19 EVICTION
BAN**

(42 U.S.C. § 1983 and C.C.P. § 1060)

Date Action Filed:
Trial Date: Not Set

21 Plaintiffs APARTMENT ASSOCIATION OF LOS ANGELES COUNTY,
22 INC., dba "APARTMENT ASSOCIATION OF GREATER LOS ANGELES"
23 ("AAGLA") and APARTMENT OWNERS ASSOCIATION OF CALIFORNIA,
24 INC. ("AOA") (collectively, "Plaintiffs") allege as follows:

25 **INTRODUCTION**

26 1. At the onset of the COVID-19 pandemic ("Pandemic"), on March 19, 2020,
27 Defendant County of Los Angeles ("County") issued its "Safer at Home" order, requiring most
28

1 businesses in the County to close temporarily in an effort to “slow the spread” of the coronavirus
2 pathogen. Retail businesses such as restaurants and bars were particularly hit hard and financially
3 devastated from the order, as were many thousands of County residents who were either laid off or
4 furloughed as a result of the County’s edict.

5 2. On the same day (March 19, 2020), knowing the County would be eliminating
6 hundreds of thousands of jobs in the County, the Chair of the Los Angeles County Board of
7 Supervisors issued an executive order implementing a “Countywide ban on evictions” for
8 impacted residential tenants, and inviting such tenants to withhold payment of monthly rent to a
9 later date. Thereafter, on or about March 31, 2020, the County’s Board of Supervisors (“Board”)
10 ratified the Chair’s executive order in its legislatively-adopted eviction ban (“Original Eviction
11 Ban”). Over the succeeding months, the County’s Board and health experts continued to extend
12 and modify both the “Safer at Home” order and Original Eviction Ban. The County did so
13 without any plan in place to provide rental assistance or other relief to landlords, whom the
14 County has punished (and continues to punish) for the simple “offense” of providing needed
15 housing to the County’s residents.

16 3. On August 31, 2020, with the County’s Original Eviction Ban set to expire several
17 weeks later, Governor Newsom signed into law Assembly Bill 3088, imposing, among other
18 things, a statewide ban on residential evictions of tenants willing to attest to being impacted by the
19 pandemic under penalty of perjury and willing to pay 25% of their rental obligations accruing after
20 September 1, 2020. The statewide ban also expressly preempted any local moratorium on
21 evictions enacted or renewed after August 19, 2020. The statewide moratorium on evictions for
22 failure to pay rent was extended twice, but the last extension expired on its own terms as of
23 September 2021 and has not been renewed. Although the last extension expired in September
24 2021, the statewide moratorium continued to have a preemptive effect on the ability of cities and
25 counties to implement new residential eviction controls until April 1, 2022. Because the County’s
26 Original Eviction Ban had expired (and could not be renewed until April 2022), between October
27 1, 2021 (when residential tenants not complying with the requirements for protection under state
28 law were allowed to be evicted under state law), and the filing of this Complaint, residential

1 evictions for such non-qualifying tenants have been allowed in the County based on the failure to
2 pay rent. Indeed, as of the filing of this Complaint, tenants residing in the County who elected not
3 to seek protection under the state moratorium, may be evicted for the failure to pay rent.

4 4. Notwithstanding the fact that the California Legislature and most other local
5 agencies did not believe the conditions warranted any further eviction bans after the statewide ban
6 expired in September 2021, on January 25, 2022, the County’s Board doubled-down on their
7 crusade against landlords and adopted a brand new eviction ban (which the County has elected to
8 soften by simply relabeling it the “COVID-19 Tenant Protections Resolution” and hereinafter
9 referred to as “Renewed Eviction Ban” or “Ban”), for the duration 2022 and potentially (with
10 respect to some tenants) through June 30, 2023. The County did so even though: 1) the County
11 and its health experts have made clear they have no plans for further business lock-down orders or
12 stay-at-home orders given the high vaccination rates in the County; 2) the unemployment figures
13 for the County, like the nation, have improved dramatically since the original lockdowns
14 throughout 2020 and into 2021; 3) COVID-19 hospitalizations and deaths are nowhere near the
15 levels they were at in 2020 and even 2021 when the Delta variant spread through the County; and
16 4) there is simply no evidence to suggest that by April 1, 2022, when the County’s Renewed
17 Eviction Ban takes effect, there will be any need whatsoever for further eviction controls at the
18 regional level.

