# APPENDIX

# APPENDIX

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## APPENDIX A

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**
**FOR THE NINTH CIRCUIT**

**No. 20-56251**

**D.C. No. 2:20-cv-05193-DDP-JEM**

**[Filed: August 25, 2021]**

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| APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC., DBA Apartment Association of Greater Los Angeles, | ) |
| *Plaintiff-Appellant*, | ) |
| v. | ) |
| CITY OF LOS ANGELES; ERIC GARCETTI, in his official capacity as Mayor of Los Angeles; CITY COUNCIL OF THE CITY OF LOS ANGELES, in its official capacity; DOES, 1 through 25, inclusive, | ) |
| *Defendants-Appellees*, | ) |
| and | ) |

ALLIANCE OF CALIFORNIANS FOR COMMUNITY EMPOWERMENT ACTION; STRATEGIC ACTIONS FOR A JUST ECONOMY,
*Intervenor-Defendants-Appellees.*

OPINION

Appeal from the United States District Court
for the Central District of California
Dean D. Pregerson, District Judge, Presiding

Argued and Submitted May 12, 2021
Pasadena, California

Filed August 25, 2021

Before: Jay S. Bybee and Daniel A. Bress, Circuit Judges, and Kathleen Cardone,[*] District Judge.

Opinion by Judge Bress

**SUMMARY**[**]

**Civil Rights**

The panel affirmed the district court's order denying plaintiff's request for preliminary injunctive relief in an action brought by a trade association of Los Angeles

[*] The Honorable Kathleen Cardone, United States District Judge for the Western District of Texas, sitting by designation.

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

landlords challenging the City's eviction moratorium, imposed in response to the COVID-19 pandemic.

Plaintiff sought to enjoin key provisions of the eviction moratorium as violating the Contracts Clause. The panel held that the district court did not abuse its discretion in concluding that plaintiff had not shown the required likelihood of success on the merits.

Applying the two-step test set forth in *Sveen v. Melin*, 138 S. Ct. 1815 (2018), the panel held that even if the eviction moratorium was a substantial impairment of contractual relations, the district court did not err in determining that the moratorium's provisions were likely "reasonable" and "appropriate" given the circumstances of the COVID-19 pandemic. The City fairly tied the moratorium to its stated goal of preventing displacement from homes, which the City reasonably explained could exacerbate the public health–related problems stemming from the COVID-19 pandemic. In turn, each of the provisions of the eviction moratorium that plaintiff challenged could be viewed as reasonable attempts to address that valid public purpose.

The panel stated that whatever force plaintiff's challenge may have had in a much earlier era of Contracts Clause jurisprudence, more contemporary Supreme Court case law has severely limited the Contracts Clause's potency. The panel held that, given the deferential standard established by the Supreme Court and this court, it was compelled to conclude that the City's enactments passed constitutional muster under the Contracts Clause. And whatever other constitutional challenges plaintiff may seek to bring

against the Los Angeles eviction moratorium, there was no apparent basis under modern cases to find the challenged provisions unconstitutional under the Contracts Clause—the only issue before the panel.

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## OPINION

BRESS, Circuit Judge:

Following the outbreak of COVID-19 in early 2020, the City of Los Angeles imposed an eviction moratorium with the stated purposes of ensuring housing security and promoting public health during the pandemic. The moratorium operates during a "Local Emergency Period" to bar certain evictions. Related provisions delay applicable tenants' rent payment obligations and prohibit landlords from charging late fees and interest. Plaintiff, a trade association of Los Angeles landlords, sued the City, arguing that the moratorium and its related provisions violate the Constitution's Contracts Clause. U.S. Const. art. I, § 10, cl. 1. The district court denied plaintiff's request for preliminary injunctive relief, and plaintiff now appeals that ruling.

Other courts, including the Supreme Court, have recently considered a variety of constitutional and statutory challenges to COVID-19 eviction moratoria. The appeal before us, however, is limited only to the Contracts Clause. We hold that under modern Contracts Clause doctrine, the district court did not err in determining that the moratorium's provisions were likely "reasonable" and "appropriate" given the circumstances of the COVID-19 pandemic. Whatever force plaintiff's challenge may have had in a much earlier era of Contracts Clause jurisprudence, more contemporary Supreme Court case law has severely limited the Contracts Clause's potency. And whatever other constitutional challenges plaintiff may seek to bring against the Los Angeles eviction moratorium,

there is no apparent basis under modern cases to find the challenged provisions unconstitutional under the Contracts Clause—the only issue before us.

The district court thus did not abuse its discretion in concluding that plaintiff had not shown the required likelihood of success on the merits. We therefore affirm.

## I

### A

Following the spread of COVID-19 to the United States, the Secretary of Health and Human Services on January 31, 2020 declared a nationwide public health emergency. California's Governor likewise proclaimed a state of emergency some weeks later. Soon after that, and as relevant here, the City of Los Angeles enacted an ordinance imposing a series of restrictions on residential landlords. L.A., Cal., Ordinance No. 186,585 (Mar. 31, 2020). A subsequent ordinance created further restrictions. L.A., Cal., Ordinance No. 186,606 (May 12, 2020). We will refer to these ordinances, which subsequently were codified at sections 49.99 through 49.99.9 of the Los Angeles Municipal Code, as the "eviction moratorium."

The eviction moratorium made plain its motivations and purpose. It described the City Council's finding that "[t]he COVID-19 pandemic threatens to undermine housing security and generate unnecessary displacement of City residents and instability of City businesses." L.A., Cal., Municipal Code § 49.99. It also referenced public health measures that called for many individuals to stay at home, as well as the loss of income and increased expenses anticipated as a result

of governmental directives to "self-isolate" and shut down nonessential businesses. *Id.* Noting the relationship between housing and physical health during the pandemic, the City Council found it necessary to "take measures to protect public health, life, and property" by enacting the eviction moratorium. *Id.*; L.A., Cal., Ordinance No. 186,585 pmbl.

To achieve these goals, the eviction moratorium curtails the rights of residential landlords in various ways. Most significantly, it substantially alters the grounds that landlords may invoke against tenants in eviction actions (known in California as "unlawful detainer" actions). Specifically, landlords are barred from "endeavor[ing] to evict or evict[ing] a residential tenant for" any of three reasons. L.A., Cal., Municipal Code § 49.99.2(A)–(C).

*First*, "[d]uring the Local Emergency Period and for 12 months after its expiration," tenants cannot be evicted "for non-payment of rent . . . if the tenant is unable to pay rent due to circumstances related to the COVID-19 pandemic." *Id.* §49.99.2(A). "[C]ircumstances related to the COVID-19 pandemic" include:

> loss of income due to a COVID-19 related workplace closure, child care expenditures due to school closures, health-care expenses related to being ill with COVID-19 or caring for a member of the tenant's household or family who is ill with COVID-19, or reasonable expenditures that stem from government-ordered emergency measures.

*Id*. Although these tenants' payment obligations were deferred (an issue we discuss further below), the moratorium did not relieve tenants of their ultimate obligations to pay rent. *Id.*

*Second*, during the Local Emergency Period, tenants cannot be evicted for a "no-fault reason." *Id.* § 49.99.2(B). Those reasons include an owner or owner's family intending to occupy the property; withdrawal of the property from the rental market; the owner's compliance with laws or governmental orders requiring vacating of the property; and intent to demolish or remodel the property. *Id.* § 49.99.1(D); *see also* Cal. Civ. Code § 1946.2(b)(2). *Finally*, tenants during the Local Emergency Period cannot be evicted "based on the presence of unauthorized occupants or pets, or for nuisance related to COVID-19." *Id.* § 49.99.2(C).

The "Local Emergency Period" was defined as "the period of time from March 4, 2020, to the end of the local emergency as declared by the Mayor." *Id.* §§ 49.99.1(C). The Local Emergency Period remains ongoing as of the time of this opinion. The eviction moratorium does not require tenants to provide any evidence, such as a written attestation, that any claimed inability to pay rent, presence of "unauthorized occupants or pets," or "nuisance" existed or was COVID-19-related.

Additionally, the eviction moratorium alters tenants' payment obligations by providing them "up to 12 months following the expiration of the Local Emergency Period to repay any rent deferred during

the Local Emergency Period." *Id.* § 49.99.2(A). By its terms, however, it does not "eliminate[] any obligation to pay lawfully charged rent." *Id.* For covered tenants, the moratorium also prohibits landlords from "charg[ing] interest or a late fee on rent not paid." *Id.* § 49.99.2(D).

Landlords may continue to seek to evict tenants based on their good-faith belief that the tenants are not protected under the eviction moratorium. But the eviction moratorium's protections create an affirmative defense for tenants in an unlawful detainer action.[1] *Id.* § 49.99.6.

The eviction moratorium also creates a private right of action for residential tenants who believe their landlords have aggrieved them. *Id.* § 49.99.7. If the landlord was given an opportunity to cure and did not do so, a prevailing tenant is potentially entitled to "injunctive relief, direct money damages," "reasonable

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[1] The Supreme Court recently temporarily enjoined Part A of the COVID Emergency Eviction and Foreclosure Prevention Act (CEEFPA), 2020 N.Y. Laws ch. 381. *Chrysafis v. Marks*, No. 21A8, slip op. at 1 (U.S. Aug. 12, 2021). Under the New York law, "[i]f a tenant self-certifies financial hardship" due to COVID-19, CEEFPA "generally precludes a landlord from contesting that certification and denies the landlord a hearing." *Id.* The Supreme Court concluded that "[t]his scheme violates the Court's longstanding teaching that ordinarily, 'no man can be a judge in his own case' consistent with the Due Process Clause." *Id.* (quoting *In re Murchinson*, 349 U.S. 133, 136 (1955)). Although there are apparent differences between the Los Angeles and New York eviction moratoria, AAGLA in any event does not raise before us any Due Process challenge, whether to the procedures governing unlawful detainer proceedings or otherwise.

attorney's fees and costs," and "an award of a civil penalty up to $10,000 per violation depending on the severity of the violation" (and up to an additional $5,000 per violation for elderly or disabled tenants). *Id.* However, an "[o]wner who prevails in any such action and obtains a Court determination that the tenant's action was frivolous" also may recover "reasonable attorney's fees and costs." *Id.*[2]

B

Plaintiff Apartment Association of Los Angeles County, Inc., dba Apartment Association of Greater Los Angeles ("AAGLA"), is a trade association "comprised of thousands of owners and managers of rental housing units, including over 55,000 properties within the City of Los Angeles." AAGLA's members did not react positively to the City's eviction moratorium, viewing it as laying on their shoulders the burdens of maintaining affordable housing during the pandemic. On June 11, 2020, AAGLA, on behalf of its members, challenged the eviction moratorium in a lawsuit against the City, its Mayor, and the City Council. We will refer to these parties collectively as the "City."

