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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

ALLIANCE OF CALIFORNIANS FOR)
COMMUNITY EMPOWERMENT (ACCE))
ACTION; POLICYLINK; STRATEGIC)
ACTIONS FOR A JUST ECONOMY)
(SAJE),)

Petitioners,

v.

THE CALIFORNIA DEPARTMENT OF)
HOUSING AND COMMUNITY)
DEVELOPMENT and GUSTAVO)
VELASQUEZ, IN HIS OFFICIAL)
CAPACITY AS THE DIRECTOR OF THE)
CALIFORNIA DEPARTMENT OF)
HOUSING AND COMMUNITY)
DEVELOPMENT,)

Respondents.

Case No. **22CV012263**

**VERIFIED PETITION FOR WRIT OF
MANDATE (CCP § 1085)**

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1 **Introduction**

2 1. As yet another COVID wave sweeps through California, and policymakers grapple
3 with the intensifying homelessness crisis, Petitioners bring this suit to enforce the Department of
4 Housing and Community Development’s duty to provide due process and equal access to low-
5 income tenants seeking Emergency Rental Assistance to stay in their homes and off the streets.

6 2. Last year, the Department was charged with distributing \$5.2 billion of federal rental
7 assistance funds intended to keep struggling tenants housed as the COVID pandemic put millions of
8 cost-burdened renters on the brink of homelessness.

9 3. But the Department’s flawed administration of the Emergency Rental Assistance
10 Program (“ERAP”) is violating tenants’ due process rights and disproportionately harming tenants
11 on the basis of race, color, and national origin, leading to unnecessary evictions.

12 4. COVID exacerbated underlying racial disparities in housing access; Black and Latinx
13 renters are especially likely to lack confidence in their ability to make rent payments, and
14 disproportionately likely to need rental assistance to avoid eviction. And renters with limited
15 English proficiency, many from Asian and Latinx communities, face barriers in accessing rental
16 assistance due to the Department’s lack of adequate interpretation services and its failure to properly
17 translate the rental assistance application and follow-up notifications to tenants.

18 5. Rental assistance is critical to tenants’ ability to meet their basic needs, yet the
19 Department provides no procedural protections for tenants. The Department denies rental assistance
20 without giving tenants meaningful notice of the grounds for denial; upon appeal, it does not provide
21 access to the documents or information on which the denial is based to enable tenants to
22 meaningfully contest denials; and tenants receive no reasonable opportunity to be heard.

23 6. While the Department issued few denials in the early months of the rental assistance
24 program, beginning in April 2022, the rate of denials increased dramatically. As of May 25, 2022,
25 HCD has denied nearly 140,000 tenants assistance – 25% of the total applications submitted. These
26 unfair denials subject tenants to unnecessary eviction and exacerbate underlying racial disparities in
27 housing access and homelessness.

Parties

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2 7. Petitioner Alliance of Californians for Community Empowerment (ACCE) Action is
3 a membership organization comprised of tenants from across the state of California with offices in
4 Oakland. ACCE provides tenants’ rights education, direct tenant services and tenant organizing
5 support. Since the inception of ERAP, ACCE has engaged in extensive educational campaigns and
6 conducted direct services to assist tenants in applying for rental assistance. ACCE members continue
7 to experience the financial hardships of the COVID-19 pandemic. ACCE’s work includes
8 advocating on behalf of tenants who have had difficulty accessing rental assistance because of
9 limited English proficiency, technological limitations, and other barriers. ACCE also assists tenants
10 who have been denied ERAP benefits in appealing denial decisions. ACCE has assisted a high
11 volume of low-income tenants seeking rental assistance and has diverted its organizational resources
12 to assist eligible tenants in challenging denials of rental assistance.

13 8. Petitioner PolicyLink is a national research and action institute that works to advance
14 racial and economic equity. PolicyLink seeks to promote economic inclusion to eliminate poverty,
15 shrink inequality, and increase mobility, creating and maintaining opportunity-rich communities
16 through equitable development. PolicyLink uses research to create resources that will ensure that all
17 systems and institutions are just, free of racial bias, and lead to a vibrant democracy where all,
18 especially the most vulnerable, can participate and prosper. PolicyLink is a 501(c)(3) nonprofit
19 organization and is based in Oakland, California.