19 5. A central component of the County’s Renewed Eviction Ban is its provisions
20 allowing for tenant self-certification of financial hardship. Under the Renewed Eviction Ban as it
21 presently stands, all residential tenants “may provide, and Landlords must accept . . . [a]
22 Residential Tenant’s self-certification of an inability to pay rent[.]” Self-certification is critical to
23 the Renewed Eviction Ban’s overall operation because self-certification is one of the three
24 requirements necessary for a tenant to assert protections under it: “a Residential Tenant is
25 protected from eviction . . . so long as [1] the reason for nonpayment was Financial Impacts
26 Related to COVID-19, and [2] the Residential Tenant has provided notice to the Landlord to this
27 effect and [3] self-certified their financial hardship.” Starting April 1, 2022, landlords in the
28 County may no longer evict residential tenants claiming an impact from the pandemic, nor may

1 landlords even challenge a tenant’s “self-certification” of financial hardship. After May 31, 2022,
2 all residential tenants whose household incomes are at or below 80 percent of the Area Median
3 Income may continue to self-certify financial hardship.

4 6. While the County claims that its Renewed Eviction Ban reflects the lessons the
5 County has learned over the many months (now years) since the beginning of the pandemic, the
6 County has not learned the lesson most recently taught by the United States Supreme Court
7 concerning “tenant self-certification.” In August 2021, the Supreme Court in *Chrysaifis v. Marks*
8 (2021) 141 S. Ct. 2482, granted an application for injunctive relief enjoining nearly identical self-
9 certification provisions in New York state law prohibiting COVID-19-related evictions. Under the
10 law enjoined by the Court, “[i]f a tenant self-certifies financial hardship, [the state law] generally
11 precludes a landlord from contesting that certification and denies the landlord a hearing.” (*Ibid.*)
12 Citing procedural due process principles, the Court held that the scheme “violates the Court’s
13 longstanding teaching that ordinarily ‘no man can be a judge in his own case’ consistent with the
14 Due Process Clause.” (*Ibid.* [citation omitted].)

15 7. The County’s Renewed Eviction Ban also runs afoul of substantive due process
16 because it is not a rational means of advancing legitimate state interests. The County has
17 expressed that it has no intention to adopt new shutdown orders regarding businesses. Yet, as of
18 January 25, 2022 when the County adopted its Renewed Eviction Ban in the face of “surging”
19 Omicron cases, landlords throughout the County could evict impacted tenants for failure to pay
20 rent. But there was no “flood of evictions” at the time and the County certainly has not pointed to
21 any evidence to suggest that evictions may increase as of April 1, 2022, when the Renewed
22 Eviction Ban for failure to pay rent goes into effect. Indeed, as of the filing of this Complaint,
23 Omicron is no longer surging. The County has in fact admitted to the vast improvement of
24 pandemic conditions throughout the County and on March 4, 2022, the County even lifted its
25 indoor mask mandate in part because the County “continues to experience consistent declines in
26 COVID-19 cases, test positivity rates, and related hospitalizations.” Most visibly, the County also
27 invited hundreds of thousands of football fans throughout the world to travel to the County and
28 attend and gather for the NFL Super Bowl. When compared to the destruction of landlord

1 livelihoods at the hands of government officials and opportunistic tenants that has persisted since
2 March 2020, the “need” to continue commandeering residential properties to house non-paying
3 tenants is non-existent. Quite simply, the Renewed Eviction Ban does not advance—to any
4 degree—any legitimate public purpose. Now in year three of the pandemic, the Renewed Eviction
5 Ban is not tailored to protect the health and safety of County residents in any rational or legitimate
6 manner.

7 8. Finally, the Renewed Eviction Ban’s standardless categories purporting to define
8 “Financial Impacts” relevant to a tenant’s self-certification are woefully vague. The Ban’s failure
9 to give meaningful substance to the terms allowing for self-certification effectively allows tenants
10 to unilaterally define the scope and extent of the Ban’s protections as to them. The Renewed
11 Eviction Ban is independently infirm as void for vagueness under well-established due process
12 principles.

13 9. The self-certification provisions in the County’s Renewed Eviction Ban are not
14 severable. If they were, the Ban would become even more constitutionally offensive, as tenants
15 could exploit its benefits as to them without any attestation or proof whatsoever.

16 10. As set forth below, Plaintiff asserts that the Renewed Eviction Ban violates
17 procedural and substantive due process, and is void for vagueness, under the Fourteenth
18 Amendment to the United States Constitution. The Ban’s self-certification provisions and
19 hopelessly vague “criteria” for protection are inextricably intertwined with its other provisions.
20 Thus, the entirety of the County’s Renewed Eviction Ban must be enjoined.

21 PARTIES

22 11. Plaintiff Apartment Association of Los Angeles County, Inc., doing business as
23 “Apartment Association of Greater Los Angeles” (“AAGLA”) at all relevant times, is and was a
24 California mutual benefit Corporation organized and authorized to do business and doing business
25 in the State of California. Founded in 1917, AAGLA is comprised of over 10,000 members that
26 own or manage over 200,000 rental housing units throughout the counties of Los Angeles,
27 Ventura, and San Bernardino. For over 105 years, AAGLA has served rental housing providers
28 through education and management advice, and as an advocate for rental housing providers at the

1 local, county, state, and federal levels of government.

