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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC., Plaintiff, v. COUNTY OF LOS ANGELES, Defendants.	Case No. CV 22-02085 DDP (JEMx) **ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** [Dkt. 17]

Presently before the court is a Motion for Preliminary Injunction filed by Plaintiffs Apartment Association of Los Angeles County, Inc. ("AAGLA") and Apartment Owners Association of California, Inc. ("AOA"). Having considered the submissions of the parties and heard oral argument, the court grants the motion and adopts the following Order.

I. Background

The global COVID-19 pandemic is now in its third year. At the outset of the pandemic in the spring of 2020, Defendant Los Angeles County ("the County") implemented a moratorium on evictions of residential tenants. (Complaint ¶ 2.) The moratorium was premised on the County Board of Supervisors' finding that "COVID 19 is

causing, and is expected to continue to cause, serious financial impacts to Los Angeles County residents and businesses, . . . impeding their ability to pay rent[.]" (Plaintiff's Request for Judicial Notice, Ex. 7 at 203.) The Board further found that "displacing residential . . . tenants . . . will worsen the present crisis," and "severely impact the health, safety and welfare of County residents." (Id. at 203-204.)

Although it remains to be seen whether, as Plaintiffs optimistically assert, "[w]e are at the end stages of the pandemic," 2022 has not seen the lockdowns and other economic disruptions of the earlier days of the public health crisis. (Reply at 16.) Fortunately, Los Angeles County's COVID 19 community level, as determined by the Centers for Disease Control, is currently "low."[1] Businesses are open, and the County no longer requires that masks be worn in most indoor settings.[2] Nevertheless, the Board found earlier this year that the emergence of COVID-19 variants, such as the Omicron variant, "demonstrat[es] a continuing necessity to preserve and extend many [] tenant protections." (RJN, Ex. 7 at 202 at 207.) Accordingly, the County replaced its residential eviction moratorium with a revised set of lesser "Tenant Protections." (RJN, Ex. 7 at 202).[3]

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[1] http://publichealth.lacounty.gov/media/Coronavirus/data/response-plan.htm

[2] http://publichealth.lacounty.gov/media/Coronavirus/docs/HOO/COVID19ResponsePlan.pdf at 4-5.

[3] Pursuant to state law, the protections at issue here took effect July 1, 2022. Cal. Civ. Proc. Code § 1179.05(a)(1).

Plaintiffs are comprised of and represent over 30,000 owners and managers of rental housing units. (Complaint ¶¶ 11-12.) Plaintiffs' Complaint seeks declaratory and injunctive relief under 42 U.S.C. § 1983 and California Code of Civil Procedure § 1060 to enjoin enforcement of the Tenant Protections, alleging that the Tenant Protections violate Plaintiffs' due process rights and are unconstitutionally vague. Plaintiffs' instant motion seeks a preliminary injunction on those same grounds.

II. Legal Standard

A party seeking a preliminary injunction must show that (1) it is likely to succeed on the merits; (2) it will suffer irreparable harm in the absence of preliminary relief; (3) the balancing of the equities between the parties that would result from the issuance or denial of the injunction tips in its favor; and (4) an injunction is in the public interest. Winter v. Natural Resources Def. Council, 555 U.S. 7, 20 (2008). Preliminary relief may be warranted where a party (1) shows a combination of probable success on the merits and the possibility of irreparable harm, or (2) raises serious questions on such matters and shows that the balance of hardships tips in favor of an injunction. See Arcamuzi v. Continental Air Lines, Inc., 819 F.2d 935, 937 (9th Cir. 1987). "These two formulations represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases." Id.; see also hiQ Labs, Inc. v. LinkedIn Corp., 938 F.3d 985, 992 (9th Cir. 2019). Under both formulations, the party must demonstrate a "fair chance of success on the merits" and a "significant threat of

irreparable injury" absent the requested injunctive relief.[4] Arcamuzi, 819 F.2d at 937.