20 9. Petitioner Strategic Actions for a Just Economy (SAJE) is dedicated to securing
21 economic justice and building community power in South Los Angeles by advocating for tenant
22 rights, healthy housing, and equitable development. SAJE provides tenants’ rights education, direct
23 tenant services and tenant organizing support. SAJE has engaged in extensive educational campaigns
24 and conducted direct services to assist tenants in accessing rental assistance. SAJE assisted tenants
25 impacted by COVID-19 in applying for rental assistance through March of 2022. SAJE tenants
26 continue to experience the financial hardships of the COVID-19 pandemic. SAJE assists tenants who
27 have been denied ERAP benefits in appealing denial decisions. SAJE has assisted many low-income
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1 tenants and has diverted its organizational resources to assist those facing eviction because of HCD's
2 unfair denials of rental assistance.

3 10. Respondent Department of Housing and Community Development is a state agency
4 established under the laws of the state of California, and is charged with implementing ERAP.
5 Health & Safety Code § 50897.5(a)(1). In its role as ERAP fund administrator, HCD is charged with
6 creating a system to determine eligibility for assistance and distributing funds to eligible tenants and
7 their landlords in accordance with applicable state law and federal funding guidance. Several large
8 cities and counties entered into agreements with HCD for the Department to administer federal rental
9 assistance funds originally allocated directly to their local government. HCD agreed to administer
10 these funds through the state ERAP program in accordance with applicable state law and federal
11 funding guidance. In addition to administering ERAP, HCD is also responsible for a wide variety of
12 housing related programs, including compliance with the federal mandate to produce an Analysis of
13 Impediments to Fair Housing Choice examining barriers to fair housing and action plans to address
14 those barriers.

15 11. Respondent Gustavo Velasquez is named in his official capacity as the Director of
16 HCD.

17 **Venue**

18 12. Venue is proper in this Court pursuant to Code of Civil Procedure section 401
19 because the Attorney General has an office in Alameda County.

20 **Facts**

21 **The Emergency Rental Assistance Program**

22 13. Millions of Americans lost income during the pandemic, from a variety of COVID-
23 related causes including unemployment, illness, reduced work hours, lack of childcare, complying
24 with isolation and quarantine requirements, and family caretaking responsibilities. People with low
25 incomes and limited savings were unable to pay their rent, putting them at risk of losing their
26 housing and threatening to exacerbate the state's existing homelessness crisis. At the same time, the
27 sudden loss of rental income put smaller landlords at risk of foreclosure.
28

1 21. Upon completion of a rental assistance application, the tenant submitted the
2 application and waited for a decision. The median wait time for decision is around 3 months, with an
3 additional month for payment to arrive.

4 22. Federal ERAP guidance strongly recommends that states “avoid establishing
5 documentation requirements that are likely to be barriers to participation for eligible households”
6 and permits states to rely on applicant attestations as evidence of application requirements, including
7 income, loss of income, and COVID impact.¹

8 23. HCD does not provide detailed guidance on what documentation is required for rental
9 assistance applications, but its guidance documents state that no written lease is required. This is
10 consistent with state law, which does not require a written lease to establish a tenancy. Civ. Code
11 §1622.

12 24. HCD’s guidance documents also provide that documentation requirements be kept as
13 simple as possible so as not to deter or prevent access to the rental assistance program including
14 documentation requirements that could “inhibit landlord or household participation in the program.”
15 California Dept. of Housing and Community Development, State Rental Assistance Program
16 Guidelines – Emergency Rental Assistance (ERA) Rounds 1 and 2 Implementation (Sept. 2021),
17 Section 3.2, pp. 13-14.

18 25. If HCD staff determine that further information or documentation is needed, they will
19 contact the tenant via telephone or email.