2 12. Plaintiff Apartment Owners Association of California, Inc. (“AOA”), at all relevant
3 times, is and was one of the largest apartment associations in California. AOA was formed in
4 1982 by founder and chief executive officer, Daniel C. Faller. AOA has provided California
5 apartment owners with low-cost, full service resources since 1982. AOA is one of the largest,
6 individually organized groups of apartment owners in the state of California and has over 20,000
7 members throughout California.

8 13. Defendant County of Los Angeles is a charter county organized and existing as a
9 legal subdivision under the laws of the State of California.

10 14. Plaintiffs do not know the true names and capacities of Defendants Does 1 through
11 25, inclusive, and therefore sues them by their fictitious names. Plaintiffs allege that Defendants
12 Does 1 through 25, inclusive, are jointly, severally and/or concurrently liable and responsible for
13 the injuries set forth herein, acting on their own or as the agents of named Defendants. Plaintiffs
14 will amend this Complaint to insert the true names of the fictitiously-named Defendants when the
15 same are ascertained.

16 15. Plaintiffs are informed and believe and thereon allege that each Defendant was the
17 agent and/or employee of every other Defendant, and at all times relevant hereto was acting within
18 the course and scope of said agency and/or employment.

19 VENUE

20 16. Venue is proper because the regulatory actions challenged as violating due process
21 have been applied to properties located in the county and judicial district in which this action is
22 filed.

23 FACTUAL ALLEGATIONS

24 **Government Response to Pandemic Re Evictions**

25 17. During the early days of the COVID-19 pandemic, the State and County enacted a
26 flurry of executive orders, regulations and legislative acts relating to evictions, as alleged in more
27 detail herein below.

28

The State's Response

1
2 18. On March 4, 2020, Governor Newsom issued a “State of Emergency” Order to
3 address the threat of the spread of the Pandemic throughout California’s communities.

4 19. On March 16, 2020, Governor Newsom issued Executive Order N-28-20
5 authorizing and inviting local governments to halt evictions of tenants. In relevant part, the Order
6 purported to suspend provisions of state law that would “preempt or otherwise restrict a local
7 government’s exercise of its police power to impose substantive limits on residential or
8 commercial evictions,” but only to the extent that “[t]he basis for the eviction is nonpayment of
9 rent . . . arising out of a substantial decrease in household or business income” caused by the
10 Pandemic or the government response thereto. The Order also required that the decrease in
11 income be “documented.” The Order initially provided that such protections would only be in
12 effect through May 31, 2020.

13 20. On March 27, 2020, Governor Newsom issued Executive Order N-37-20 restricting
14 residential evictions through May 31, 2020, if certain conditions were met, including that the
15 tenant notified the landlord in writing of her “inability to pay the full amount due to reasons
16 related to COVID-19,” within 7 days of the date the rent was due. The Order also required that
17 tenants retain “verifiable documentation” explaining their changed financial circumstances, as an
18 affirmative defense to an unlawful detainer action.

19 21. On May 29, 2020, Governor Newsom issued Executive Order No. N-66-20,
20 extending the eviction protections for an additional 60 days.

21 22. On June 30, 2020, Governor Newsom issued Executive Order N-71-20, extending
22 the timeframe for the protections provided by N-28-20 that authorized local governments to halt
23 evictions for renters impacted by COVID-19 through September 30, 2020.

24 23. On September 1, 2020, Governor Newsom signed Assembly Bill 3088 (“AB
25 3088”) providing that, among other things, residential tenants who were unable to pay rent
26 between March 1, 2020, and January 31, 2021, due to financial distress related to COVID-19 were
27 protected from eviction, pursuant to certain requirements. AB 3088 provided that landlords could
28 bring unlawful detainer actions against nonpaying tenants as of October 5, 2020, if a tenant failed

1 to deliver a declaration stating her inability to pay due to COVID-19-related financial distress.
2 Furthermore, AB 3088 required residential tenants, by January 31, 2021, to pay at least 25 percent
3 of rent owed for the months of October 2020 through January 2021. Finally, AB 3088 provided
4 that actions adopted by local governments between August 19, 2020, and January 31, 2021, to
5 protect residential tenants from eviction due to financial hardship related to COVID-19, were
6 temporarily preempted.

7 24. On January 29, 2021, Governor Newsom signed Senate Bill 91 (“SB 91”) into law,
8 which extended AB 3088’s eviction protections through June 30, 2021, as well as the temporary
9 preemption of a local jurisdiction’s ability to enact new or amend existing eviction protections.

10 25. On June 28, 2021, Governor Newsom signed Assembly Bill 832 (“AB 832”),
11 further extending the statewide moratorium through September 30, 2021. AB 832 provided that
12 any local ordinances, resolutions, regulations, or administrative actions adopted “in response to the
13 COVID-19 pandemic to protect tenants from eviction,” including extensions, expansions,
14 renewals, reenactments, or new adoptions, “shall have no effect before April 1, 2022.” (Code Civ.
15 Proc. § 1179.05, subd. (a)(1).)

