

Electronically Received 04/23/2020 10:27 PM

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

COUNTY OF LOS ANGELES,

Petitioner/Plaintiff,

v.

CITY OF NORWALK and DOES 1-10,
inclusive,

Respondents/Defendants.

CASE NO. 20STCP01480

**PETITIONER/PLAINTIFF COUNTY OF
LOS ANGELES' EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE RE PRELIMINARY
INJUNCTION**

[Filed Concurrently with Request for Judicial
Notice; Declarations of Ansell, Hashmall,
Marston, McClaire, and Miller; and [Proposed]
Orders]

Date: April 27, 2020
Time: 8:30 a.m.
Dept.: 1

Assigned for All Purposes to:
Hon. James C. Chalfant, Dept. 85

Action Filed: April 23, 2020
Trial Date: None set

1 **TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on April 27, 2020, at 8:30 a.m., or as soon after as the
3 matter may be heard in Department 1 of the above-entitled Court, located at 111 North Hill Street,
4 Los Angeles, California 90012, Petitioner and Plaintiff County of Los Angeles (“County” or
5 “Plaintiff”) will and hereby does apply *ex parte* for a temporary restraining order against
6 Respondent and Defendant City of Norwalk (“Norwalk” or “Defendant”) and an order to show
7 cause why a preliminary injunction should not issue (“Application”).

8 Good cause exists for this Application. California is facing an unprecedented public health
9 crisis due to the spread of COVID-19. There are federal, state, and local declarations of
10 emergency in place. Under the California Emergency Services Act, emergency authority is
11 centralized at the state level. The State has the authority to direct counties and cities to take action
12 to protect people and property.

13 As applicable here, the State has created a program called “Project Roomkey” and directed
14 counties to secure temporary emergency housing for individuals experiencing homelessness who
15 are at risk of contracting COVID-19, including by utilizing private hotels and motels. Project
16 Roomkey is designed to save lives and reduce the burden on the hospital system.

17 While many cities, hotels, and motels have jumped in to help the County implement
18 Project Roomkey, along with the County’s own quarantine and isolation programs, others have
19 resisted. Norwalk is one of those cities. Norwalk’s resistance is surprising, given that Norwalk
20 has its own plan to prevent and combat homelessness, and has been receiving funding from the
21 Los Angeles County Homeless Initiative.

22 Nonetheless, Norwalk is now blocking the County from providing critical temporary
23 housing to individuals experiencing homelessness—during an unprecedented public health crisis
24 that is impacting Norwalk’s own residents. On April 21, 2020, Norwalk directed a participating
25 hotel to “cease and desist” using its premises for a temporary emergency homeless housing
26 shelter. Norwalk asserted that it would take legal action against the hotel if it did not immediately
27 “retract and withdraw” its contract with the County. In the letter, Norwalk stated that it would
28 revoke the hotel’s Conditional Use Permit and threatened to pursue fines, penalties and other

1 actions if the hotel proceeded with its participation in Project Roomkey.

2 Norwalk did not stop there. On April 21, 2020, at a special meeting announced on 24
3 hours' notice, the City Council passed an ordinance—a moratorium—barring hotels and motels
4 from “converting or utilizing businesses or properties” for homeless housing or COVID-19
5 housing uses or purposes “without prior city approval” (the “Norwalk Moratorium”). Norwalk
6 proclaimed “the importance of local control over land use and related activities during the current
7 state of emergency.” Instead of assisting the State and the County to implement these critical and
8 life-saving measures to house and provide essential services to at-risk individuals experiencing
9 homelessness, Norwalk erected local barriers to businesses seeking to participate in the programs.