AAGLA alleged that the eviction moratorium violated the Contracts Clause, the Takings Clause, and the Tenth and Fourteenth Amendments. Later, AAGLA

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[2] We grant the City's motion for judicial notice of related COVID-19 measures. We also note that the eviction moratorium contains other provisions not at issue in this appeal, such as requirements that landlords notify tenants of their rights under the moratorium and restrictions on removing residential property from the rental market. *See, e.g.* , L.A., Cal., Municipal Code §§ 49.99.2(E), .4.

moved for a preliminary injunction. As relevant here, AAGLA sought to enjoin key provisions of the eviction moratorium as violating the Contracts Clause.[3] In support of its motion, AAGLA submitted declarations from four of its members who own or manage properties in Los Angeles, detailing the harms the eviction moratorium was allegedly causing them. These harms include loss of rental income, inability to perform background checks on unauthorized occupants, and being forced to use retirement savings to cover expenses on the properties.

The district court denied AAGLA's request for preliminary injunctive relief. The district court first determined that AAGLA was unlikely to succeed on its Contracts Clause claim. The court found that AAGLA was likely to show that the eviction moratorium would be "a substantial impairment of its contractual rights," in part because no landlord could have anticipated the COVID-19 pandemic and "the public health measures necessary to combat it." But the district court also determined that AAGLA could not show that the eviction moratorium was not "reasonable" and "appropriate" under the deferential standard in Contracts Clause cases. Furthermore, the district court found that AAGLA had not shown a likelihood of

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[3] AAGLA did not request preliminary injunctive relief based on the Takings Clause. And although it did invoke the Fourteenth Amendment's Due Process Clause, AAGLA does not appeal the district court's rejection of that claim. We therefore have no occasion to decide whether AAGLA has a valid claim under either the Takings Clause or the Fourteenth Amendment.

irreparable harm or that the balance of the equities and the public interest favored granting relief.

AAGLA timely appealed the district court's order denying preliminary injunctive relief. On appeal, AAGLA pursues its Contracts Clause challenge only with respect to the provisions of the eviction moratorium governing restrictions on the grounds for evictions, rent deferment, and the elimination of late fees and interest.

## II

We "review the district court's decision to . . . deny a preliminary injunction for abuse of discretion." *Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 918 (9th Cir. 2003) (en banc) (per curiam). "The district court's interpretation of the underlying legal principles, however, is subject to de novo review." *Id.* Factual findings are reviewed for clear error. *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1286 (9th Cir. 2013).

A preliminary injunction is "an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (emphasis in original) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam)); *accord Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain injunctive relief, a plaintiff "must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an

injunction is in the public interest." *City & County of San Francisco v. USCIS*, 944 F.3d 773, 788–89 (9th Cir. 2019) (quoting *Winter*, 555 U.S. at 20) (alterations in original). "Likelihood of success on the merits is the most important factor." *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018) (quotations omitted).

III

A

The Contracts Clause provides that "No State shall . . . pass any . . . Law impairing the Obligation of Contracts." U.S. Const. art. I, § 10, cl. 1. As a historical matter, the "primary focus" of the Contracts Clause "was upon legislation that was designed to repudiate or adjust pre -existing debtor-creditor relationships that obligors were unable to satisfy." *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 503 (1987); *see generally Home Bldg. & Loan Ass'n v. Blaisdell* , 290 U.S. 398, 453–65 (1934) (Sutherland, J., dissenting) (recounting the history of the Contracts Clause). Yet "the text is not so limited, and historical context suggests that the Clause was aimed at all retrospective, redistributive schemes in violation of vested contractual rights." *Ass'n of Equip. Mfrs. v. Burgum*, 932 F.3d 727, 732 (8th Cir. 2019) (quotations omitted). For the first 150 years of American legal history, the Contracts Clause imposed consequential limitations that federal courts routinely deployed to invalidate state and local legislation. *See Blaisdell*, 290 U.S. at 465–72 (Sutherland, J., dissenting) (collecting and discussing cases).

All of that changed with *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934), the "watershed decision . . . on which the modern interpretation of the [Contracts Clause] rests." Richard A. Epstein, *Toward a Revitalization of the Contract Clause*, 51 U. Chi. L. Rev. 703, 735 (1984). There, the Court "upheld Minnesota's statutory moratorium against home foreclosures, in part, because the legislation was addressed to the 'legitimate end' of protecting 'a basic interest of society.'" *Keystone Bituminous*, 480 U.S. at 503 (quoting *Blaisdell*, 590 U.S. at 445).

*Blaisdell* marked the beginning of the Supreme Court significantly curtailing the Contracts Clause's prohibitive force. As a result, the relevant cases today primarily consist of *Blaisdell* and its progeny, which set forth a very different conception of the Contracts Clause than in earlier cases. *E.g.*, *Sveen v. Melin*, 138 S. Ct. 1815 (2018); *Keystone Bituminous*, 480 U.S. 470; *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983); *Energy Reserves Grp. v. Kan. Power & Light Co.* , 459 U.S. 400 (1983). Perhaps most prominently, in *Energy Reserves Group v. Kansas Power & Light Co.*, 459 U.S. 400 (1983), the Court clarified the modern approach to the Contracts Clause post-*Blaisdell*, articulating the flexible considerations courts must consider in a Contracts Clause case. *Id.* at 410–13.

Recently, in *Sveen v. Melin*, 138 S. Ct. 1815 (2018), the Supreme Court restated the inquiry as a "two-step test." *Id.* at 1821–22. Under *Sveen*'s formulation, "[t]he threshold issue is whether the state law has 'operated as a substantial impairment of a contractual relationship.'" *Id.* (quoting *Allied Structural Steel Co.*

*v. Spannaus*, 438 U.S. 234, 244 (1978)). Factors relevant to that consideration include "the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights." *Id.* at 1822.

If the law is a substantial impairment, then "the inquiry turns to the means and ends of the legislation." *Id.* At that point, a court must determine whether the law is drawn in an "'appropriate' and 'reasonable' way to advance 'a significant and legitimate public purpose.'" *Id.* (quoting *Energy Reserves*, 459 U.S. at 411–12). A heightened level of judicial scrutiny is appropriate when the government is a contracting party. *U.S. Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 25–26 (1977). But when the government is not party to the contract being impaired, "courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." Energy Reserves, 459 U.S. at 413 (quotations omitted); *see also Keystone Bituminous*, 480 U.S. at 505; *Lazar v. Kroncke*, 862 F.3d 1186, 1199 (9th Cir. 2017).

Thus, the eviction moratorium must be upheld, even if it is a substantial impairment of contractual relations, if its "adjustment of the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption." *Energy Reserves*, 459 U.S. at 412 (quotations omitted and alterations accepted). And because the government is not "the party asserting the benefit of the statute," AAGLA bears the burden of showing that

the ordinances are unreasonable. *Seltzer v. Cochrane (In re Seltzer)*, 104 F.3d 234, 236 (9th Cir. 1996).

B

We need not decide whether the eviction moratorium is a substantial impairment of contractual relations because even assuming it is, given the challenges that COVID-19 presents, the moratorium's provisions constitute an "appropriate and reasonable way to advance a significant and legitimate public purpose." *Sveen*, 138 S. Ct. at 1822 (quotations omitted); *see also Snake River Valley Elec. Ass'n v. PacifiCorp*, 357 F.3d 1042, 1051 n.9 (9th Cir. 2004) ("We need not address the question of substantial impairment, for we have no doubt that the [statute] reflects significant and legitimate public purposes . . ."). AAGLA does not dispute that the eviction moratorium was enacted for a permissible public purpose. Therefore, it can prevail, if at all, only if it can show that the provisions it challenges were not "appropriate and reasonable." *Sveen*, 138 S. Ct. at 1822.

AAGLA's challenge meets its end here because the district court properly deferred to local officials in the reasonableness analysis under modern Contracts Clause precedent. *See Energy Reserves*, 459 U.S. at 413. Therefore, assuming without deciding that the eviction moratorium is a substantial impairment of contracts, and undertaking a "careful examination" of its provisions, *Allied Structural*, 438 U.S. at 245, we conclude that AAGLA is unlikely to show that the eviction moratorium is an unreasonable fit for the problems identified.

Case law supports this conclusion: repeatedly in modern times, both the Supreme Court and this court have upheld as reasonable various laws that nonetheless may have affected private contracts. *See, e.g.*, *Keystone Bituminous*, 480 U.S. at 505–06; *Exxon Corp.*, 462 U.S. at 191–94; *Energy Reserves*, 459 U.S. at 416–19; *Snake River*, 357 F.3d at 1051 n.9; *Seltzer*, 104 F.3d at 236–37. For instance, despite finding that the law challenged in *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470 (1987), was a substantial impairment, the Court upheld it, "refus[ing] to second-guess" the legislature's identification of "the most appropriate ways of dealing with the problem." *Id.* at 506.

Given such precedents, AAGLA is unlikely to show that the challenged provisions of the eviction moratorium are constitutionally impermissible under the Contracts Clause. The City fairly ties the moratorium to its stated goal of preventing displacement from homes, which the City reasonably explains can exacerbate the public health-related problems stemming from the COVID-19 pandemic. *See* L.A., Cal., Municipal Code § 49.99 ("The COVID-19 pandemic threatens to undermine housing security and generate unnecessary displacement of City residents and instability of City businesses. Therefore, the City of Los Angeles has taken and must continue to take measures to protect public health, life, and property."); L.A., Cal., Ordinance No. 186,585 pmbl. ("[I]n the interest of protecting public health and preventing transmission of COVID-19, it is essential to avoid unnecessary housing displacement to protect the City's affordable housing stock and to prevent housed

individuals from falling into homelessness[.]"). As mentioned, AAGLA does not dispute that this purpose is a legitimate one.