16 *The California Courts’ Response*

17 26. On April 6, 2020, the California Judicial Council, the policymaking body of the
18 California courts, issued temporary measures, including Rules 1 and 2, which effectively
19 prohibited the bringing of unlawful detainer actions and judicial foreclosures. This independent
20 eviction moratorium expired on September 1, 2020.

21 *The County’s Response*

22 27. Since March 2020, the County of Los Angeles has enacted and continues to enact
23 resolutions and regulations relating to evictions, as alleged in more detail herein below.

24 28. On March 4, 2020, the Los Angeles County Board of Supervisors (“Board”)
25 proclaimed and ratified a local emergency. On that same day, the County Health Officer
26 determined there to be an imminent and proximate threat to public health due to COVID-19 within
27 the County and concurrently declared a Local Health Emergency.

28 29. On March 19, 2020, as previously alleged, the Chair of the Board issued an

1 executive order imposing the Original Eviction Ban for non-payment of rent by residential and
2 commercial tenants impacted by COVID-19, commencing March 4, 2020, and initially set to
3 expire on May 31, 2020.

4 30. On March 31, 2020, the Board ratified the Chair's Original Eviction Ban.

5 31. On April 14, 2020, the Board amended the County moratorium to include all
6 incorporated cities within the County, as well as include all mobilehome owners who rented space
7 in mobilehome parks within the Original Eviction Ban.

8 32. On May 12, 2020, the Board decided to extend the Original Eviction Ban the
9 through June 30, 2020. Also on that day, the Board determined to reevaluate the Original Eviction
10 Ban every thirty days.

11 33. On June 23, 2020, the Board again extended the Original Eviction Ban through
12 July, 31, 2020.

13 34. On July 21, 2020, the Board extended the Original Eviction Ban through
14 September 30, 2020.

15 35. On September 1, 2020, the Board again extended the Original Eviction Ban
16 through October 31, 2020, and established the County's eviction protections as the baseline for all
17 incorporated cities within Los Angeles County, including cities with their own local eviction
18 moratoria, to the extent a city's moratorium does not include the same or greater tenant protections
19 as the County Moratorium. Because this occurred after August 19, 2020, the newly enacted state
20 moratorium (via AB 3088) preempted the County's local protections for nonpayment of rent
21 through February 1, 2021.

22 36. On October 13, 2020, the Board again attempted to extend the Original Eviction
23 Ban through November 30, 2020.

24 37. On November 10, 2020, the Board, yet again, tried to extend the Original Ban
25 through January 31, 2021.

26 38. On December 8, 2020, the Board approved amending and restating the Original
27 Eviction Ban to include prohibitions on harassment or intimidation of residential mobilehome
28 space renters and delineated the types of forbidden harassing and intimidating acts. The Board also

1 added further protections for residential and mobilehome space renters.

2 39. On January 5, 2021, the Board purported again to extend the Original Eviction Ban
3 through February 28, 2021. However, the State legislature, via SB 91 (signed by the Governor on
4 January 29, 2021) extended the State law’s preemptive effects on local ordinances through July 1,
5 2021, for any extensions or renewals passed by local bodies “that occur[ed] between August 19,
6 2020, and June 30, 2021.”

7 40. On February 23, 2021, the Board purported to extend the Original Eviction Ban the
8 through June 30, 2021, thus eliminating the practice of extending it each month.

9 41. On June 22, 2021, the Board again tried to extend non-preempted provisions of the
10 Original Eviction Ban through September 30, 2021. However, the State legislature, via AB 832
11 (signed by the Governor on June 28, 2021) extended the State law’s preemptive effects on local
12 ordinances through April 1, 2022, for any extensions or renewals passed by local bodies “that
13 occur[ed] between August 19, 2020, and March 31, 2022.”

14 42. On September 28, 2021 the Board approved extending the non-preempted
15 provisions of the Original Eviction Ban through January 31, 2022.

16 **The County’s Renewed Eviction Ban**

17 43. Even though the County continues to extend its Eviction Bans frequently, as
18 previously alleged, the ban on evictions at least for the non-payment of rent was (and now
19 currently is) preempted under the statewide eviction ban memorialized in AB 3088 (extended by
20 SB 91 and AB 832). AB 3088 provided that any local eviction moratorium extended, expanded,
21 renewed or reenacted after August 19, 2020, could not take effect until after January 31, 2021. By
22 operation of SB 91 and AB 832, any such attempts to extend, expand, renew or reenact local
23 moratoria could have no effect before April 1, 2022.