20 26. In early 2022, HCD began requiring nearly all tenants to upload additional
21 documentation, including a written lease, even when a tenant indicated that their tenancy was
22 pursuant to a verbal agreement.

23 27. Tenants who indicate that they speak a language other than English and included a
24 third party contact on their application still receive communications directly from HCD in English
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27 ¹ United States Department of the Treasury, Emergency Rental Assistance Frequently Asked
28 Questions (Aug. 25, 2021) at p. 2-3, <https://home.treasury.gov/system/files/136/ERA-FAQ-8-25-2021.pdf>.

1 only. Third party contacts are not included on communications from HCD and are removed from the
2 application system without notice.

3 28. Similarly, some tenants who request communications via phone or U.S. mail still
4 receive notices and requests for information via email or in the online application portal.

5 29. Tenants who have been waiting for their application to be processed for several
6 months will sometimes receive notification that they must submit additional documents within three
7 days or face denial.

8 30. Applicants cannot change their email addresses after they have submitted an
9 application. If a tenant loses access to the email account they used for their application, they are
10 unable to access their application and may be denied rental assistance for lack of responsiveness.

11 31. A landlord may separately initiate a rental assistance application or complete a rental
12 assistance application upon receiving notice that their tenant has applied for ERAP. Landlords use a
13 separate application portal to apply for assistance, identify their tenants, and upload supporting
14 documentation. HCD then attempts to link the landlord application to the application completed by
15 the corresponding tenant when determining eligibility for assistance and the amount of assistance
16 that will be provided.

17 32. Tenants may be approved for assistance for the entire amount they request, or they
18 may be approved for only a portion of the amount they request. HCD does not provide any specific
19 information to tenants approved for partial payment to explain why the tenant is being denied the full
20 amount requested.

21 33. In March 2022, HCD stopped allowing tenants to apply for assistance for April, May,
22 and June 2022, and tenants who had already submitted requests for those months saw the requests
23 disappear from their application without explanation.

24 34. If a landlord refuses to participate in the program, the rental assistance payment may
25 be paid directly to the eligible tenant as a single payment. The tenant must then provide the full
26 payment to their landlord within 15 days of receipt.

1 35. When HCD denies an application for rental assistance in full, the denial notice is
2 sometimes sent only via email, and in English, regardless of the primary language preference and
3 method of contact the tenant indicated on their application.

4 36. Until in or about February 2022, denial notices included language stating that the
5 decision was a “final decision.” This denial notice allowed a landlord to initiate a nonpayment
6 eviction against their tenant under state law.

7 37. On or about March 2022, in response to concerns from tenants’ advocates, HCD
8 modified the language of ERAP denial notices such that they now state that the denial decision is not
9 final for thirty days, and that the tenant may appeal the decision through the application portal and
10 submit additional documents.

11 38. HCD’s template denial decisions do not state the basis for the denial with any
12 specificity. For example, tenants receive notices that state “inconsistent or unverifiable information
13 has been provided by the applicant and cannot be substantiated by the program in...supporting
14 paperwork.” The notices do not provide any meaningful detail about what was wrong with the
15 tenant’s application, what portion of the application led to the denial, or how the tenant can address
16 the issue.

17 39. Tenants also receive denials that use acronyms and terms without explanation. For
18 example, one denial notice states “your application has been determined ineligible for government
19 rental assistance and denied due to the following reason(s): The applicants request surpasses the CA
20 COVID-19 RRP eligibility period D. Rent Assistance Requested.” No further detail is provided.

21 40. Because HCD’s notices use the term “applicant” without specification and do not
22 state the reason for denial supported by specific facts, landlords and the Department can blame
23 tenants for submitting incomplete information even if the denial is in fact based on the landlord’s
24 application and/or erroneous information provided by the landlord.

25 41. Where a tenant is unable to respond to requests for additional information because
26 HCD sent the request in the wrong language or in the wrong format, the tenant is denied assistance
27 for being “nonresponsive.”
28

1 42. Tenants may also be designated as “nonresponsive” if their landlord denies any rent is
2 owed. Tenants do not receive any written explanation for the “nonresponsive” designation.