III. Discussion

A. Likelihood of Success on the Merits

Plaintiffs contend, among other things, that the Tenant Protections at issue here are unconstitutionally vague. Indeed, determining the nature and scope of the extant Tenant Protections in the first instance is no simple task.

Rather than adopt a new resolution implementing the Tenant Protections, the Board of Supervisors issued a resolution ("the Resolution") incorporating over a dozen prior resolutions and amendments related to COVID-19.[5] (RJN Ex. 7 at 207.) The result is a resolution that lists, across several different sections and subsections, different types of protections, applicable at different times, to different groups of tenants. As relevant here, Section IV(K) of the Resolution defines the term "Protections" only to mean "the set of tenant protections applicable to a Tenant pursuant to the terms of this Resolution," providing little guidance to landlords or tenants. (RJN Ex. 7 at 209).

Section VI of the Resolution is, somewhat misleadingly, titled "Eviction Protections." (RJN Ex. 7 at 211). As the County appears to acknowledge, however, Section VI does not actually describe the

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[4] Even under the "serious interests" sliding scale test, a plaintiff must satisfy the four Winter factors and demonstrate "that there is a likelihood of irreparable injury and that the injunction is in the public interest." Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011).

[5] Resolution of the Board of Supervisors of the County of Los Angeles Further Amending And Restating The County of Los Angeles COVID-19 Tenant Protections Resolution (January 25, 2022). (RJN Ex. 7 at 202).

form of any specific, currently applicable eviction or tenant protections regarding COVID-related nonpayment of rent. Section VI(A)(1)states, "During the time periods set forth below, a Tenant shall not be evicted for nonpayment of rent . . . if the Tenant demonstrates an inability to pay rent . . . due to Financial Impacts Related to COVID-19 . . . ." (RJN Ex. 7 at 211 (emphasis added)). Despite this seemingly categorical language, the County asserts that there is no longer a total moratorium on evictions for COVID-related nonpayment of rent, and that different, narrower protections apply during the current "Extensions Protections Period" pursuant to Section VI(A)(1)(b)(ii). (Id. at 212.) That subsection provides that a more limited pool of qualifying residential tenants "is protected from eviction under this Resolution." (Id. (emphasis added)). Only a residential tenant who (1) has household income equal to or less than 80 percent of the Area Median Income, (2) is unable to pay rent (3) "so long as the reason for nonpayment was Financial Impacts Related to COVID-19," (4) notifies their landlord of this COVID-related inability to pay and (5) self-certifies income level and financial hardship (6) within seven days after the date missed rent is due "is protected from eviction." (Id.) Landlords "must accept" a qualifying tenant's self-certification of income level and financial hardship. (Id. at 216.) Section VI(A)(1)(b)(ii) does not, however, set forth what "protection from eviction" entails.

According to the County, that a qualifying tenant "is protected from eviction" does not actually mean that the tenant cannot be evicted. Such is not apparent from Section VI(A)(1)(b)(ii), or from any other provision in Section VI (or

Section IV). Rather, to determine what "protection from eviction" under Section VI(A)(1)(b)(ii) means, a tenant or landlord must refer to the language of Section XI, the "Remedies" section of the Resolution. (RJN Ex. 7 at 221.) There, Section XI(C) states that "any Protections . . . provided under this Resolution shall constitute an affirmative defense for a Tenant in any unlawful detainer action . . . ." (Id. (emphasis added).) Thus, under the County's interpretation, the current Tenant Protections do no more than provide an affirmative defense to a discrete set of tenants, under relatively specific circumstances, who are already involved in unlawful detainer proceedings.

That the Tenant Protections are difficult to suss out is not sufficient to render them unconstitutionally vague. See United States v. Williams, 553 U.S. 285, 304 (2008) ("perfect clarity and guidance has never been required"). The question, rather, is whether the resolution gives "the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." Grayned v. City of Rockford, 408 U.S. 104, 108 (1972). Laws must also provide sufficiently explicit standards to prevent arbitrary or discriminatory enforcement. Id.; Williams, 553 U.S. at 304.