10 The demand for local control over property used for emergency housing of at-risk
11 populations is bad public policy that impedes statewide efforts to minimize the public health
12 fallout from the COVID-19 emergency. Moreover, the Norwalk Moratorium and other efforts to
13 interfere with Project Roomkey violate the law. Under the California Emergency Services Act
14 and Governor Gavin Newsom’s Executive Orders, the State’s political subdivisions—including
15 both counties and cities—have a *mandatory duty* to take all measures to carry out the Governor’s
16 emergency plans. Those plans include Project Roomkey, along with other programs designed to
17 bring vulnerable individuals experiencing homelessness indoors, and provide medical testing and
18 social distancing and quarantine measures as necessary, to minimize COVID-19 exposure risks.

19 Because of Norwalk’s actions, which threaten the County’s ability to implement Project
20 Roomkey, the County applies to this Court for a temporary restraining order that:

- 21 1. Orders Norwalk to comply with the Emergency Services Act and the Governor’s
22 Executive Orders by allowing the County to implement Project Roomkey, and
23 other temporary emergency housing programs for at-risk individuals experiencing
24 homelessness;
- 25 2. Enjoins Norwalk from enforcing the Norwalk Moratorium; and
- 26 3. Enjoins Norwalk from taking any actions intended to prohibit or inhibit the ability
27 of businesses in Norwalk to participate in Project Roomkey or other temporary
28 emergency housing programs for at-risk individuals experiencing homelessness.

1 The County is entitled to the relief requested in this Application. In its Petition for Writ of
2 Mandate and Complaint for Declaratory Relief (“Petition”), the County brings two causes of
3 action: (1) a petition for writ of mandate compelling Norwalk to comply with the Emergency
4 Services Act and the Governor’s Executive Orders by allowing the County to implement Project
5 Roomkey, and other temporary emergency housing programs for at-risk individuals experiencing
6 homelessness; and (2) declaratory relief declaring that the Emergency Services Act bars any
7 actions intended to prohibit or inhibit the ability of businesses in Norwalk to participate in Project
8 Roomkey or other temporary emergency housing programs for at-risk individuals experiencing
9 homelessness, and declaring that any such acts (including, but not limited to, the Norwalk
10 Moratorium) are invalid and unenforceable during a state of emergency.

11 For the reasons set forth above and demonstrated herein, the County is likely to prevail on
12 both causes of action. Under the California Emergency Services Act, Norwalk is obligated to
13 carry out the Governor’s emergency plans during a state of emergency and is prohibited from
14 taking any actions that impede the implementation of the emergency orders of the Governor or the
15 County. The Norwalk Moratorium, and other efforts to block Project Roomkey and related
16 programs, are contrary to these binding obligations and are therefore invalid and improper.

17 The irreparable harm to the County if relief is not granted is clear. Without temporary
18 housing, the 15,000 at-risk individuals experiencing homelessness would either be hospitalized or
19 die if they were to contract COVID-19. This strain on the hospital system, and disregard for
20 human life, is an untenable outcome. The County must take all feasible actions to bring these at-
21 risk individuals indoors. Doing so requires the participation of hotels and motels, which must be
22 able to sign agreements with the County to implement this emergency public health program
23 without fear of legal reprisal. The Norwalk Moratorium has delayed the opening of the facility
24 and hindered the County’s ability to remove at-risk individuals from the streets, while also
25 delaying its ability to test and, if necessary, obtain medical treatment for these individuals.
26 Norwalk is demanding a lengthy review process involving City staff, and then City Council
27 review and approval, that would conflict with the Governor’s mandate that these emergency
28 services be provided to the vulnerable homeless population on an expedited basis.

1 Norwalk, in turn, will not be harmed by the issuance of the TRO. The County, with state
2 and federal support, is providing wraparound services to institute safety measures at the hotel site
3 and to give essential services to the residents it temporarily houses, while at the same time
4 enlisting experienced law enforcement and other security personnel to protect the surrounding
5 community. The Los Angeles Homeless Services Authority (“LAHSA”), not Norwalk, is in
6 charge of all operations, and has the experience and expertise to service this at-risk population.
7 Moreover, Norwalk has its own homeless population who may be eligible to obtain these services.