24 44. At their recent meeting on January 25, 2022, the Board adopted its Renewed
25 Eviction Ban. This new moratorium generally comes in two phases: Phase 1 is from February 1,
26 2022 through May 31, 2022, and Phase 2 is from June 1, 2022 through December 31, 2022. Phase
27 1 is substantially identical to the prior extensions of the Original Eviction Ban, and bans evictions
28 for any tenants impacted by the pandemic. Because the Renewed Eviction Ban cannot as a matter

1 of state law take effect until April 1, 2022 for evictions based on the nonpayment of rent, such
2 evictions may take place in the County only until April 1, 2022 (unless enjoined by this Court).
3 Phase 2, effective as of June 1, 2022, will extend protections against evictions for the failure to
4 pay rent only to households with income at or below 80% Area Median Income (“AMI”). Other
5 protections (such as the ban against evictions for unauthorized occupants or pets) would remain in
6 Phase 2. At that time, the County also laid the groundwork for a potential third phase running
7 from January 1, 2023, through June 30, 2023, which would eliminate all protections other than for
8 the failure to pay rent by tenants with income at or below 80% AMI. A copy of the January 25,
9 2022 Motion and Ordinance as approved by the County’s Board of Supervisors is attached hereto
10 as **Exhibit A**.

11 45. Importantly, the Renewed Eviction Ban (now stylized by the County as “Tenant
12 Protections”) allows for tenant self-certification of financial hardship. Specifically, during Phase
13 1, all “Residential Tenants seeking protection under this Resolution, may provide, and Landlords
14 must accept . . . [a] Residential Tenant’s self-certification of inability to pay rent[.]” Phase 2
15 limits tenant self-certification to tenants whose household income is at 80 percent of Area Medium
16 Income or below. Self-certification is critical to the Renewed Eviction Ban’s overall operation
17 because it provides that “a Residential Tenant is protected from eviction . . . so long as the reason
18 for nonpayment was Financial Impacts Related to COVID-19, and the Residential Tenant has
19 provided notice to the Landlord to this effect and self-certified their financial hardship[.]”

20 46. Finally, the self-certification provisions of the County’s Renewed Eviction Ban are
21 not severable as they are inextricably intertwined with the overall operation of the moratorium.
22 California courts consider four factors when assessing severability of unconstitutional provisions
23 in municipal ordinances. (See *Vivid Entm’t, LLC v. Fielding* (2014) 774 F.3d 566, 573–77
24 [applying California law and finding that factors are whether the ordinance includes a severability
25 clause, though this is “not conclusive,” as well as whether the challenged provision is
26 “grammatically, functionally, and volitionally separable”].) To enjoin only the self-certification
27 provisions of the Renewed Eviction Ban would render the Ban even more constitutionally
28 offensive to property owners’ and lessors’ due process rights. For example, if the Court severed

1 the self-certification provisions but left the Ban’s remaining provisions intact, then tenants could
2 be protected from eviction “so long as the reason for nonpayment was Financial Impacts Related
3 to COVID-19, and the Tenant has provided notice to the Landlord to this effect.” Indeed, severing
4 the unconstitutional self-certification provisions of the Renewed Eviction Ban would amplify its
5 unconstitutionality rather than save it.

6 **FIRST CLAIM FOR RELIEF**

7 **Procedural Due Process – Fourteenth Amendment of the U.S. Constitution;**

8 **42 U.S.C. § 1983**

9 ***(By Plaintiffs against All Defendants)***

10 47. Plaintiffs incorporate herein by reference each and every allegation contained in the
11 preceding paragraphs of this Complaint as though fully set forth herein.

12 48. The Due Process clause of the Fourteenth Amendment to the United States
13 Constitution provides in part: “[N]or shall any State deprive any person of life, liberty, or
14 property, without due process of law.”

15 49. Property owners have a legitimate property interest, grounded in state law, in the
16 property they own and in the right to retake possession of that property pursuant to California’s
17 unlawful detainer process. (See, e.g., *Alabama Ass’n of Realtors v. Dep’t of Health & Human*
18 *Servs.* (2021) 141 S. Ct. 2485, 2489 “[P]reventing [landlords] from evicting tenants who breach
19 their leases intrudes on one of the most fundamental elements of property ownership—the right to
20 exclude.”.)

21 50. The County’s Renewed Eviction Ban deprives property owners of their procedural
22 due process right to “be heard at a meaningful time and in a meaningful manner” with respect to a
23 tenants’ self-certification of financial hardship. (*Matthews v. Eldridge* (1976) 424 U.S. 319, 335.)
24 Indeed, the Supreme Court found that a nearly identical COVID-19 eviction scheme in New York
25 state law deprived the property owner plaintiffs of their due process rights by allowing a tenant’s
26 “self-certific[ation] [of] financial hardship” to block eviction proceedings and “den[y] the landlord
27 a hearing.” (*Chrysafis, supra*, 141 S. Ct. at p. 2482.) Here, under the Ban, “[n]o landlord shall
28 evict a Tenant . . . so long as the reason for nonpayment was Financial Impacts Related to

1 COVID-19, and the Tenant has provided notice to the Landlord to this effect and certified their
2 financial hardship[.]”