In turn, each of the provisions of the eviction moratorium that AAGLA challenges may be viewed as reasonable attempts to address that valid public purpose. *See Energy Reserves*, 459 U.S. at 418–19. As the City explains in its briefing, the eviction protections are "necessary to avoid displacing residential tenants amidst a pandemic"; late fees and interest "could compound COVID-19 affected tenants' dilemmas, causing them to self-evict or be evicted"; and "economic hardship may cause consolidation of households and an increase in the number of inhabitants in some units, which could include additional inhabitants' pets" (citations and quotations omitted).

Thus, given the deferential standard that precedent constrains us to apply, we are compelled to conclude that the City's enactments pass constitutional muster under the Contracts Clause. Under current doctrine, we must "refuse to second-guess" the City's determination that the eviction moratorium constitutes "the most appropriate way[] of dealing with the problem[s]" identified. *Keystone Bituminous*, 480 U.S. at 506. That is particularly so, based on modern Contracts Clause cases, in the face of a public health situation like COVID-19. *See Blaisdell*, 290 U.S. at 440–41, 444–45.

C

AAGLA does not seriously argue that the City's chosen mechanisms are not reasonably related to the legitimate public purpose of ensuring health and security during the pandemic. Instead, AAGLA relies on a line of cases, beginning in the antebellum period and culminating in *Blaisdell*, that considered various laws imposing moratoria on evictions and foreclosures. Citing those earlier cases, AAGLA avers that "the Supreme Court *has* established a standard for reasonableness in the context of moratoria delaying a property owner's right to possession: ensuring *fair rental compensation* contemporaneous with the extended occupation during the pendency of a moratorium."

AAGLA correctly observes that the Court in those Contracts Clause cases often appears to have referenced in its discussion whether the law provided for some sort of reasonable rental value to be paid to the property owner during the moratoria's interim. In *Blaisdell,* for example, the Court upheld a moratorium on foreclosures, at least in part because it "secure[d] to the mortgagee the rental value of the property" during the emergency period. 290 U.S. at 432. The other cases AAGLA discusses appear to have viewed reasonable rent as a relevant consideration as well.[4]

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[4] *Compare Block v. Hirsh*, 256 U.S. 135, 153–54 (1921) (upholding a law allowing tenants to remain in possession after the expiration of the terms of their leases at least in part because "[m]achinery is provided to secure to the landlord a reasonable rent"), *with Bronson v. Kinzie* , 42 U.S. (1 How.) 311, 319–22 (1843) (striking down a law limiting certain foreclosures, in part because—as the

But AAGLA's assertion that, as a matter of constitutional law, eviction moratoria require fair rental compensation in the interim fails for two main reasons. *First*, even in the more Contracts Clause-friendly era in which some of these cases were decided, the authorities AAGLA cites do not clearly impose AAGLA's preferred inflexible rent payment rule. While these cases treated reasonable rent as a relevant criterion in the analysis, they do not purport to impose such a requirement as a categorical matter. Indeed, even AAGLA in its opening brief acknowledges that its desired contemporaneous rent requirement "may not have been elevated to a hard and fast 'rule' in every case."

In other words, there is no apparent ironclad constitutional rule that eviction moratoria pass Contracts Clause scrutiny only if rent is paid during the period of the moratoria. Instead, each of the cases AAGLA cites turned on its own facts and circumstances. That reasonable rent may have been a relevant consideration in some cases thus does not make it a constitutional floor in all cases. And it does not thereby create a Contracts Clause constitutional baseline in a case involving a public health situation like COVID-19. *See Matsuda v. City & County of Honolulu*, 512 F.3d 1148, 1152 (9th Cir. 2008) ("[T]he

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court later explained— unlike in *Blaisdell*, "there was no provision . . . to secure to the mortgagee the rental value of the property during the extended period," *Blaisdell*, 290 U.S. at 432); *and W.B. Worthen Co. v. Kavanaugh*, 295 U.S. 56, 61 (1935) (invalidating a law limiting foreclosures that did not condition relief "upon payment of interest and taxes or the rental value of the premises").

Supreme Court has construed [the Contracts Clause] prohibition narrowly in order to ensure that local governments retain the flexibility to exercise their police powers effectively.").

In claiming that any eviction moratorium is constitutional only if rent is contemporaneously paid, AAGLA relies most heavily on *Blaisdell*. But *Blaisdell* shows why AAGLA's attempt to divine a bright-line "reasonable rent" rule is unpersuasive. *Blaisdell* identified several factors that supported the state law's constitutionality. As the Court later explained, these included that the law contained a declaration of emergency, "protect[ed] a basic societal interest," was "appropriately tailored," and imposed "reasonable" conditions "limited to the duration of the emergency." *Allied Structural*, 438 U.S. at 242; *see also Blaisdell*, 290 U.S. at 444–47. Nothing in *Blaisdell* suggests that a "reasonable rent" requirement was dispositive. Indeed, *Blaisdell* specifically rejected the notion that Contracts Clause analysis should proceed with a "literal exactness like a mathematical formula." 290 U.S. at 428. Instead, "[e]very case must be determined upon its own circumstances." *Id.* at 430 (quotations omitted).

*Second*, the outmoded approach in the pre-*Blaisdell* cases AAGLA cites does not resemble the Supreme Court's modern Contracts Clause doctrine. *See U.S. Trust*, 431 U.S. at 22 n.19 (explaining that to the extent prior cases had imposed strict limitations, "[l]ater decisions abandoned these limitations as absolute requirements"). Indeed, the Supreme Court has clarified, even "the existence of an emergency and

the limited duration of a relief measure . . . cannot be regarded as essential in every case." *Id* at 23 n.19.

As discussed above, *Energy Reserves* provided for considerable deference to state and local legislatures in assessing the reasonableness of legislation. 459 U.S. at 412–13. Even twenty-five years ago, we "specifically recognized the shift in the law created by *Energy Reserves*," when the Supreme Court "retreated from its prior case law" and "indicated a renewed willingness to defer to the decisions of state legislatures regarding the impairment of private contracts." *Seltzer*, 104 F.3d at 236 (quotations omitted and alterations accepted). Under current precedent, this court therefore does not engage in an analysis as demanding as that of the pre-*Blaisdell* cases that AAGLA invokes.

Further weakening AAGLA's challenge is the fact that the eviction moratorium is but one aspect of a broader remedial framework applicable to landlords during the pandemic. In response to AAGLA's concerns, appellees fairly argue that the City's creation of an Emergency Rental Assistance Program supports the eviction moratorium's reasonableness. That Program initially made available about $103 million (of which $100 million was funded by the federal government) to provide up to $2,000 in rent payments per eligible household, though only tenants were able (but were not required) to apply for such assistance. Subsequently, federal and state funds allowed the City to expand that program by an additional $235.5 million.

Moreover, the City more recently has indicated that it expects to receive an additional $193 million "for rental assistance directly from the federal

government," along with a portion of the $1.2 billion in federal funds allocated to California from the most recent legislation. The City points to recent state legislation directing the funds to be "used to pay all of the rental debt accumulated on or after April 1, 2020 by a household making up to 80% of the area median income." *See* Cal. Health & Safety Code § 50897.1(b), (d)(1).

And finally, the City notes that other government agencies, including within the City, have given landlords flexibility in meeting their obligations, such as payment plans for utilities and penalty waivers for property taxes. Although the interaction between these various programs is a matter of some complexity, the availability of such relief, while not dispositive, remains relevant in assessing the overall reasonableness of the City's actions. *See Energy Reserves*, 459 U.S. at 418 ("To analyze properly the Kansas Act's effect, . . . we must consider the entire state and federal gas price regulatory structure."). That other government programs provide some relief to landlords thus further undermines AAGLA's Contracts Clause challenge.

Lastly, we note that although we appear to be the first court of appeals to have addressed a challenge to the constitutionality of a COVID-19-related eviction moratorium under the Contracts Clause, our result today is consistent with those of the district courts that have confronted—and uniformly rejected—these challenges. *See Heights Apartments, LLC v. Walz*, 510 F. Supp. 3d 789, 808–10 (D. Minn. 2020), *appeal docketed*, No. 21-1278 (8th Cir.); *Baptiste v. Kennealy*,

490 F. Supp. 3d 353, 381–87 (D. Mass. 2020); *El Papel LLC v. Inslee*, No. 2:20-cv01323-RAJ-JRC, 2020 WL 8024348, at *6–12 (W.D. Wash. Dec. 2, 2020), *report and recommendation adopted*, 2021 WL 71678, at *3 (Jan. 8, 2021); *HAPCO v. City of Philadelphia*, 482 F. Supp. 3d 337, 349–35 (E.D. Pa. 2020); *Auracle Homes, LLC v. Lamont*, 478 F. Supp. 3d 199, 223– 26 (D. Conn. 2020); *Elmsford Apartment Assocs., LLC v. Cuomo*, 469 F. Supp. 3d 148, 168–72 (S.D.N.Y. 2020).[5]

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[5] We note that AAGLA's Contracts Clause challenge involves a different analysis than the statutory and constitutional challenges to the nationwide eviction moratorium imposed by the Centers for Disease Control and Prevention (CDC), which recently reached the Supreme Court. *See Ala. Ass'n of Realtors v. U.S. Dep't of Health & Hum. Servs*,. No. 20-cv-3377 (DLF), — F. Supp. 3d —, 2021 WL 1779282, at *4–9 (D.D.C. May 5, 2021), *motion to stay granted*, — F. Supp. 3d —, 2021 WL 1946376, at *5 (May 14, 2021), *motion to vacate stay denied*, No. 21-5093, 2021 WL 2221646, at *1 (D.C. Cir. June 2, 2021) (per curiam), *application to vacate stay denied sub. nom. Ala. Ass'n of Realtors v. Dep't of Health & Hum. Svcs.*, 141 S. Ct. 2320, 2320 (2021) (mem.); *see also Ala. Ass'n of Realtors* , 141 S. Ct. at 2320– 21 (Kavanaugh, J., concurring); *Tiger Lily, LLC v. U.S. Dep't of Hous. & Urb. Dev.*, 992 F.3d 518, 522–24 (6th Cir. 2021) (order); *Terkel v. Ctrs. for Disease Control & Prevention*, No. 6:20-cv-00564, — F. Supp. 3d —, 2021 WL 742877, at *4–10 (E.D. Tex. Feb. 25, 2021), *appeal docketed*, No. 21-40137 (5th Cir.). Those cases concern the federal government's powers to enact national eviction moratoria under the Public Health Service Act and the Constitution. *See Tiger Lily*, 992 F.3d at 522–23; *Ala. Ass'n of Realtors*, 2021 WL 1779282, at *4;*Terkel*, 2021 WL 742877, at*4. We have no occasion to opine on those issues here.