8 This Application is based on this Notice, the accompanying Memorandum of Points and
9 Authorities, the Declarations of Louis R. (“Skip”) Miller, Mira Hashmall, Phil Ansell,
10 Heidi Marston, and Megan McClaire, the pleadings and other papers on file in this action, all
11 matters of which this Court may take judicial notice, and such oral and documentary evidence as
12 may be presented at the hearing on this Application.

13 **Notice of *Ex Parte* Application Pursuant to California Rules of Court 3.1203 and 3.1204**

14 On April 23, 2020, counsel for Plaintiff emailed Norwalk’s City Attorney,
15 Arnold M. Alvarez-Glasman, notifying him of Plaintiff’s intent to seek the relief requested herein.
16 The e-mail advised Norwalk of the relief sought, including the grounds therefor, and the time,
17 place and date of this Application. (Declaration of Mira Hashmall ¶ 7; Ex. E.) The County
18 understands that Norwalk intends to oppose this Application.

19 **Disclosures Pursuant to California Rule of Court 3.1202**

20 Pursuant to California Rule of Court 3.1202, Plaintiff states that no *ex parte* application
21 has been refused in whole or in part of the same character or for the same relief, and the contact
22 information for Defendant’s counsel is:

23 Arnold M. Alvarez-Glasman
24 Christopher G. Cardinale
25 ALVAREZ-GLASMAN & COLVIN
26 13181 Crossroads Pkwy. North, Suite 400 - West Tower
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DATED: April 23, 2020

MILLER BARONDESS, LLP

By: /s/ Louis R. Miller
LOUIS R. MILLER
Attorneys for Petitioner/Plaintiff
COUNTY OF LOS ANGELES

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1 **I. INTRODUCTION**

2 The County of Los Angeles (“County”) is facing an unprecedented public health crisis.
3 There are now over 17,000 known cases of COVID-19, and over 700 deaths, in the County.
4 People over the age of 65 and individuals with certain underlying health conditions are more at
5 risk of experiencing severe illness or death if exposed to COVID-19. As the science catches up
6 with the rapidly-evolving situation on the ground, it appears that asymptomatic individuals may be
7 unknowingly causing the spread of COVID-19.

8 The County faces a daunting challenge during this pandemic: housing the significant
9 number of County residents who are experiencing homelessness. Individuals experiencing
10 homelessness are at particular risk of being exposed to, and contracting, COVID-19 because they
11 often reside in crowded shelters or congested public areas. They are also less likely to have access
12 to the basic hygiene facilities, healthcare services, and medical resources that could save their
13 lives. To effectuate the “Safer at Home” executive orders issued by the State of California and the
14 County, public health experts are implementing safety measures targeting individuals experiencing
15 homelessness to curb the spread of COVID-19.

16 Governor Gavin Newsom recognized the need to find a way to protect the tens of
17 thousands of people experiencing homelessness in California, and created a novel initiative called
18 “Project Roomkey.” Project Roomkey, the first program of its kind in the nation, marshals
19 support from the hard-hit hospitality sector by identifying hotel and motel rooms that can be used
20 as temporary housing for the individuals experiencing homelessness who are most susceptible to
21 the risk of contracting and spreading COVID-19. Project Roomkey has been praised by the
22 National Alliance to End Homelessness. The Federal Emergency Management Agency
23 (“FEMA”) also signed on, agreeing to fund a 75 percent cost-share reimbursement for state and
24 local governments.

25 In partnerships with the State, the City of Los Angeles (“City”) and the Los Angeles
26 Homeless Services Authority (“LAHSA”), the County has been at the forefront of Project
27 Roomkey. The County has secured more than 2,500 hotel and motel rooms at over 28 hotels
28 across the region.

1 Meanwhile, the County has also been working to establish hotel and motel facilities for the
2 purposes of isolating and quarantining persons with, or exhibiting symptoms of, COVID-19.