The County contends that the Tenant Protections cannot possibly run afoul of these prescriptions because they do no more than establish a new affirmative defense for tenants, and thus do not prohibit landlords from doing anything. That blinkered reading of the Resolution, however, ignores Section IX(I), which expressly prohibits landlords from "[t]aking action to terminate any tenancy including service of any notice to quit or notice to bring any

action to recover possession of a rental unit based upon facts which the Landlord has no reasonable cause to believe to be true or upon a legal theory which is untenable . . . ." (RJN Ex. 7 at 220 (emphasis added).) Violations of Section IX subject landlords to administrative fines and civil and criminal penalties under Sections X and XI. (Id. at 220-221.) In other words, a landlord cannot bring an unlawful detainer action, at peril of civil and criminal penalties, unless the landlord reasonably believes that a tenant's affirmative defense, created by and comprising the Tenant Protections, will fail.

A landlord cannot, of course, form any reasonable belief about the viability of a particular tenant's affirmative defense without an understanding of the elements of the defense. Although seemingly limited in application, the affirmative defense created by the Tenant Protections is expansive in scope, in that it applies to nonpayment of rent "so long as the reason for nonpayment was Financial Impacts Related to COVID-19." (RJN Ex. 7 at 212.) "Financial Impacts" include (1) "substantial loss of income caused by the COVID-19 pandemic," (2) "loss of revenue or business . . . due to business closure," (3) "increased costs," (4) "reduced revenues or other similar reasons impacting a Tenant's ability to pay rent due," (5) layoffs or "loss of compensable hours of work or wages," and (6) "extraordinary out-of-pocket medical expenses." (Id. at 208). "Related to COVID-19" means not just "related to . . . [a] suspected or confirmed case of COVID-19, or caring for a household or family member who has a suspected of confirmed case of COVID-19," but also related to "reduction or loss of income or

revenue resulting from . . . economic or employer impacts related to COVID-19." (Id. at 209).

Given the breadth of these definitions, it would be impossible for a landlord to determine whether the affirmative defense might apply in any particular instance. The bounds of, for example, "increased costs" resulting from "economic . . . impacts related to COVID-19" are virtually limitless. Even the most exacting categories of "Financial Impacts," namely "substantial loss of income" and "extraordinary" medical expenses, are inherently variable and subjective. Indeed, the County acknowledges that "a particular amount in lost income may be 'substantial' for one tenant but not for another, just as a certain amount of medical expenses may be 'extraordinary' to one tenant but not another." (Opp. at 14:19-21.) In the County's view, this variability is a feature, not a bug, insofar as it "permits the Resolution to apply to different tenants of varying circumstances."[6] (Id. at 14:18-19.) That may be, but that same vagueness also deprives landlords of the ability to gauge whether any particular tenant can successfully invoke the affirmative defense. Without any meaningful guidance from the Resolution, landlords are left to guess, not just as to the likelihood of success of any unlawful detainer action, but as to whether the very filing of any such action is prohibited.

[6] The court notes that other provisions in the Resolution, and even within Section VI(A)(1)(b)(ii), are not so flexible. For example, the affirmative defense applies only "so long as the reason for nonpayment was Financial Impacts Related to COVID-19." (RJN Ex. 7 at 211-212 (emphasis added).)

Even if a landlord chooses to run the risk of initiating an unlawful detainer proceeding, it is unclear whether she may contest all of the elements of the Tenant Protections affirmative defense. Among the required elements of the defense are that a tenant (1) be unable to pay rent and (2) have a household income equal to or less than eighty percent of the Area Median Income. The County concedes that a tenant bears the burden of proof of establishing the affirmative defense. The Resolution, however, states that "Landlords must accept" "a Residential Tenant whose household incomes [sic] is at 80 percent Area Median Income or below self-certifies [sic] their income level and financial hardship . . . ." (RJN Ex. 7 at 216). At oral argument, the County maintained that the phrase "must accept" does not mean that landlords must accept the merits of a tenant's self-certification, but rather that "the landlord must accept delivery of that self-certification." That interpretation has no support in the text of the Resolution, which does not give a person of ordinary intelligence reasonable notice that she is free to dispute a tenant's income level or degree of financial hardship, in court or elsewhere.