The issues presented here are also different than those in *Chrysafis*, discussed above, in which the Supreme Court partially enjoined New York's eviction moratorium based on a Due Process challenge relating to landlords' lack of access to hearing procedures. No. 21A8, slip op. at 1. The Supreme Court in

Because AAGLA has not demonstrated a likelihood of success on its claim, we need not address the other preliminary injunction factors that AAGLA also would have needed to establish. *See California ex rel. Becerra v. Azar*, 950 F.3d 1067, 1083 (9th Cir. 2020) (en banc) ("If a movant fails to establish likelihood of success on the merits, we need not consider the other factors.").

* * *

We are tasked only with evaluating the constitutionality of the eviction moratorium under the forgiving standard of modern Contracts Clause analysis. A faithful application of that standard requires us to conclude that the district court did not err in denying AAGLA's request for preliminary injunctive relief.

**AFFIRMED.**

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*Chrysafis* was not considering a Contracts Clause challenge.

## APPENDIX B

**UNITED STATES DISTRICT COURT**
**CENTRAL DISTRICT OF CALIFORNIA**

**Case No. CV 20-05193 DDP (JEMx)**

**[Filed: November 13, 2020]**

APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC.,

Plaintiff,

v.

CITY OF LOS ANGELES, ET AL.,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

[Dkt. 46]

Presently before the court is Plaintiff Apartment Association of Los Angeles County, doing business as the Apartment Association of Greater Los Angeles ("AAGLA")'s Motion for Preliminary Injunction. Having considered the submissions of the parties and heard

oral argument, the court denies the motion and adopts the following Order.[1]

## I. Background

The COVID-19 global pandemic is the gravest public health crisis in over a century. At present, the novel coronavirus has killed at least 230,000 Americans and infected over 9 million more.[2] The true toll may never be known, but is likely significantly higher. The Centers for Disease Control and Prevention ("CDC"), for example, estimates that the number of "excess deaths" in the United States is closer to 300,000.[3] Neither the State of California nor the City of Los Angeles have been spared from the ravages of COVID-19. Nearly a million Californians have been infected, and nearly 18,000 have died.[4] Approximately

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[1] The court has also considered submissions from amici curiae (1) National Housing Law Project ("NHLP"); (2) Professors Ananya Roy and Paul Ong, of the University of California, Los Angeles ("UCLA Scholars"); and (3) the Cities of Chicago, Albuquerque, Austin, Baltimore, Boston, Cambridge, Chelsea, Cincinnati, Columbus, Dayton, Gary, Santa Cruz, Santa Monica, Seattle, St. Paul, Oakland, Portland, Tucson, Somerville, and West Hollywood, and Santa Clara County ("Amici Governments").

[2] See https://covid.cdc.gov/covid-data-tracker/?CDCAA refVal =https%3A%2F %2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2 Fcases-updates%2Fcases-in -us.html#cases casesper100k

[3] See https://www.cdc.gov/mmwr/volumes/69/wr/mm6942e2.htm

[4] See https://www.cdph.ca.gov/Programs/OPA/Pages/ NR20-293.aspx

300,000 of those cases and 7,000 of those fatalities have occurred in the Los Angeles area.[5]

Eight months into the pandemic, the City of Los Angeles remains in a state of emergency. In accordance with recommendations from national, state, and local public health authorities, state and local officials have taken hitherto unthinkable steps to slow the spread of the virus. For a time, all state and city residents were ordered to stay confined to their places of residence, with limited exceptions.[6] Although restrictions have eased somewhat at present, many types of businesses and gathering places remain closed in Los Angeles, including movie theaters, bars, athletic fields, theme parks, gyms and fitness centers, museums, live performance venues, indoor restaurants, and "non-critical" offices.[7] These measures, in conjunction with other coronavirus-related concerns, have had devastating economic consequences. By one estimate, over 16 million California households have lost

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[5] See http://dashboard.publichealth.lacounty.gov/covid19surveillancedashboard/

[6] See https://covid19.ca.gov/stay-home-except-for-essential-needs/;

https://www.lamayor.org/sites/g/files/wph446/f/page/file/20200527%2 0Mayor%20Public%20Order%20SAFER%20AT%20HOME%20ORDER%202020.03.19%20(REV%202020.05.27).pdf

[7] See https://corona-virus.la/sites/default/files/inline-files/MOCOVID-19What%27sOpenUpdated%2020201007.pdf

employment income as a result of the coronavirus.[8] Over the last six months, the unemployment rate in the Los Angeles area has ranged from 15 to 20 percent.[9]

Crises of national scope require national responses. Initially, the federal government rose to meet the economic challenge presented by the COVID crisis and passed the Coronavirus Aid, Relief and Economic Security Act ("CARES Act"), Pub. L. No. 116-136. Among the CARES Act's provisions were (1) a one-time stimulus payment to taxpayers and (2) an additional $600 weekly payment to Americans collecting unemployment benefits.[10] [11] Those additional unemployment payments expired, however, at the end of July, and Congress has not provided for further stimulus payments or other assistance to the American

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[8] See https://www.census.gov/data/tables/2020/demo/hhp/hhp14.html

[9] See https://www.bls.gov/eag/eag.calosangelesmd.htm

[10] See https://home.treasury.gov/policy-issues/cares/assistance-for-american-workers-and-families;

https://www.edd.ca.gov/about edd/coronavirus-2019/cares-act.htm

[11] Undocumented immigrants, including those who pay federal taxes with an Individual Taxpayer Identification Number, are not eligible for one-time stimulus payments, nor are United States citizens who are married to and file taxes jointly with undocumented spouses. See, e.g., Amador v. Mnuchin, No. CV ELH-20-1102, 2020 WL 4547950, at *4 (D. Md. Aug. 5, 2020). Many vulnerable renters in Los Angeles are concentrated in immigrant neighborhoods. (UCLA Scholars brief at 7.)

people. But the crisis has not abated. As the pandemic has worsened, its economic consequences have persisted.

These economic impacts have, unsurprisingly, affected the ability of many residential tenants to make rent payments. Somewhere between one million and 1.4 million California households are behind on their rent.[12] Approximately 14% of renter households in Los Angeles County are behind on rent, largely due to the effects of the pandemic on employment.[13] These households include over 450,000 people in the City of Los Angeles.[14]

As the CDC has explained, the novel coronavirus "spreads very easily and sustainably between people who are in close contact with one another . . . ."[15] "[H]ousing stability helps protect public health because homelessness increases the likelihood of individuals moving into congregate settings . . ."[16] Thus, "[i]n the context of a pandemic, eviction moratoria – like

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[12] See https://www.census.gov/data/tables/2020/demo/hhp/hhp14.html

[13] See UCLA Scholars brief at 4:10-11.

[14] Id. at 5:12.

[15] See Dep't of Health and Human Serv.'s, Centers for Disease Control and Prevention, *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, https://www.govinfo.gov/content/pkg/FR-2020-09-04/pdf/2020-19654.pdf

[16] Id.

quarantine, isolation, and social distancing – can be an effective public help measure utilized to prevent the spread of communicable disease," and "facilitate self-isolation by people who become ill or who are at risk for severe illness from COVID-19."[17]

Recognizing that "[t]he COVID-19 pandemic threatens to undermine housing security and generate unnecessary displacement of City residents," the City of Los Angeles adopted, among other measures, Ordinance 186606 ("the Eviction Moratorium," "City Moratorium," or "Moratorium"). The Moratorium "temporarily prohibits evictions of residential and commercial tenants for failure to pay rent due to COVID-19, and prohibits evictions of residential tenants during the emergency for no-fault reasons, for unauthorized occupants or pets, and for nuisances related to COVID-19." (Plaintiff's Request for Judicial Notice, Ex. 3 at 2.) Landlords may continue to seek to evict tenants for other reasons, and do not run afoul of the Moratorium at all if they seek to evict a tenant on the basis of a good faith belief that the tenant does not qualify for the Moratorium's protections.[18] (Id. at 3, 4).

The Moratorium's prohibition of evictions for COVID-related unpaid rent extends for twelve months

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[17] Id.

[18] The Moratorium also creates a private right of action for residential tenants against landlords for certain violations, but only after written notice to the landlord and a fifteen day window to cure the alleged violation. (Moratorium at 4-5.)

after the expiration of the local emergency.[19] (Id. at 3.) In other words, tenants have one year after the end of the emergency to make any rent payments that were missed as a result of COVID, including as a result of workplace closures, health care expenses, child care expenses due to school closures, "or other reasonable expenditures stemming from government-ordered emergency measures."[20] (Id.) The Moratorium explicitly states, however, that it does not "eliminate[] any obligation to pay lawfully charged rent." (Id. at 4.) If, at the end of the one year grace period, a tenant still owes rent that came due during the emergency period, a landlord may seek to evict for that unpaid rent. Landlords may not, however, charge late fees or interest for missed rent during the emergency or twelve month grace period. (Id. at 3.)

Plaintiff AAGLA is comprised of thousands of owners and managers of rental housing units, including over 55,000 properties within the City of Los Angeles. Plaintiff's Third Amended Complaint ("TAC") alleges that the City Eviction Moratorium and Rent Freeze Ordinance violate landlords' rights under the Contract Clause of the Constitution, as well as the Due Process Clause, Takings Clause, and Tenth

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[19] The City also adopted Ordinance No. 186607 (the "Rent Freeze Ordinance"), which prohibits rent increases on units subject to existing rent control provisions for a similar twelve-month period following the end of the COVID emergency. (Plaintiff's RJN, Ex. 4 at 21.)

[20] As discussed in further detail below, this grace period will, by operation of state law, expire no later than March 1, 2022. See California Assembly Bill 3088 § 1179.05(a)(2)(A).

Amendment. Plaintiff now moves for a preliminary injunction on the basis of the TAC's first two claims.

## II. Legal Standard

A private party seeking a preliminary injunction must show that: (i) it is likely to succeed on the merits; (ii) it will suffer irreparable harm in the absence of preliminary relief; (iii) the balancing of the equities between the parties that would result from the issuance or denial of the injunction tips in its favor; and (iv) an injunction will be in the public interest. Winter v. Natural Resources Def. Council, 555 U.S. 7, 20 (2008). Preliminary relief may be warranted where a party: (i) shows a combination of probable success on the merits and the possibility of irreparable harm; or (ii) 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.[21] Arcamuzi, 819 F.2d at 937.