3 51. Moreover—like the New York law invalidated in *Chrysafis*—the County’s
4 Renewed Eviction Ban provides no avenue for landlords to contest or challenge these self-
5 certifications. In effect, the only “procedures” safeguarding owners from erroneous deprivations
6 of their property rights are tenants’ subjective determinations as to whether they fall within one of
7 the self-certification’s hopelessly vague categories. The Renewed Eviction Ban “violates the
8 Court’s longstanding teaching that ordinarily ‘no man can be a judge in his own case’ consistent
9 with the Due Process Clause.” (*Chrysafis, supra*, 141 S. Ct. at p. 2482.) The Supreme Court was
10 clear in *Chrysafis* that Due Process is violated so long as the law “generally precludes a landlord
11 from contesting” the tenant’s self-certification of hardship. (*Ibid.*) The Ban continues to do so
12 and therefore violates landlords’ Due Process rights.

13 52. Defendants are depriving property owners of their property rights without
14 providing an adequate procedural remedy by implementing the Renewed Eviction Ban’s
15 provisions foreclosing property owners from commencing or prosecuting eviction proceedings
16 upon the submission of a tenant’s self-certification.

17 53. Acting under color of state law, Defendant has caused, and will continue to cause,
18 property owners to be deprived of their property without due process in violation of their
19 procedural due process rights under the Fourteenth Amendment.

20 54. In the absence of declaratory and injunctive relief, property owners will continue to
21 be irreparably harmed and to be subjected to this deprivation of rights guaranteed to them by the
22 United States Constitution.

23 55. Plaintiffs found it necessary to engage the services of private counsel to vindicate
24 their members’ rights under the law. Plaintiffs are therefore entitled to an award of attorney’s fees
25 and litigation expenses as allowed by law.

26
27
28

1 **SECOND CLAIM FOR RELIEF**

2 **Substantive Due Process – Fourteenth Amendment of the U.S. Constitution;**

3 **42 U.S.C. § 1983**

4 ***(By Plaintiffs against All Defendants)***

5 56. Plaintiffs incorporate herein by reference each and every allegation contained in the
6 preceding paragraphs of this Complaint as though fully set forth herein.

7 57. The Due Process clause of the Fourteenth Amendment to the United States
8 Constitution provides in part: “[N]or shall any State deprive any person of life, liberty, or
9 property, without due process of law.” This provision “guarantees more than fair process,”
10 *Washington v. Glucksberg* (1997) 521 U.S. 702, 719, in that it also contains a substantive
11 component which “bar[s] certain government actions regardless of the fairness or procedures used
12 to implement them.” (*Daniels v. Williams* (1986) 474 U.S. 327, 331; cf. *Collins v. Harker Heights*
13 (1992) 503 U.S. 115, 126 [noting that the Due Process Clause was intended to prevent government
14 officials “from abusing [their] power, or employing it as an instrument of oppression”].)

15 58. Substantive due process “prevents the government from engaging in conduct that
16 ‘shocks the conscience’ . . . or interferes with rights ‘implicit in the concept of ordered liberty.’”
17 (*United States v. Salerno* (1987) 481 U.S. 739, 746.) Local ordinances violate substantive due
18 process where they are “clearly arbitrary and unreasonable, having no substantial relation to the
19 public health, safety, morals, or general welfare.” (*Euclid v. Ambler Realty Co.* (1926) 272 U.S.
20 365, 395.) The applicable tier of constitutional scrutiny proscribes regulations that are “arbitrary,
21 discriminatory, or demonstrably irrelevant.” (*Nebbia v. New York* (1934) 291 U.S. 502, 539.)

22 59. The Renewed Eviction Ban is clearly arbitrary and unreasonable and does not share
23 a substantial relation to public health, safety, morals, or general welfare.

24 60. At the expiration of state eviction protections in September 2021, landlords within
25 the County have been free to bring unlawful detainer actions against nonpaying tenants, even
26 those impacted financially by the Pandemic.

27 61. At the County’s December 18, 2021 Board of Supervisors meeting, the County’s
28 Director of Public Health, Barbara Ferrer, stated that no further lockdowns were planned at that

1 time due to a strong vaccination rate and other public health measures currently in place.
2 Specifically, Ms. Ferrer stated: “I know that the thing that’s top of mind is, do we see in this near
3 future closing back down our stores, telling people they have to stay home? And my hope is no.
4 But that’s a hope. And it really depends on us being able to use these new tools we have to the
5 best of our ability to actually be able to mitigate against this pretty big threat that we all face with
6 Omicron.” She also stated: “But what I do want to note is we’re not where we were last year; we
7 have new tools, so we don’t need to do what we did last year.” In other words, there is zero
8 evidence at this point in time that County mandates will further put people out of work by way of
9 business closures.