3 While these facilities are available to any persons in need of isolation or quarantine, they have
4 been predominately used by, and made available to, persons experiencing homelessness. The
5 State and FEMA have also authorized these efforts in response to the declared emergency.

6 Between these two programs, the County is working to provide safe isolation and
7 quarantine capacity, as well as to prevent the spread of COVID-19 and flatten the curve.

8 Many cities have embraced Project Roomkey and the establishment of isolation and
9 quarantine facilities. The County's efforts have met resistance from several cities, however,
10 including Respondent/Defendant City of Norwalk ("Norwalk"). In addition to threatening one
11 hotel who entered into an occupancy agreement with the County with legal action if it did not
12 "immediately retract and withdraw" the contract, Norwalk recently enacted Urgency Ordinance
13 No. 20-1716U to prohibit hotels and motels from "converting or utilizing businesses or properties
14 for homeless housing purposes or uses, without prior city approval" (the "Norwalk Moratorium").
15 Norwalk asserted "local control" during the emergency and enacted barriers to the implementation
16 of these vital State and County public health programs, which it described as the "unscrupulous"
17 use of hotels and motels for unsanctioned housing and COVID-19 related uses.

18 Norwalk's attempts to interfere with Project Roomkey and the County's isolation and
19 quarantine programs ignore the fact that both of these programs are temporary, emergency
20 initiatives that are critical to protecting the health of the greater community. Indeed, Norwalk
21 itself has a population of individuals experiencing homelessness, some of whom might be at risk
22 and in need of temporary housing. Despite having a plan to prevent and combat homelessness,
23 which is funded, in part, by the Los Angeles County Homeless Initiative, Norwalk is ignoring the
24 needs of the County's most vulnerable residents. But Norwalk also ignores that the County-
25 administered programs are expressly permitted under the California Emergency Services Act and
26 Governor Gavin Newsom's Executive Orders. This is a matter of statewide concern that the cities
27 cannot override with conflicting local emergency orders or impede through the enforcement of
28 existing city rules, regulations, ordinances, or contracts.

The County respectfully requests that the Court issue a temporary restraining order directing Norwalk to allow the County to implement Project Roomkey and other temporary emergency housing programs, to immediately suspend enforcement of the Norwalk Moratorium, and to cease any actions intended to prohibit or inhibit the ability of businesses in Norwalk to participate in Project Roomkey or other temporary emergency housing programs.

II. FACTS

A. Federal, State, And Local Emergencies Are Declared Over COVID-19

On March 4, 2020, the Governor of the State of California proclaimed a State of Emergency to exist in California as a result of COVID-19. (Declaration of Phil Ansell (“Ansell Decl.”) ¶ 4 & Ex. A.) That same day, the Los Angeles County Board of Supervisors proclaimed a local emergency, and the Los Angeles County Health Officer declared a local health emergency. (*Id.* ¶¶ 5-6 & Exs. B & C.)

On March 12, 2020, the Governor issued an Executive Order (N-25-20) that, among other things, included the following directive:

The California Health and Human Services Agency and the Office of Emergency Services shall identify, and shall otherwise be prepared to make available—including through the execution of any necessary contracts or other agreements and, if necessary, through the exercise of the State’s power to commandeer property—hotels and other places of temporary residence[.]

(*Id.* ¶ 7 & Ex. D.) On March 13, 2020, the President of the United States issued an Emergency Declaration. (*Id.* ¶ 8.)

B. The Governor Announces Project Roomkey

On March 18, 2020, the Governor announced \$150 million in emergency funding to find a way to move individuals experiencing homelessness indoors. (Ansell Decl. ¶ 11.) Of the \$150 million, \$50 million was to be used for buying travel trailers and leasing hotels and motels. (*Id.*)

That same day, the Governor also issued Executive Order N-32-20, which states:

[T]he emergency of COVID-19 necessitates a more focused approach, including emergency protective measures to bring unsheltered Californians safely indoors, expand shelter capacity, maintain health and sanitation standards and institute medically indicated interventions, and add new isolation and quarantine capacity to California’s shelter and housing inventory to slow the spread of the pandemic. (*Id.* ¶ 12 & Ex. G.)