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[21] 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).

## III. Discussion

A. Likelihood of Success on the Merits

AAGLA contends that the Eviction Moratorium and the Rent Freeze Ordinance run afoul of the Contract Clause's prescription that states shall not pass "any Law impairing the Obligation of Contracts." U.S. Const., Art. I, § 10. Although this language "is facially absolute, its prohibition must be accommodated to the inherent police power of the State to safeguard the vital interests of its people." Energy Reserves Grp., Inc. v. Kansas Power & Light Co., 459 U.S. 400, 410 (1983) (internal quotation marks omitted). "The constitutional question presented in the light of an emergency is whether the power possessed embraces the particular exercise of it in response to particular conditions." Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 426 (1934). Thus, to determine whether the Eviction Moratorium runs afoul of the Contract Clause, this Court must examine (1) whether the law "operate[s] as a substantial impairment of a contractual relationship," (2) whether the City "has a significant and legitimate public purpose" in enacting the moratorium, and (3) whether the "adjustment" of the rights of the contracting parties is "based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption." Energy Reserves, 459 U.S. at 411-12 (alterations omitted); see also Sveen v. Melin, 138 S. Ct. 1815, 1821 (2018) (combining public purpose and reasonableness inquiries). Here, although AAGLA concedes that the Eviction Moratorium is motivated by a legitimate public purpose, it nevertheless contends

that the moratorium substantially and unreasonably impairs landlords' contract rights.[22]

1. Substantial Impairment

Whether a law substantially impairs a contractual relationship depends upon "the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights."[23] Sveen, 138 S. Ct. at 1822. AAGLA asserts that the Eviction Moratorium deprives landlords of the "primary enforcement mechanism embodied in residential leases," and that such mechanisms are "the heart of what the Supreme Court has held must be protected under the Contract Clause." (Memorandum in support of motion at 22:4-7.) This argument is premised upon several mischaracterizations. First, notwithstanding AAGLA's description of eviction as the "primary" enforcement mechanism of a rental contract, the Eviction Moratorium does not deprive landlords of their contract remedies. The Moratorium does not excuse tenants from their contractual obligations to pay rent,

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[22] Because the Rent Freeze Ordinance is less burdensome than the Eviction Moratorium, the discussion of the former is subsumed within that of the latter, herein.

[23] AAGLA asserts that an impairment is substantial "if it deprives a private party of an important right, thwarts performance of an essential term, defeats the expectations of the parties, or alters a financial term." S. California Gas Co. v. City of Santa Ana, 336 F.3d 885, 890 (9th Cir. 2003) (internal citations omitted). That slightly looser standard applies, however, to public contracts. Id.

and landlords remain free to sue in contract for back rent owed.

Second, the Blaisdell court, contrary to AAGLA's representation, did not state that contract enforcement measures are sacrosanct. Although the Court did recount its prior observation in Von Hoffman v. City of Quincy, 71 U.S. 535, 551 (1866), that "[n]othing can be more material to the obligation [of a contract] than the means of enforcement," the Court explained, in the very same paragraph, that the Von Hoffman court itself limited its "general statement" with the observation that "it is competent for the States to change the form of the remedy, or to modify it otherwise, as they may see fit, provided no substantial right secured by the contract is thereby impaired. . . . Every case must be determined upon its own circumstances." Blaisdell, 290 U.S. at 430 (internal quotation marks omitted).[24] Indeed, the Court went on to reject the very argument raised by AAGLA here.

> [I]t does not follow that conditions may not arise in which a temporary restraint of enforcement may be consistent with the spirit and purpose of the constitutional provision and thus be found to be within the range of the reserved power of the state to protect the vital interests of the community. It cannot be maintained that the constitutional prohibition should be so construed

[24] The Blaisdell court further explained that none of the cases it cited, including Von Hoffman, were "directly applicable," and that "broad expressions contained in some of these opinions went beyond the requirements of the decision, and are not controlling." Blaisdell, 290 U.S. at 434.

> as to prevent limited and temporary interpositions with respect to the enforcement of contracts if made necessary by a great public calamity such as fire, flood, or earthquake. *** And, if state power exists to give temporary relief from the enforcement of contracts in the presence of disasters due to physical causes such as fire, flood, or earthquake, that power cannot be said to be nonexistent when the urgent public need demanding such relief is produced by other and economic causes.

Blaisdell, 290 U.S. at 439.

That said, it would be difficult to conclude that the Moratorium does not, at a minimum, significantly interfere with landlords' reasonable expectations. The reasonableness of a party's expectations will depend, to a significant extent, on the degree of regulation in the relevant industry. See Energy Reserves, 459 U.S. at 413; Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 242 n.13 (1978); Snake River Valley Elec. Ass'n v. PacifiCorp, 357 F.3d 1042, 1051 n.9 (9th Cir. 2004). AAGLA concedes, as it must, that the landlord-tenant relationship has long been subject to extensive regulation. See, e.g., 42 U.S.C. § 3604; Cal. Civ. Code § 1942.4. Several courts, examining Contract Clause challenges to eviction moratoria in other locales, have relied upon this history of regulation to conclude that eviction moratoria are relatively minor alterations to existing regulatory frameworks, and therefore do not interfere with landlords' reasonable expectations. See, e.g., HAPCO v. City of Philadelphia, C.A. No. 20-3300, 2020 WL 5095496, *7-8 (E.D. Pa. Aug. 28, 2020);

Auracle Homes, LLC v. Lamont, No. 3:20-cv-00829 (VAB), 2020 WL 4558682, *17 (D. Conn. Aug. 7, 2020); Elmsford Apt. Assocs., LLC v. Cuomo, No. 20-cv-4062 (CM), 2020 WL 3498456, *1 (S.D.N.Y. June 29, 2020).

This Court respectfully concludes that the scope and nature of the COVID-19 pandemic, and of the public health measures necessary to combat it, have no precedent in the modern era, and that no amount of prior regulation could have led landlords to expect anything like the blanket Moratorium. See Baptiste v. Kennealy, No. 1:20-CV-11335-MLW, 2020 WL 5751572, at *16 (D. Mass. Sept. 25, 2020) ("[T]he court finds that a reasonable landlord would not have anticipated a virtually unprecedented event such as the COVID-19 pandemic that would generate a ban on even initiating eviction actions against tenants who do not pay rent and on replacing them with tenants who do pay rent."). This Court cannot ignore the possibility that some landlords may face, at the very least, the prospects of reduced cash flow and time value of missed rent payments and increased wear and tear on rental properties, and that these effects were, at least in terms of degree, unforeseeable. At this stage, therefore, the court concludes that AAGLA is likely to succeed in showing a substantial impairment of its contractual rights.[25]

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[25] This is not to say, of course, that further factual development could not affect the court's conclusion. In Baptiste, for example, the court found it "not possible to determine conclusively the extent of the impairment of plaintiffs' contractual right to evict" because of factual uncertainties regarding the temporal extent of Massachusetts' eviction moratorium. Baptiste, 2020 WL 5751572, at *17. That particular concern is less salient here, as the

2. Reasonableness

No party disputes that the Moratorium was enacted in pursuit of a legitimate public purpose. The next question, therefore, "is whether the adjustment of the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption." Energy Reserves, 459 U.S. at 412 (quoting United States Trust Co. of New York v. New Jersy, 431 U.S. 1, 22 (1977) (internal quotation marks and alterations omitted)). "Unless the State itself is a contracting party, ... courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." Id. at 412-13 (internal quotation marks omitted).

Notwithstanding the Supreme Court's prescription, AAGLA urges this Court to set aside the City's determination that the Moratorium is necessary to protect public health, life, and property, and to conclude that the law is not a reasonable means of achieving its stated end.[26] AAGLA's argument rests largely upon unsupported factual assertions and a misreading of Supreme Court precedent. First, AAGLA asserts, without citation to any source, that "there is no

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Moratorium's limitation on evictions will persist for at least one year from today, and likely until March 2022. Further factual development, however, such as on the question whether landlords are able, in practice, to secure their contractual rights without recourse to eviction, could yet affect the substantial impairment question.

[26] See Moratorium at 2.

need for the Ordinances now . . ., with COVID cases decreasing . . . ." (Reply at 16:18-19.) It is unclear to the court whether that representation has been true at any point since the onset of the pandemic.[27] But even assuming that COVID cases were decreasing at the time of writing, that is most definitely not the case now, as fall wanes and winter approaches.[28]

Necessity aside, AAGLA primarily argues that, under Blaisdell, no "government entity, even in an acute and sustained economic emergency, may excuse tenants from paying a reasonable amount of rent contemporaneous with occupancy as a condition to avoiding eviction."[29] (Mem. in support at 24:18-19 (emphasis omitted).) AAGLA misreads Blaisdell, and subsequent cases interpreting it.

In 1933, in the midst of a state of economic emergency brought on by the Great Depression, Minnesota passed the "Mortgage Moratorium Law." Blaisdell, 290 U.S. at 416. The Mortgage Moratorium

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[27] See https://covid.cdc.gov/covid-data-tracker/#trendstotalandratecases

[28] See https://covid.cdc.gov/covid-data-tracker/#trendsdailytrendscases

[29] As discussed in further detail below, in the context of the irreparable harm analysis, this position is somewhat surprising in light of AAGLA's argument that a separate, statewide eviction moratorium is more reasonable than the City Ordinance, and that "we can certainly assume that the state law is constitutional." As discussed below, that state law, like the Moratorium, prohibits evictions for COVID-related nonpayment of rent, even where a tenant has paid no rent for a period of as much as eleven months.

Law automatically extended the period of redemption from foreclosure sales for thirty days, and empowered county courts to grant "just and equitable" further extensions, during which mortgagee-purchasers would be unable to take possession or obtain title. Id. In Blaisdell, defaulting mortgagors obtained a two year extension of the redemption period, subject to the condition that they make payments equal to the reasonable rental value of the property. Id. at 420. The mortgagee, a building and loan association, contended that the Mortgage Moratorium Law violated the Contract Clause, Due Process Clause, and Equal Protection Clause of the Fourteenth Amendment. Id. at 416.