3 43. Tenants have thirty days from notification of a denial to submit an appeal. There is no
4 publicly available information about who reviews the appeal, nor is this information provided to
5 tenants with their denial.

6 44. In some cases, tenants are approved for assistance by HCD staff, but receive notice up
7 to six weeks later from a third-party vendor retroactively denying their application.

8 45. Tenants do not receive notice that their applications may be subject to further review
9 after approval and may be retroactively denied after a rental assistance payment has been made.

10 46. When a tenant receives a retroactive denial from a third-party vendor, they are
11 instructed to return the rental assistance to the state, even if they have already provided the
12 assistance to their landlord. Applicants are told they can appeal third-party retroactive denials within
13 thirty days of the date of denial, regardless of the date of notice.

14 47. To appeal a denial of a rental assistance application, tenants are directed to use the
15 appeal form on the HousingisKey.com website. For some tenants, the appeal form does not appear
16 when they access their application. Tenants who seek to initiate an appeal via email or phone have
17 been told that they have exhausted their appeals, even if they have not yet challenged the initial
18 decision.

19 48. When available, the appeal form on the ERAP website allows the denied applicant to
20 submit documents in support of their appeal, but provides no opportunity for a hearing of any kind.
21 Nor are applicants informed of the specific factual basis for the denial, or provided a mechanism to
22 see the documents or information that HCD considered in denying the application.

23 49. When HCD denies an ERAP application based on the landlord’s submission, the
24 tenant does not receive any opportunity to see the documents provided by the landlord. Nor does the
25 denial notice identify the document on which the decision was based.

26 50. After submitting documents through the appeal form, the applicant receives no
27 opportunity to state their case before the decisionmaker or orally challenge the Department’s
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1 decision. Applicants are told to “state the reason(s) you are appealing” in writing on the appeal form,
2 with no indication that this is the only opportunity to present their case.

3 51. Many eligible tenants are erroneously denied rental assistance.

4 52. The vast majority of tenants seeking rental assistance do not have access to an
5 attorney or advocate to assist them.

6 53. If the denial is upheld, tenants receive notice via email, regardless of their preferred
7 method of communication. In some cases, HCD does not send notice to both parties and tenants
8 learn of the denial through their landlord.

9 54. Upon denial of an appeal, HCD does not inform applicants that they may seek review
10 through a petition for an administrative writ of mandate under Code of Civil Procedure section
11 1094.5. Instead, denial notices state that “all Appeal determinations are FINAL and cannot be
12 contested.”

13 55. Prior to March 2022, HCD issued almost no denial decisions. Since the program
14 closed on March 31, 2022, the number of denials escalated drastically; as of May 25, 2022, more
15 than 139,000 applications were denied, or 25% of total applications submitted.

16 **Rental assistance denials severely curtail tenants’ procedural rights in eviction proceedings**
17

18 56. The eviction protections first included in Senate Bill 91 were extended by Assembly
19 Bill 832, which was signed into law on June 28, 2021. A. B. 832 (2021-2022 Reg. Sess.) (Stats.
20 2021, Ch. 27). Assembly Bill 2179, signed into law March 31, 2022, further extended these
21 protections through June 30, 2022. A. B. 2179 (Stats. 2021, Ch. 13) (2021-2022 Reg. Sess.).

22 57. Assembly Bill 832 modified the unlawful detainer process by which landlords can
23 legally evict a tenant for failure to pay rent. The law requires the landlord to attest that the tenant
24 failed to complete a rental assistance application in order to proceed with an eviction action for
25 nonpayment of rent or that a final decision has been made denying the tenant’s application. Code of
26 Civ. Proc. § 1179.11(a).

1 58. Even if the tenant applies for rental assistance, once HCD issues a “final decision”
2 denying the application, the landlord is free to initiate eviction proceedings based on nonpayment of
3 the rental debt that would have been covered by ERAP. *Id.*

4 59. Eviction for nonpayment of rent takes place on an expedited timeline; after expiration
5 of a three-day notice demanding the rent due, the landlord may proceed in unlawful detainer using a
6 five-day summons. Code of Civ. Proc. §§ 1161, 1167. If the tenant is unable to respond in time,
7 default judgment may be entered on the 6th day with execution of a writ of possession following
8 days later. Code of Civ. Proc. §§ 1167, 1169.