10 62. The January 25, 2022 Resolution adopting the Renewed Eviction Ban, however,
11 recites without any evidentiary support that “COVID-19 is causing, and is expected to continue to
12 cause, serious financial impacts to Los Angeles County residents and business, including the
13 substantial loss of income due to illness, business closures, loss of employment, or reduced hours,
14 thus impeding their ability to pay rent.”

15 63. That the County adopted its Renewed Eviction Ban in January 2022, purportedly
16 on the basis of a rise in Omicron-variant cases, to take effect in April for nonpayment of rent (and
17 potentially lasting through June 30, 2023 for those tenants with household incomes at or below
18 80% of AMI), all while evictions have been possible within the County since October 2021 (and
19 with no indication of the feared “flood” of evictions occurring, even during the Omicron surge),
20 further demonstrates that the County did not enact the Renewed Eviction Ban due to concerns
21 regarding the Omicron variant as stated in the January 25 Resolution. In fact, language in the
22 Motion adopting the January 25 Resolution betrays the true reason for extending the Ban: to buy
23 the County time to “examine [the County’s] existing permanent protections to determine whether
24 changes and/or additions should be made based on the lessons learned over the past two years.” In
25 other words, the Renewed Eviction Ban is being used by the County to ultimately buttress other,
26 permanent tenant protections. Such subterfuge shocks the conscience — the County is forcing
27 landlords to shoulder the financial burden whilst it takes the “lessons it has learned” in doing so to
28 craft permanent regulations against those very property owners. Indeed, the County’s actions are

1 arbitrary and discriminatory, and the Renewed Eviction Ban is demonstrably irrelevant to the real
2 purposes underlying its enactment.

3 64. In the absence of declaratory and injunctive relief, property owners will continue to
4 be irreparably harmed and to be subjected to this deprivation of rights guaranteed to them by the
5 United States Constitution.

6 65. Plaintiffs found it necessary to engage the services of private counsel to vindicate
7 their members' rights under the law. Plaintiffs are therefore entitled to an award of attorney's fees
8 and litigation expenses as allowed by law.

9 **THIRD CLAIM FOR RELIEF**

10 **Void for Vagueness – Fourteenth Amendment of the U.S. Constitution;**

11 **42 U.S.C. § 1983**

12 ***(By Plaintiffs against All Defendants)***

13 66. Plaintiffs incorporate herein by reference each and every allegation contained in the
14 preceding paragraphs of this Complaint as though fully set forth herein.

15 67. The Due Process clause of the Fourteenth Amendment to the United States
16 Constitution provides in part: “[N]or shall any State deprive any person of life, liberty, or
17 property, without due process of law.”

18 68. A law is unconstitutionally vague under procedural due process principles unless it
19 is “sufficiently clear so as not to cause persons ‘of common intelligence . . . necessarily [to] guess
20 at its meaning and ‘to differ as to its application,’” *United States v. Makowski* (9th Cir. 1997) 120
21 F.3d 1078, 1080, or if it does not adequately inform people of “what is required of them,” *F.C.C.*
22 *v. Fox Television Stations, Inc.* (2012) 567 U.S. 239, 253.

23 69. Plaintiffs' members have a legitimate property interest, grounded in state law, in
24 the property they own and in the right to retake possession of that property pursuant to
25 California's unlawful detainer process.

26 70. The Renewed Eviction Ban's self-certification provisions rely on definitions
27 relating to “Financial Impacts Relating to COVID-19.” The Ban defines “Financial Impacts” to
28 include (1) “Substantial loss of household income caused by the COVID-19 pandemic”; (2) “Loss

1 of revenue or business by Tenants due to business closure”; (3) “Increased costs”; (4) “Reduced
2 revenues or similar reasons impacting a Tenant’s inability to pay rent due”; (5) “Loss of
3 compensable hours of work or wages, layoffs”; and (6) “Extraordinary out-of-pocket medical
4 expenses.” These financial impact categories are vague and undefined. Indeed, there is no
5 framework to determine whether “loss of household income” is “substantial,” whether “increased
6 costs” of even \$1 would suffice, or whether the loss of one compensable hour satisfy the County’s
7 criteria. The Ban violates property owners’ procedural due process rights, and is void for
8 vagueness, because it fails to provide them fair notice of the Ban’s requirements and obligations,
9 is so standardless as to provide for arbitrary and discriminatory enforcement, invites unreviewable
10 abuse by tenants, and deprives property owners of any procedural opportunity to discern—let
11 alone challenge—the reasoning for self-certification based on these undefined circumstances.