The Supreme Court, focusing on the Contract Clause, disagreed.[30] Id. at 447-48. In so concluding, the Court observed that (1) a state of emergency existed, (2) the moratorium was addressed to "the protection of a basic interest of society" rather than to the benefit of particular individuals, (3) the moratorium's relief could only be "of a character appropriate to the emergency, and could only be granted upon reasonable conditions," (4) the moratorium, on balance, met that reasonableness requirement, and (5) the legislation was temporary. Id. at 447; see also Allied Structural Steel, 438 U.S. at 242. In finding the conditions imposed by the Minnesota Moratorium Law reasonable on balance, the Blaisdell court looked to several of the moratorium's provisions. Blaisdell, 290 U.S. at 445-46; Allied Structural Steel, 438 U.S. at 243. The relevant

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[30] No State shall . . . pass any . . . Law impairing the Obligation of Contracts." U.S.Const., Art. I, § 10.

conditions included (1) a continuation of the mortgage indebtedness, (2) the continued validity of the mortgagee's right to title or a deficiency judgment, (3) the mortgagor's obligation to pay the reasonable rental value, and (4) the fact that most mortgagees were corporations and banks "not seeking homes or the opportunity to engage in farming." Id.

According to AAGLA, the Blaisdell court's inclusion of reasonable rental value as a factor relevant to the reasonableness of the Mortgage Moratorium Law was tantamount to a requirement that any "adjustment" of rights relating to tenancy or occupancy include rent payments. For support, AAGLA points to the Supreme Court's subsequent pronouncement in Allied Structural Steel that "[t]he Blaisdell opinion [] clearly implied that if the Minnesota moratorium legislation had not possessed the characteristics attributed to it by the Court, it would have been invalid under the Contract Clause of the Constitution." Allied Structural Steel, 438 U.S. at 242. The characteristics to which the Allied Structural Steel court referred, however, were not the provisions bearing on the reasonableness of the Mortgage Moratorium Law, but rather the five broader considerations, of which reasonableness was but one. Id. As the Court explained,

> In upholding the state mortgage moratorium law, the [Blaisdell] Court found five factors significant. First, the state legislature had declared in the Act itself that an emergency need for the protection of homeowners existed. Second, the state law was enacted to protect a basic societal interest, not a favored group.

> Third, the relief was appropriately tailored to the emergency that it was designed to meet. Fourth, the imposed conditions were reasonable. And, finally, the legislation was limited to the duration of the emergency.

Id. (internal citations omitted) (emphasis added). Thus, although the Blaisdell court might conceivably have reached a different conclusion in the absence of a reasonable rent requirement, it did not go so far as AAGLA would suggest. Furthermore, the Supreme Court has explained that, to the extent any of its post-Blaisdell decisions did impose any specific limitations on legislatures' powers vis-à-vis contracts, "[l]ater decisions abandoned these limitations as absolute requirements." U.S. Trust, 431 U.S. at 22 n.19. Instead, specific requirements, including such a seemingly fundamental consideration as the existence of an emergency, are "subsumed in the overall determination of reasonableness." Id. "Undoubtedly the existence of an emergency and the limited duration of a relief measure are factors to be assessed in determining the reasonableness of an impairment, but [even] they cannot be regarded as essential in every case." Id.

In the absence of any specific prerequisite for reasonableness, let alone a requirement that the Moratorium provide for rent payments to landlords, this Court will defer to the City Council's weighing of the interests at stake. In so doing, the court joins at least four other courts that have found eviction moratoria reasonable in light of the COVID-19 pandemic at the preliminary injunction stage,

notwithstanding the lack of any provision for partial rent payments. See Baptiste, 2020 WL 5751572, at *19; HAPCO, 2020 WL 5095496, at *10; Auracle, 2020 WL 4558682, at *18-19; Elmsford, 2020 WL 3498456, at *15.[31] [32] Notably, here, as in Blaisdell, the Moratorium is addressed to protect a basic societal need, is temporary in nature, does not disturb landlords' ability to obtain a judgment for contract damages, does not absolve tenants of any obligation to pay any amount of rent, does not appear to impact landlords' ability to obtain housing, and was implemented in the context of a state of emergency. Indeed, the current emergency is arguably more serious than that brought on by the Great Depression, coupling, as it does, the consequences of economic catastrophe with a serious, and worsening, threat to public health.

AAGLA makes much of the fact that the Moratorium does not require tenants affected by COVID-19 to make an affirmative declaration to that effect. Although such a requirement would certainly

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[31] To be sure, although all four of these cases involve eviction moratoria with no partial rent requirement, the moratoria at issue differ in their particulars from each other and from the Moratorium here. Of the four moratoria at issue in the cited cases, the City's Moratorium is most akin to the City of Philadelphia's, discussed in HAPCO, 2020 WL 5095496, at *2-4.

[32] The Elmsford court converted a motion for a preliminary injunction into a motion for summary judgment, and, strictly speaking, did not reach the reasonableness question because it concluded, as a matter of law, that New York's eviction moratorium did not substantially impair landlords' contractual rights. Elmsford, 2020 WL 3498456, at *15.

make it more difficult for ill-intentioned, financially secure tenants to game the Moratorium, landlords remain free to seek to evict such nonpaying tenants, so long as there exists a good faith basis to believe that the tenant falls outside the Moratorium's protections. (Moratorium at 2.) There does not appear to this Court to be anything inherently unreasonable about the City Council's decision to spare legitimately-impacted tenants the burden of attestation.

Lastly, although the Moratorium does not mandate that tenants pay a reasonable, or any, amount of rent, neither has the City Council simply thrown landlords to the wolves. Along with the Moratorium and other coranavirus-related measures, the City implemented an Emergency Rental Assistance Program ("ERAS"), which will provide over $100 million in rental assistance payments to approximately 50,000 low-income households by the end of this year. (City Request for Judicial Notice, Ex. Y.) This rent subsidy "will be a grant paid directly to the tenant's landlord . . . ." (Id. at 5-6 (emphasis added).) The ERAS program does not impose any requirements on landlords beyond those already implemented by the Moratorium and the Rent Freeze Ordinance. (Id.) Although it is unlikely that the ERAS program will be sufficient to make up the entire shortfall of rent owed to AAGLA's members, the amount is not insignificant, and is at the very least indicative of the City Council's reasoned balancing of competing interests, including those of tenants, landlords, and the public health.[33]

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[33] AAGLA's Due Process claim fails for these same reasons. "Substantive due process provides no basis for overturning validly

Thus, even though the court is persuaded that AAGLA will be able to show that the Moratorium substantially impairs landlords' contract rights, AAGLA is not likely to succeed on its Contract Clause claim because any such impairment appears, at this stage, to be eminently reasonable under the extraordinary circumstances.[34]

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enacted state statutes unless they are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare." Spoklie v. Montana, 411 F.3d 1051, 1059 (9th Cir. 2005) (internal quotation marks omitted). The Moratorium clearly meets this relatively low bar. Despite AAGLA's urging, this Court does not read Block v. Hirsh, 256 U.S. 135, 155 (1921) to create some different standard for cases involving regulation of rents. Indeed, AAGLA's argument appears to be no more than a due process recasting of its "reasonable rental value" theory. The court in Block, as in Blaisdell, conducted a reasonableness analysis to determine whether the District of Columbia Rents Act "goes too far." Block, 256 U.S. at 156. Although the fact that "[m]achinery is provided to secure the landlord a reasonable rent" was a relevant factor in that due process analysis, the existence of such "machinery" is not a prerequisite to constitutional validity, any more than is "reasonable rent" in the Contract Clause context. Id. at 157.

Indeed, the Blaisdell court, having concluded that there was no Contract Clause violation, summarily disposed of a corresponding due process claim. Blaisdell, 290 U.S. at 448-49. ("We are of the opinion that the Minnesota statute . . . does not violate the contract clause . . . . Whether the legislation is wise or unwise as a matter of policy is a question with which we are not concerned. What has been said on that point is also applicable to the contention presented under the due process clause.") (citing Block) (emphasis added).

[34] As suggested above, nothing in this Order shall be read to suggest that further litigation of this matter could not affect the Court's conclusions. See note 25, above. Although the Court finds

B. Irreparable harm

A plaintiff seeking a preliminary injunction must demonstrate not just a possibility, but a likelihood of irreparable harm. Winter**,** 555 U.S. at 22; Alliance for the Wild, 632 F.3d at 1135. Although AAGLA asserts that irreparable harm can be presumed in the context of constitutional violations, the Ninth Circuit has cautioned that the irreparable harm requirement does not "collapse into the merits question," even where a plaintiff demonstrates a likelihood of success on the merits of a constitutional claim. Cuviello v. City of Vallejo, 944 F.3d 816, 831 (9th Cir. 2019)**.** At the same time, however, the court has stated that certain constitutional violations, including First Amendment violations and unlawful detentions without due process, "unquestionably" constitute irreparable harm. See, e.g., Klein v. City of San Clemente, 584 F.3d 1196,

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the Moratorium reasonable on balance at this stage of proceedings, the rationales for each of the Moratorium's various provisions are not all equally apparent. For example, it stands to reason that economic difficulties will lead to some consolidation of households and an increase in the number of inhabitants in some units, and that to evict that entire expanded household would have serious public health consequences. And it may well be that, absent a prohibition on interest and late fees, tenants might "self-evict" rather than incur additional debt. (Intervenors' brief at 20 (citing HAPCO, 2020 WL 5095496, at * 12)). This Court will not second-guess the City's apparent conclusion that the risk of such outcomes warrants a temporary suspension of interest charges, or that impacted renters should not be penalized in the form of late fees for missed payments that are, by definition, attributable to the current emergency. It remains to be seen, however, whether a blanket prohibition on pet-related evictions in fact promotes, or can reasonably be assumed to protect, public safety.

1207 (9th Cir. 2009) (First Amendment); Hernandez v. Sessions, 872 F.3d 976, 994 (9th Cir. 2017) (Due Process). Even assuming that economic injuries could also rise to the level of irreparable harm, this Court need not resolve this apparent tension because, for the reasons stated above, AAGLA has not demonstrated a likelihood of success on the merits of its constitutional claims.