9 60. Even if the tenant responds in time to the five-day summons, unlawful detainer trials
10 are set within 20 days of a trial setting memorandum, resulting in judgment and physical removal
11 from the property in a matter of weeks. Code of Civ. Proc. § 1170.5(a).

12 61. If a tenant receives an approval on their rental assistance application, the tenant may
13 seek an emergency order stopping an unlawful detainer judgment from issuing. Code of Civ. Proc.
14 § 1179.13(a).

15 62. Absent ERAP approval, tenants have no procedural mechanism to stop the eviction
16 once it has started.

17 **HCD has failed to provide requested public records related to ERAP denials**

18 63. On August 13, 2021, Petitioner PolicyLink contacted HCD and requested data
19 regarding the Emergency Rental Assistance Program, including data regarding applications and
20 denials.
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22 64. After efforts to obtain a complete response were unsuccessful, PolicyLink submitted a
23 formal Public Records Act request to HCD on October 7, 2021. After further discussions, the
24 Department began providing data regarding ERAP applications on an ongoing basis. However, to
25 date HCD has not provided any responsive documents that reflect the bases for denials of ERAP.

26 65. After seeing a dramatic increase in ERAP denials in April 2022, PolicyLink
27 submitted a supplemental Public Records Act request to HCD on April 25, 2022, again requesting
28 data and documents that reference the possible bases for ERAP denials. Specifically, PolicyLink

1 requested documents “reflecting a list or description of the possible bases for denying a rental
2 assistance application.” PolicyLink also requested data regarding denials, template denial notices
3 and HCD’s policies regarding denials. None of the requests sought personally identifying
4 information.

5 66. To date HCD has provided a total of four documents responsive to the April 25
6 request, none of them including data on denials. HCD has not produced a template initial denial
7 notice.

8 67. In response to follow up inquiries about additional responsive documents, HCD staff
9 stated that further documents would be provided on a “rolling basis” every 14 days. HCD did not
10 specify what further documents or type of documents would be produced, provide a date for
11 completing its response, or raise any objection to the request.

12 **First Cause of Action**

13 **Ordinary Mandamus (Code of Civ. Proc. § 1085): Procedural Due Process** 14 **Article 1, Section 7 of the California Constitution** 15 **(ACCE and SAJE vs. All Respondents)**

16 68. Petitioners reallege and incorporate herein each and every allegation contained in the
17 preceding paragraphs in this Petition.

18 69. The California Constitution provides that a “person may not be deprived of life,
19 liberty, or property without due process of law.” Cal. Const., art. I, § 7(a).

20 70. Petitioners and their members have a statutory interest in rental assistance.

21 71. In the context of the rental assistance program, due process requires, at a minimum,
22 adequate notice of the specific basis for denial, opportunity to confront the evidence that HCD used
23 in the denial determination, and a meaningful opportunity to be heard regarding the denial of
24 assistance.

25 72. By denying tenants rental assistance without providing notice of the specific reason
26 for denial, denying tenants the opportunity to confront the evidence HCD used in making the denial
27 decision, and failing to offer any opportunity for hearing, HCD is violating the Due Process Clause
28 of Article 1, Section 7 of the California Constitution.

1 83. The Fair Employment and Housing Act makes it unlawful to make unavailable or
2 deny a dwelling based on discrimination because of race, color, or national origin, and to act or fail
3 to act in a way that has the effect of unlawfully discriminating on the basis of race, color, or national
4 origin. Gov. Code §§ 12955, 12955.8(b).

5 84. The Fair Employment and Housing Act also makes it unlawful for HCD to
6 discriminate through financial assistance practices because of race, color, and national origin. Gov.
7 Code § 12955; 2 CCR § 12100(a).