12 71. As set forth in the foregoing allegations, the Renewed Eviction Ban’s failure to
13 define these phrases robs landlord owners of fair notice of when a tenant is eligible to avoid
14 eviction. Tenants’ ability to self-certify financial hardship based on, for example, the naked claim
15 that they have suffered “increased costs,” or even a de minimis “loss of compensable hours of
16 work or wages” or “reduced revenues” as a consequence of COVID-19 keeps landlords in the dark
17 about the precise nature of their tenants’ purported hardship. The lack of any evidentiary
18 obligations for tenants and fair notice to landlords makes the self-certification process ripe for
19 abuse. The same is true for the other categories, including what constitutes a “substantial loss of
20 household income,” “loss of revenue . . . due to business closure,” and “extraordinary out-of-
21 pocket medical expenses,” and are equally as vague. None of these terms is defined, and, in fact,
22 are so vague that they cause persons of “common intelligence” to guess as to whether, for
23 example, “increased costs” includes simple inflation due to the ongoing supply chain issues
24 relating to COVID-19, or a multitude of other circumstances only tangentially related to the
25 Pandemic. Because these categories lack any precision whatsoever, their application will
26 necessarily cause the Ban’s provisions to differ wildly from tenant to tenant.

27 72. Because the law provides landlords with no notice about what circumstances
28 prohibit them from evicting tenants, it essentially delegates the authority to determine the scope of

1 the Renewed Eviction Ban to tenants themselves. That flies in the face of due process principles,
2 which require “that regulated parties . . . know what is required of them so they may act
3 accordingly.” (*Fox Television Stations, supra*, 567 U.S. 239 at p. 253; see also *Chrysafis*, 141 S.
4 Ct. at p. 2482 [“no man can be the judge in his own case”]).

5 73. Likewise, the contentless nature of these categories will result in arbitrary and
6 discriminatory enforcement, as they provide no standards to guide their application.

7 74. Defendants are depriving property owners of their property rights by means of a
8 constitutionally violative and self-serving hardship certification, including by implementing the
9 Ban’s provisions foreclosing property owners from commencing or prosecuting eviction
10 proceedings once a self-certification of hardship has been submitted.

11 75. Acting under color of state law, Defendants have caused, and will continue to
12 cause, property owners to be deprived of their property without due process in violation of their
13 due process rights under the Fourteenth Amendment.

14 76. In the absence of declaratory and injunctive relief, property owners will continue to
15 be irreparably harmed and to be subjected to this deprivation of rights guaranteed to them by the
16 United States Constitution.

17 77. Plaintiffs found it necessary to engage the services of private counsel to vindicate
18 their members’ rights under the law. Plaintiffs are therefore entitled to an award of attorney’s fees
19 and litigation expenses as allowed by law.

20 **FOURTH CLAIM FOR RELIEF**

21 **Declaratory Relief**

22 **Code of Civil Procedure § 1060**

23 ***(By Plaintiffs Against all Defendants)***

24 78. Plaintiffs incorporate herein by reference each and every allegation contained in the
25 preceding paragraphs of this Complaint as though fully set forth herein.

26 79. An actual controversy has arisen and now exists between Plaintiffs and their
27 members, on the one hand, and Defendants, on the other, concerning the legal effect of the
28 County’s Renewed Eviction Ban. Plaintiffs contend, for the aforesaid reasons, that the Renewed

1 Eviction Ban is illegal and violates procedural and substantive due process as guaranteed by the
2 Fourteenth Amendment to the United States Constitution. Plaintiffs are informed and believe, and
3 thereon allege, that Defendants deny that the Renewed Eviction Ban violates the rights and
4 guarantees secured by the Fourteenth Amendment to the United States Constitution.

5 80. Plaintiffs desire a judicial determination of Plaintiffs' and Defendants' respective
6 rights and duties concerning the validity of the Renewed Eviction Ban.

7 81. A declaration is necessary and appropriate at this time in order that Plaintiffs and
8 Defendants may ascertain their rights and duties with respect to the validity and enforceability of
9 the Renewed Eviction Ban. In particular, bringing this suit for declaratory relief will enable the
10 Court to ascertain the rights and duties of all parties without necessitating multiple lawsuits.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs pray for an order and judgment against Defendants, and each of
13 them, as follows as to all causes of action:

14 1. A declaration that the County's Renewed Eviction Ban is facially unconstitutional
15 in its entirety under the Fourteenth Amendment to the United States Constitution;

16 2. In the alternative, a declaration that each of the challenged portions and provisions
17 of the Renewed Eviction Ban are facially unconstitutional under the Fourteenth Amendment to the
18 United States Constitution;

19 3. A preliminary injunction and permanent injunction enjoining Defendant from
20 implementing or enforcing the Renewed Eviction Ban, or, in the alternative, of implementing or
21 enforcing each of its challenged provisions;

22 4. An award of fees, costs, expenses, and disbursements, including attorneys' fees and
23 costs to which Plaintiffs are entitled pursuant to 42 U.S.C. § 1988; and

24 5. Such other and further relief as the Court may deem just and proper.
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Dated: March 7, 2022

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