AAGLA argues further that it is likely to suffer irreparable harm because, in the absence of injunctive relief, "tenants may simply live rent-free for the foreseeable future, without providing any documentation to their landlords." (Mem. in support at 19:18-19.) Although at first glance, it is somewhat unclear how landlords could possibly be irreparably harmed by the possibility of a temporary delay in rent payments "for the foreseeable future," AAGLA's reply makes clear that its theory of irreparable harm is that landlords have "no realistic chance of being paid . . . ." (Reply at 25:24.) It has long been established, however, "that economic injury alone does not support a finding of irreparable harm, because such injury can be remedied by a damage award." Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc., 944 F.2d 597, 603 (9th Cir. 1991) (citing Los Angeles Memorial Coliseum Comm'n v. National Football League, 634 F.2d 1197, 1202 (9th Cir. 1980); see also Goldie's Bookstore, Inc. v. Superior Court of State of Cal., 739 F.2d 466, 471 (9th Cir. 1984) ("Mere financial injury, however, will not constitute irreparable harm if adequate compensatory relief will be available in the course of litigation."). Indeed, the Ninth Circuit has relied upon that principle in denying a preliminary

injunction, even when the economic injury at issue stemmed from an alleged constitutional violation. Amwest Sur. Ins. Co. v. Reno, 52 F.3d 332 (9th Cir. 1995) (unpublished disposition).

AAGLA contends that, notwithstanding the Ninth Circuit's pronouncements, economic harm may be irreparable where there is a significant risk that damages will never be collected. (Reply at 25.) Some courts, including this one, have occasionally found irreparable harm where a plaintiff seeks monetary damages from a defendant that is, or is likely to become, insolvent or may dissipate assets to avoid judgment. See, e.g., DirecTV, LLC v. E&E Enterprises Glob., Inc., No. 17-06110-DDP-PLA, 2017 WL 4325585, at *5 (C.D. Cal. Sept. 25, 2017); Aliya Medcare Fin., LLC v. Nickell, No. CV1407806MMMSHX, 2014 WL 12526382, at *5 (C.D. Cal. Nov. 26, 2014); Laguna Commercial Capital, LLC v. Se. Texas EMS, LLC, No. CV 11-09930 MMM PLAX, 2011 WL 6409222, at *6 (C.D. Cal. Dec. 21, 2011). Those cases, however, bear little resemblance to the instant suit. Here, AAGLA seeks only declaratory and injunctive relief, not monetary damages. AAGLA does not cite, nor is this Court aware of, any authority for the proposition that an imminent irreparable harm exists simply because a plaintiff may be unable to collect a monetary judgment against some unascertained third party at the conclusion of some unrelated, separate suit that has yet to, and may never, be filed in the first instance. AAGLA's reliance on Baptiste is also misplaced. Although the Baptiste court did opine that landlords' contract remedies "will often be illusory" because tenants may be judgment-proof, it did so in the course

of the substantial impairment analysis, and not as part of an irreparable harm inquiry. Baptiste, 2020 WL 5751572, at *16.

Although monetary losses alone cannot, in this context, constitute irreparable harm, foreclosure theoretically could, as landlords' properties are unique. See Sundance Land Corp. v. Cmty. First Fed. Sav. & Loan Ass'n, 840 F.2d 653, 661 (9th Cir. 1988). Here, however, AAGLA has failed to demonstrate a likelihood, as opposed to a mere possibility, that landlords are in imminent danger of losing their properties to foreclosure. AAGLA has admittedly submitted declarations from only "a few" of its member landlords, only two of whom make any reference to mortgage difficulties.[35] (Mem. in support at 16-17.) One declarant states that four of twelve units he and his wife manage are not paying rent, but the declarant does not indicate that he is unable to make mortgage payments.[36] (Declaration of Fred Smith ¶¶ 4, 6.) Although the second declarant does state that her

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[35] Of the other two declarants, only one mentions a mortgage at all, and, despite a pre-Covid negative cash flow of $11,000 to $26,000 per year, does not appear to have any difficulty making mortgage payments. (Declaration of Natalie Adomian ¶ 3). Adomian's declaration also undercuts AAGLA's contention that landlords will not be able to recover monetary damages, as she states that her delinquent tenant earns at least $225,000 per year, and likely significantly more. (Id. at ¶ 5.)

[36] The court in no way intends to minimize the hardship the declarant faces, and acknowledges that the declarant is paying a portion of the mortgages out of his savings. The monetary harm the declarant describes, however, do not rise to the level of irreparable harm.

father is unable to make mortgage payments, and that one out of seven of his tenants is currently not paying rent, she further states that the mortgagor bank has agreed to one lengthy extension, and the declaration does not indicate that the bank has expressed any intention to foreclose in the foreseeable future. (Declaration of Evelyn Garcia, ¶¶ 4, 8.) The court is not aware of any evidence that mortgagors are, in fact, generally eager or likely to foreclose on residential rental units in the current environment. See Aliya Medcare, 2014 WL 12526382, at *4 ("It is not enough that the claimed harm be irreparable; it must be imminent as well." (citing Caribbean Marine Servs. Co., Inc. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988)). Indeed, under the present circumstances, including the very Moratorium that AAGLA seeks to invalidate, mortgagors may have little incentive to foreclose and significant motivations to come to accommodations with property owners. Furthermore, it is not clear that Mr. Garcia's difficulties are attributable to the Moratorium, as his mortgage was already delinquent by April 2, 2020.[37] (Garcia Decl., Ex. A.)

Even putting all these considerations aside, AAGLA has failed to show that the preliminary injunction it seeks will prevent the harms it alleges. The Moratorium represents but one layer of protection Los Angeles renters currently enjoy. California state authorities have not remained idle in the face of the

[37] Again, this Court has no intention of minimizing the difficulties faced by Mr. Garcia or any other landlord. Those difficulties do not, however, constitute irreparable harm for purposes of a preliminary injunction enjoining the Moratorium.

COVID crisis. In late August, the state legislature passed Assembly Bill 3088, the COVID-19 Tenant Rights Act (the "State Law"). The State Law is similar in some ways to the City's Moratorium, insofar as it also prohibits no-fault evictions and evictions for COVID-related rent delinquencies, without limiting landlords' ability to seek unpaid rent through other means. Cal. Code Civ. P. §§ CCP § 116.223, 1179.03, 1179.03.5. The State Law generally does not affect pre-existing local measures, such as the Moratorium, except to (1) trigger the commencement of any existing local rent repayment grace periods, including those conditioned upon the end of a declared state of emergency, on March 1, 2021, and (2) terminate any such repayment periods on March 31, 2022. Cal. Code Civ. P. § 1179.05.

In some aspects, however, the State Law goes beyond the Moratorium in ways that are more burdensome on landlords. The Moratorium, for example, allows evictions for back rent that remains unpaid at the conclusion of the Moratorium's twelve-month grace period. Under the State Law, in contrast, tenants can never be evicted for any COVID-related missed rent incurred between March 1, 2020 and August 31, 2020. Cal. Code Civ. P. § 1179.04(a). Similarly, tenants can never be evicted for failure to pay rent that comes due between September 1, 2020 and January 31, 2021, so long as the tenant pays, no later than January 31, twenty-five percent of the rent due during that period.[38] Cal. Civ. Code

[38] These protections only apply to tenants who provide landlords with a declaration that the tenant has missed rent due to

§ 1179.03(g)(2)(B). Thus, although the State Law provides for a shorter grace period than does the City Moratorium, it also essentially forgives, for eviction purposes (and eviction purposes only), 100% of six months' rent and up to 75% of rent for a further five months. The City Moratorium includes no comparable "forgiveness" provisions.

Notwithstanding the seemingly greater impacts of the State Law, AAGLA does not challenge the constitutionality of the State Law. To the contrary, AAGLA argues that the State Law is more reasonable than the Moratorium and, at that "we can certainly assume that the state law is constitutional." Against the backdrop of a presumptively valid State Law, however, it is unclear to the court how a preliminary injunction setting aside the Moratorium would aid Los Angeles landlords or, by the same token, how denial of such relief would put landlords in a materially worse position than that in which they would otherwise be. In arguing that the Moratorium is unreasonable, AAGLA made much of the fact that the City Ordinance does not guarantee landlords even partial payments contemporaneous with occupancy. But neither does the State Law. Under the State Law, for example, a qualifying tenant who paid zero rent for the month of September, and pays zero rent for four months thereafter, cannot be evicted until February. AAGLA's members will not possibly suffer irreparable harm in

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decreased income or increased expenses attributable to COVID-19. The City Moratorium has no equivalent attestation requirement.

the absence of an order preliminarily enjoining a Moratorium that, at the current juncture, does essentially the same thing as the admittedly reasonable and presumptively valid State Law.[39]

For these reasons, AAGLA has failed to demonstrate any likelihood of irreparable harm.

**C.** Balance of equities and the public interest

"Where the government is a party to a case in which a preliminary injunction is sought, the balance of the equities and public interest factors merge." Padilla v. Immigration & Customs Enf't, 953 F.3d 1134, 1141 (9th Cir. 2020) (citing Drakes Bay Oyster Co. v. Jewell, 747 F.3d 1073, 1092 (9th Cir. 2014)). As the court's prior discussion makes clear, the COVID-19 crisis is unparalleled in this country's modern history. It is, quite literally, a matter of life and death. The economic damage the pandemic has wrought, if left unmediated by measures such as the City Moratorium, would likely trigger a tidal wave of evictions that would not only inflict misery upon many thousands of displaced residents, but also exacerbate a public health

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[39] Of course, as discussed above, the City Moratorium and the State Law are not coterminous. But none of the most salient differences changes the result here. Although the State law does not restrict landlords' ability to seek late fees or interest at some point in the future, neither does it allow them to pursue evictions for such sums now. Furthermore, such purely economic damages cannot constitute irreparable harm, as explained above.

And, although AAGLA makes much of the Moratorium's lack of an attestation requirement, AAGLA does not explain how that lack "deprive[s] landlords of meaningful tools and resources" in a way that causes immediate, irreparable harm. (Reply at 26:6-7.)

emergency that has already radically altered the daily life of every city resident, and even now threatens to overwhelm community resources. The hardships wrought upon residential landlords as an unintended consequence of the City's efforts are real, and are significant, but must yield precedence to the vital interests of the public as a whole.

This Court will defer to the judgment of local authorities, who have the unenviable task of weighing all of the relevant considerations and choosing the least of all possible evils. It bears repeating, however, that the COVID-19 crisis is national in scope, and demands a national response.

Landlords and tenants alike are victims of the virus, both literally and economically. Tenants should not have to live in fear of eviction because of a calamity that was not of their making. Landlords should not have to live in fear of losing their hard-earned investments in our community because of a calamity that was not of their making. Our citizens should not have to fight each other to avoid economic and personal ruin.