8 85. HCD’s failure to provide language access in its administration of ERAP has a
9 disparate impact on Latinx and Asian renters because those renters are more likely than others to
10 have Limited English Proficiency.

11 86. Latinx and Asian tenants with Limited English Proficiency are unfairly denied rental
12 assistance when they are unable to respond to requests for information sent only in English.

13 87. By unfairly denying rental assistance applications without due process and failing to
14 provide language access, HCD is making financial assistance unavailable in a manner that results in
15 discriminatory effect, establishing terms and conditions of financial assistance in a manner that
16 results in a discriminatory effect, and failing to provide information regarding application
17 requirements, procedures, or standards for the review and approval of financial assistance, in a
18 manner that results in a discriminatory effect based on membership in a protected class. 2 CCR
19 § 12100(a)(1)-(3).

20 88. By unfairly denying rental assistance applications without due process and failing to
21 provide language access, HCD is acting in a way that has the effect of unlawfully discriminating on
22 the basis of race, color, or national origin. Gov. Code §§ 12955, 12955.8(b).

23 89. HCD has a clear, present, ministerial duty to comply with the Fair Employment and
24 Housing Act.

25 90. Petitioners have a beneficial interest in the performance of HCD’s duties.

26 91. Petitioners also have an interest as citizens in the performance of HCD’s public
27 duties.

1 (1) have the purpose or effect of subjecting a person to discrimination on the basis of ethnic group
2 identification, or (2) have the purpose or effect of defeating or substantially impairing the
3 accomplishment of the objectives of the recipient's program with respect to a person of a particular
4 ethnic group identification....” 2 CCR § 11154(i).

5 101. HCD has violated Government Code section 11135 by failing to afford Petitioners
6 and their members full and equal access to ERAP. HCD fails to provide people with limited English
7 proficiency notices and communications in their chosen language, and then denies assistance to
8 eligible tenants when they are unable to respond to requests for information and documents provided
9 only in English.

10 102. Petitioners are not required to exhaust administrative remedies before seeking
11 equitable relief for HCD’s conduct. Gov. Code § 11139.

12 103. HCD has a clear, present, ministerial duty to comply with Government Code section
13 11135.

14 104. Petitioners have a beneficial interest in the performance of HCD’s duties.

15 105. Petitioners also have an interest as citizens in the performance of HCD’s public
16 duties.

17 106. Despite Petitioners’ demand to HCD to reverse its unlawful policy and comply with
18 its constitutional mandate, HCD has refused to comply.

19 107. Unless compelled by this Court to comply with its legal obligations, HCD will
20 continue to deny tenants rental assistance thereby leading to unnecessary evictions and violating the
21 law.

22 108. Petitioners have no plain, speedy and adequate remedy at law other than that sought
23 herein.

Fourth Cause of Action

**Ordinary Mandamus (Code of Civ. Proc. § 1085)
Duty to Affirmatively Further Fair Housing
Government Code § 8889.50
(ACCE and SAJE vs. all Respondents)**

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5 109. Petitioners reallege and incorporate herein each and every allegation contained in the
6 preceding paragraphs in this Petition.

7 110. HCD is prohibited from taking actions which are materially inconsistent with its
8 obligation to affirmatively further fair housing. Gov. Code § 8899.50 (b)(1).

9 111. “Affirmatively furthering fair housing means taking meaningful actions that, taken
10 together, address significant disparities in housing needs and in access to opportunity, replacing
11 segregated living patterns with truly integrated and balanced living patterns, transforming racially
12 and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining
13 compliance with civil rights and fair housing laws.” Gov. Code § 8899.50(a)(1).

14 112. The duty to affirmatively further fair housing applies to the Department and extends
15 to all of its activities and programs relating to housing and community development, including the
16 administration of the Emergency Rental Assistance Program. Gov. Code § 8899.50(b)(1).

17 113. Structural and institutionalized racism have created disparities in access to wealth and
18 housing opportunity, and as a result, Black households are more likely to be renters, more likely to
19 experience severe rent burden, and more likely to face eviction as compared to white households.