The County also appears to suggest that any infirmities in the Resolution are of no moment because the affirmative defense must be proven in "a full-fledged adversarial proceeding with a trial with multiple levels of discovery available to both sides," and a neutral decisionmaker need not accept a tenant's self-certification as sufficient to carry the burden of proof. This argument is not persuasive. As an initial matter, if a landlord "must accept" a tenant's representations as to certain elements of the affirmative defense, it is unclear how any contrary position could ever be

presented to a court in an adversarial proceeding. Furthermore, and more fundamentally, a vague, standardless statute cannot be resuscitated simply by delegating definitional responsibility to a court. "If arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them." Grayned, 408 U.S. at 108. The void for vagueness doctrine "guards against arbitrary or discriminatory law enforcement by insisting that a statute provide standards to govern the actions of police officers, prosecutors, juries, and judges." Sessions v. Dimaya, 138 S. Ct. 1204, 1212 (2018) (emphasis added). The Resolution provides no more guidance to a neutral factfinder than to a landlord as to what financial impacts a tenant must suffer to invoke the affirmative defense.

Accordingly, Plaintiffs are likely to succeed on the merits of their claim that the Resolution's Tenant Protections are unconstitutionally vague.[7]

B. Remaining Factors

The other Winter factors also weigh in favor of a preliminary injunction. "It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012) (internal quotation marks omitted); see also Goldie's Bookstore, Inc. v. Superior Ct. of State of Cal., 739 F.2d 466, 472 (9th Cir. 1984) ("An alleged constitutional infringement will often alone constitute irreparable harm."). When the government is a party, the remaining factors, the balance of equities and the public

[7] Having so concluded, the court does not reach Plaintiffs' other claims.

interest, merge. California v. Azar, 911 F.3d 558, 575 (9th Cir. 2018). Here, the question is a close one. The public interest is, no doubt, served by efforts to minimize the spread of COVID-19. See, e.g., Westlake Fitness LLC v. Cnty. of Ventura, No. 21-CV-0770-CBM-(EX), 2021 WL 971148, at *2 (C.D. Cal. Jan. 29, 2021). In light of the County's current approach to other containment measures, however, the denial of an injunction would seemingly do little to further that objective. Furthermore, "it is always in the public interest to prevent the violation of a party's constitutional rights." Melendres, 695 F.3d at 1002 (internal quotation marks and citation omitted). "[P]ublic interest concerns are implicated when a constitutional right has been violated[] because all citizens have a stake in upholding the Constitution." Hernandez v. Sessions, 872 F.3d 976, 996 (9th Cir. 2017) (quoting Preminger v. Principi, 422 F.3d 815, 826 (9th Cir. 2005)). Moreover, the Resolution's vagueness problems appear largely to be a matter of drafting, rather than fundamental character. "When constitutional alternatives are available to achieve the same goal," maintaining an unconstitutional policy is not in the public interest. Agudath Israel of Am. v. Cuomo, 983 F.3d 620, 637 (2d Cir. 2020). A preliminary injunction is, therefore, warranted here.

IV. Conclusion

For the reasons stated above, Plaintiffs' Motion for Preliminary Injunction is GRANTED. Effective December 1, 2022, the County is hereby enjoined from enforcing the Tenant Protections described in Section VI(A)(1)(b)(ii) of the Resolution, as well as

those portions of Sections IX(I), X, and XI that reference or incorporate Section VI(A)(1)(b)(ii).[8]

IT IS SO ORDERED.

Dated: October 19, 2022

DEAN D. PREGERSON
United States District Judge

[8] Given the ostensible purpose of the Tenant Protections, the potential for the County to adopt a constitutionally viable alternative, and the need for tenants and landlords to adjust to and plan for a post-injunction legal landscape, the court finds that a brief transitional period is warranted.