Courts are an imperfect tool to resolve such conflicts. So too are ordinances and statutes that shift economic burdens from one group to another. The court respectfully implores our lawmakers to treat this calamity with the attention it deserves. It is, but for the shooting, a war in every real sense. Hundreds of thousands of tenants pitted against tens of thousands of landlords - that is the tragedy that brings us here. It is the court's reverent hope, expressed with great respect for the magnitude of the task at hand, that our

leaders, and not the courts, lead us to a speedy and fair solution.

## IV. Conclusion

Although it appears at this stage of proceedings that the City Moratorium substantially affects landlords' contract rights, the manner in and extent to which it does so appears reasonable under the circumstances. AAGLA has not, therefore, demonstrated a likelihood of success on the merits of its constitutional claims. Nor has AAGLA demonstrated a likelihood of irreparable harm, or that the balance of the equities or the public interest weigh in favor of preliminary relief. Accordingly, AAGLA's motion for a preliminary injunction is DENIED, without prejudice.

IT IS SO ORDERED.

Dated: November 13, 2020

/s/ Dean D. Pregerson
DEAN D. PREGERSON
United States District Judge

# APPENDIX C

## LOS ANGELES MUNICIPAL CODE

## ARTICLE 14.6

## TEMPORARY PROTECTION OF TENANTS DURING COVID-19 PANDEMIC

**(Added by Ord. No. 186,585, Eff. 3/31/20; Amended in Entirety by Ord. No. 186,606, Eff. 5/12/20.)**

Section



### SEC. 49.99. FINDINGS.

The City of Los Angeles is experiencing an unprecedented public health crisis brought by the

Coronavirus, which causes an acute respiratory illness called COVID-19.

On March 4, 2020, the Governor of the State of California declared a State of Emergency in California as result of the COVID-19 pandemic. That same day, the Mayor also declared a local emergency.

On March 16, 2020, the Governor issued Executive Order N-28-20, which authorizes local jurisdictions to suspend certain evictions of renters and homeowners, among other protections. The Executive Order further authorizes the City of Los Angeles to implement additional measures to promote housing security and stability to protect public health and mitigate the economic impacts of the COVID-19 pandemic.

The economic impacts of COVID-19 have been significant and will have lasting repercussions for the residents of the City of Los Angeles. National, county, and city public health authorities issued recommendations, including, but not limited to, social distancing, staying home if sick, canceling or postponing large group events, working from home, and other precautions to protect public health and prevent transmission of this communicable virus. Residents most vulnerable to COVID-19, including those 65 years of age or older, and those with underlying health issues, have been ordered to self-quarantine, self-isolate, or otherwise remain in their homes. Non-essential businesses have been ordered to close. More recent orders from the Governor and the Mayor have ordered people to stay at home and only leave their homes to visit or work in essential businesses. As

a result, many residents are experiencing unexpected expenditures or substantial loss of income as a result of business closures, reduced work hours, or lay-offs related to these government-ordered interventions. Those already experiencing homelessness are especially vulnerable during this public health crisis.

The COVID-19 pandemic threatens to undermine housing security and generate unnecessary displacement of City residents and instability of City businesses. Therefore, the City of Los Angeles has taken and must continue to take measures to protect public health, life, and property.

This ordinance temporarily prohibits evictions of residential and commercial tenants for failure to pay rent due to COVID-19, and prohibits evictions of residential tenants during the emergency for no-fault reasons, for unauthorized occupants or pets, and for nuisance related to COVID-19. This ordinance further suspends withdrawals of occupied residential units from the rental market under the Ellis Act, Government Code Section 7060, et seq.

**SEC. 49.99.1. DEFINITIONS.**

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

A. **Commercial Real Property.** "Commercial real property" is any parcel of real property that is developed and used either in part or in whole for commercial purposes. This does not include commercial

real property leased by a multi-national company, a publicly traded company, or a company that employs more than 500 employees.

B. **Endeavor to Evict.** "Endeavor to evict" is conduct where the Owner lacks a good faith basis to believe that the tenant does not enjoy the benefits of this article and the Owner serves or provides in any way to the tenant: a notice to pay or quit, a notice to perform covenant or quit, a notice of termination, or any other eviction notice.

C. **Local Emergency Period.** "Local emergency period" is the period of time from March 4, 2020, to the end of the local emergency as declared by the Mayor.

D. **No-fault Reason.** "No-fault reason" is any no-fault reason under California Civil Code Section 1946.2(b) or any no-fault reason under the Rent Stabilization Ordinance.

E. **Owner.** "Owner" is any person, acting as principal or through an agent, offering residential or Commercial Real Property for rent, and includes a successor in interest to the owner.

F. **Residential Real Property.** "Residential real property" is any dwelling or unit that is intended or used for human habitation.

**SEC. 49.99.2. PROHIBITION ON RESIDENTIAL EVICTIONS.**

A. During the Local Emergency Period and for 12 months after its expiration, no Owner shall endeavor to evict or evict a residential tenant for non-payment of rent during the Local Emergency Period if the tenant is unable to pay rent due to circumstances related to the COVID-19 pandemic. These circumstances include loss of income due to a COVID-19 related workplace closure, child care expenditures due to school closures, health-care expenses related to being ill with COVID-19 or caring for a member of the tenant's household or family who is ill with COVID-19, or reasonable expenditures that stem from government-ordered emergency measures. Tenants shall have up to 12 months following the expiration of the Local Emergency Period to repay any rent deferred during the Local Emergency Period. Nothing in this article eliminates any obligation to pay lawfully charged rent. However, the tenant and Owner may, prior to the expiration of the Local Emergency Period or within 90 days of the first missed rent payment, whichever comes first, mutually agree to a plan for repayment of unpaid rent selected from options promulgated by the Housing and Community Investment Department ("HCID") for that purpose.

B. No Owner shall endeavor to evict or evict a residential tenant for a no-fault reason during the Local Emergency Period.

C. No Owner shall endeavor to evict or evict a residential tenant based on the presence of

unauthorized occupants or pets, or for nuisance related to COVID-19 during the Local Emergency Period.

D. No Owner shall charge interest or a late fee on rent not paid under the provisions of this article.

E. An Owner shall: (i) provide written notice to each residential tenant of the protections afforded by this article ("Protections Notice") within 15 days of the effective date of this ordinance; and (ii) provide the Protections Notice during the Local Emergency Period and for 12 months after its termination each time the Owner serves a notice to pay or quit, a notice to terminate a residential tenancy, a notice to perform covenant or quit, or any eviction notice, including any notice required under California Code of Civil Procedure Section 1161 and California Civil Code Section 1946.1. HCID shall make available the form of the Protections Notice, which must be used, without modification of content or format, by the Owner to comply with this subparagraph. HCID will produce the form of the Protections Notice in the most commonly used languages in the City, and an Owner must provide the Protections Notice in English and the language predominantly used by each tenant.

F. No Owner shall influence or attempt to influence, through fraud, intimidation or coercion, a residential tenant to transfer or pay to the Owner any sum received by the tenant as part of any governmental relief program.

G. Except as otherwise specified in this article, nothing in this section shall prohibit an Owner from seeking to

evict a residential tenant for a lawful purpose and through lawful means.

**SEC. 49.99.3. PROHIBITION ON COMMERCIAL EVICTIONS.**

During the Local Emergency Period and for three months thereafter, no Owner shall endeavor to evict or evict a tenant of Commercial Real Property for non-payment of rent during the Local Emergency Period if the tenant is unable to pay rent due to circumstances related to the COVID-19 pandemic. These circumstances include loss of business income due to a COVID-19 related workplace closure, child care expenditures due to school closures, health care expenses related to being ill with COVID-19 or caring for a member of the tenant's household or family who is ill with COVID-19, or reasonable expenditures that stem from government-ordered emergency measures. Tenants shall have up to three months following the expiration of the Local Emergency Period to repay any rent deferred during the Local Emergency Period. Nothing in this article eliminates any obligation to pay lawfully charged rent. No Owner shall charge interest or a late fee on rent not paid under the provisions of this article.

**SEC. 49.99.4. PROHIBITION ON REMOVAL OF OCCUPIED RESIDENTIAL UNITS.**

No Owner may remove occupied Residential Real Property from the rental market under the Ellis Act, Government Code Section 7060, et seq., during the

pendency of the Local Emergency Period. Tenancies may not be terminated under the Ellis Act until 60 days after the expiration of the Local Emergency Period.

**SEC. 49.99.5. RETROACTIVITY.**

This article applies to nonpayment eviction notices, no-fault eviction notices, and unlawful detainer actions based on such notices, served or filed on or after the date on which a local emergency was proclaimed. Nothing in this article eliminates any obligation to pay lawfully charged rent.

**SEC. 49.99.6. AFFIRMATIVE DEFENSE.**

Tenants may use the protections afforded in this article as an affirmative defense in an unlawful detainer action.

**SEC. 49.99.7. PRIVATE RIGHT OF ACTION FOR RESIDENTIAL TENANTS.**

If an Owner violates Section 49.99.2, except for 49.99.2(E)(i), an aggrieved residential tenant may institute a civil proceeding for injunctive relief, direct money damages, and any other relief the Court deems appropriate, including, at the discretion of the Court, an award of a civil penalty up to $10,000 per violation depending on the severity of the violation. If the aggrieved residential tenant is older than 65 or disabled, the Court may award an additional civil penalty up to $5,000 per violation depending on the severity of the violation. The Court may award

reasonable attorney's fees and costs to a residential tenant who prevails in any such action. The Court may award reasonable attorney's fees and costs to an Owner who prevails in any such action and obtains a Court determination that the tenant's action was frivolous. A civil proceeding by a residential tenant under this section shall commence only after the tenant provides written notice to the Owner of the alleged violation, and the Owner is provided 15 days from the receipt of the notice to cure the alleged violation. The remedies in this paragraph apply on the effective date of this section, and are not exclusive nor preclude any person from seeking any other remedies, penalties or procedures provided by law.

**SEC. 49.99.8. PENALTIES.**

Upon the effective date of this section, an Owner who violates this article shall be subject to the issuance of an administrative citation as set forth in Article 1.2 of Chapter I of this Code. Issuance of an administrative citation shall not be deemed a waiver of any other enforcement remedies provided in this Code.

**SEC. 49.99.9. SEVERABILITY.**

If any provision of this article is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this article which can be implemented without the invalid provisions, and to this end, the provisions of this article are declared to be severable. The City Council hereby declares that it would have adopted this article and each provision

thereof irrespective of whether any one or more provisions are found invalid, unconstitutional or otherwise unenforceable.