20 114. As a result of these entrenched, historically rooted racial disparities, Black people are
21 also more likely to need rental assistance in order to avoid eviction and homelessness.

22 115. These racialized harms are reflected in the ERAP applicant pool; Black tenants were
23 more likely than other tenants to be facing eviction when they applied for rental assistance with the
24 Department.

25 116. In its 2020 “Analysis of Impediments to Fair Housing Choice” HCD lists action steps
26 to address impediments to fair housing including “[r]eview due process protections, including
27 hearing and grievance procedures, for entities participating in state housing programs. Seek to
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1 provide due process protections before terminating services or tenancy.”³

2 117. The Department’s failure to provide due process in the rental assistance program
3 disproportionately harms Black tenants, and exacerbates underlying patterns of segregation, lack of
4 access to housing-related opportunities and overrepresentation of Black people among the homeless.
5 HCD’s actions are in direct contravention of its duty to further fair housing and to foster compliance
6 with civil rights and fair housing laws.

7 118. HCD has a clear, present, ministerial duty to comply with its duty to affirmatively
8 further fair housing.

9 119. Petitioners have a beneficial interest in the performance of HCD’s duties.

10 120. Unless compelled by this Court to comply with its legal obligations, HCD will
11 continue to deny tenants’ rental assistance without providing due process, a harm which
12 disproportionately harms Black tenants and violates the duty to affirmatively further fair housing.

13 121. Petitioners have no plain, speedy and adequate remedy at law other than that sought
14 herein.

15
16 **Fifth Cause of Action**

17 **Writ of Mandate for Violations of the California Public Records Act**
18 **Gov. Code § 6258 and California Constitution, Article 1, Section 3(b)**
(PolicyLink vs. All Respondents)

19 122. Petitioner realleges and incorporates herein each and every allegation contained in the
20 preceding paragraphs in this Petition.

21 123. In enacting the California Public Records Act (“CPRA”), the Legislature found that
22 “access to information concerning the conduct of the people's business is a fundamental and
23 necessary right of every person in this state.” Gov. Code § 6250. The CPRA expands upon the
24 public’s right to records as expressed in Article 1, section 3 of the California Constitution, which
25 provides that “[t]he people have the right of access to information concerning the conduct of the
26 people’s business.”

27 _____
28 ³ *Final 2020 Analysis of Impediments to Fair Housing Choice*, Department of Housing and
Community Development, June 2020, at p. 428.

1 124. The CPRA broadly defines “public records” to include “any writing containing
2 information relating to the conduct of the public's business prepared, owned, used, or retained by any
3 state or local agency regardless of physical form or characteristics" Gov. Code § 6252.

4 125. Under the CPRA, all public records not subject to statutory exemptions to disclosure
5 must be made publicly available upon request. Gov. Code § 6253. Responding agencies are required
6 to provide an estimated date and time when records will be made available. Gov. Code § 6253(c).

7 126. The “CPRA must be broadly construed because its statutory scheme furthers the
8 people's right of access. Exemptions are narrowly construed and the agency opposing disclosure
9 bears the burden of proving an exemption applies.” *Ventura County Deputy Sheriffs' Association v.*
10 *County of Ventura*, 61 Cal.App.5th 585, 592 (2021).

11 127. Where a government agency refuses to provide disclosable records, “any person” may
12 seek relief in court through a writ of mandate proceeding. Gov. Code § 6258. If a court finds that the
13 official’s decision to refuse disclosure is unreasonable, the court “shall” order the official to make
14 the record public. Gov. Code § 6259(b).

15 128. The records Petitioners seek are public records related to the conduct of the public’s
16 business.

17 129. Respondent HCD has control of and access to records that are responsive to
18 Petitioner’s request.

19 130. HCD has a clear, present, ministerial duty to comply with the California Constitution
20 and the CPRA.

21 131. Despite Petitioner’s diligent efforts to obtain the records, HCD has failed to provide a
22 complete response, forcing Petitioner to retain counsel and file this petition, thereby incurring costs
23 of suit and attorneys’ fees.

24 132. Unless compelled by this Court to produce these records and comply with the CPRA,
25 HCD will continue to refuse to produce the requested records and violate the law.

26 133. Petitioner has no plain, speedy and adequate remedy at law other than that sought
27 herein.
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Injunctive and declaratory relief

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2 134. Respondents’ above-described actions have caused Petitioners and others irreparable
3 injury for which they have no adequate remedy at law because unless this Court grants equitable
4 relief; tenants throughout California will be evicted and lose their homes despite HCD’s ability to
5 prevent that harm through payment of rental assistance to eligible tenants.

6 135. There is an actual and present controversy between Petitioners and Respondents in
7 that Petitioners contend that HCD is violating state and federal law by failing to provide due process
8 and administering ERAP in a way that disproportionately harms tenants on the basis of race, color,
9 and national origin. Respondents contend to the contrary. This controversy is in need of immediate
10 resolution.

Prayer for Relief

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12 Therefore, Petitioners respectfully request that this Court:

13 1. Issue a peremptory writ of mandate and preliminary and permanent injunctive relief
14 prohibiting Respondents from denying rental assistance to tenants without providing pre-denial
15 notice sufficient to permit tenants to understand the basis for denial and how they can remedy any
16 defects in the application; access to all documents HCD considered in making the initial denial; and
17 an opportunity for tenants to give oral testimony to those officials deciding their appeals.

18 2. Issue a peremptory writ of mandate and preliminary and permanent injunctive relief
19 prohibiting Respondents from administering the rental assistance program in a way that
20 discriminates against tenants based on race, color, and national origin in violation of Government
21 Code section 11135, Government Code section 8899.50, and the Fair Employment and Housing Act;

22 3. Issue a peremptory writ of mandate against HCD pursuant to Government Code
23 section 6259, directing HCD to provide Petitioner PolicyLink the requested records within seven
24 days of this Court’s order; or in the alternative, issue an order to show cause why the court should
25 not order these public records to be disclosed;

26
27 4. Enter an order resolving the issues in dispute between the parties by declaring that
28 HCD has violated the Due Process Clause of the California Constitution, Government Code section

1 11135, Government Code section 8899.50, the Fair Employment and Housing Act, and the
2 California Public Records Act in its administration of the rental assistance program and refusal to
3 provide public records related to the program;

4 5. Award Petitioners their reasonable attorneys' fees and costs incurred in bringing this
5 action; and,

6 6. Award such further relief as the Court deems just and proper.
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8 Dated: June 6, 2022

Respectfully submitted,

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Madeline Howard

11 *Attorneys for Petitioners*

Verification:

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I, Christina Livingston, declare:

I am the executive director of ACCE, the petitioner in this action. I am authorized to make this verification on its behalf. I have read the verified petition for writ of mandate. The facts stated in the Petition are either true and correct of my own personal knowledge, or I am informed and believe that such facts are true and correct, and on that basis I allege them to be true and correct.

This verification was executed on 6/5/2022, in Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

Christina Livingston
Christina Livingston

Verification:

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I, Cynthia Strathmann, declare:

I am the executive director of SAJE, the petitioner in this action. I am authorized to make this verification on its behalf. I have read the verified petition for writ of mandate. The facts stated in the Petition are either true and correct of my own personal knowledge, or I am informed and believe that such facts are true and correct, and on that basis I allege them to be true and correct.

This verification was executed on 6/3/2022, in Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

Cynthia Strathmann
Cynthia Strathmann

Verification:

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I, Sarah Treuhaft, declare:

I am the Vice President of Research at PolicyLink, the petitioner in this action. I am authorized to make this verification on its behalf. I have read the verified petition for writ of mandate. The facts stated in the Petition are either true and correct of my own personal knowledge, or I am informed and believe that such facts are true and correct, and on that basis I allege them to be true and correct.

This verification was executed on 6/3/2022, in Oakland, California.

I declare under penalty of perjury that the foregoing is true and correct.

Sarah Treuhaft
Sarah Treuhaft