1 Executive Order N-32-20 also suspended certain statutes to make clear that certain funds could
2 be used for “addressing the impacts of the COVID-19 pandemic on homeless individuals.” (*Id.*
3 Ex. G.)

4 On April 3, 2020, the Governor announced Project Roomkey. Project Roomkey is
5 intended to protect “high risk” individuals, which FEMA defines as persons experiencing
6 homelessness who are over 65 years of age or who have certain underlying health conditions
7 (respiratory, compromised immunities, chronic disease), and who require emergency non-
8 congregate shelter as a social distancing measure. (Ansell Decl. ¶ 13.) According to the
9 Governor, the goal of Project Roomkey is to secure “thousands of isolation rooms in hotels and
10 motels for extremely vulnerable individuals experiencing homelessness to help flatten the curve
11 and preserve hospital capacity.” (*Id.* ¶ 14.) The Governor received approval for a 75 percent cost-
12 share reimbursement from FEMA, making California the first state to receive FEMA’s approval
13 for this type of project. (*Id.* ¶ 15.) The State identified more than 950 potential lodging facilities
14 for these individuals. (*Id.* ¶ 16.)

15 The Governor directed counties to implement the program. (*Id.* ¶ 17.) The County
16 received guidance from the State, including the California Department of Social Services and
17 other agencies. (*Id.*)

18 **C. The County Implements Emergency Temporary Housing Programs**

19 The County acted quickly to protect its most vulnerable residents. The County
20 immediately began negotiating with hotel and motel owners to provide beds for asymptomatic
21 individuals experiencing homelessness who are most at risk of serious health consequences if they
22 contract COVID-19. (Ansell Decl. ¶ 18.) The County entered into its first contracts for hotel and
23 motel beds for individuals at serious risk of hospitalization or death if they contract COVID-19 on
24 March 31, 2020. (*Id.* ¶ 21.) The County has secured more than 2,500 hotel and motel rooms at
25 over 28 across the region. (*Id.* ¶ 22.)

26 Through both Project Roomkey and the County’s isolation and quarantine programs, the
27 County is working to provide temporary housing, with specific emphasis on individuals
28 experiencing homelessness, by providing shelter and necessary support to those individuals who

1 have no alternative isolation or quarantine housing option. These sites are essential to ensuring
2 that those who are impacted by COVID-19, but who do not require hospitalization, can be cared
3 for in a way that protects the community and does not overburden the County healthcare system.

4 **D. City of Laguna Hills v. Elite Hospitality, LLC**

5 Orange County has also met resistance to its efforts to implement Project Roomkey.

6 On April 14, 2020, the City of Laguna Hills and four property owners sued the Board of
7 Supervisors of Orange County to stop the County from taking possession of the Laguna Hills Inn
8 for use in Project Roomkey (*City of Laguna Hills v. Elite Hospitality, Inc.*, Case No. 30-2020-
9 01139345-CU-MC-CJC (County of Orange)). (See Request For Judicial Notice (“RJN”) Ex. 1.)
10 The hotel’s owner and a nonprofit specializing in homeless outreach were also named as
11 defendants. The plaintiffs brought claims for abatement of public nuisance, breach of the
12 Declaration of Covenants, Conditions, Restrictions and Reservation of Easements (“CC&Rs”) for
13 properties within Plaza Pointe, and declaratory relief. (*Id.* at 6.)

14 On April 16, 2020, the court denied the plaintiffs’ request for a temporary restraining order
15 with respect to two causes of action, i.e., abatement of public nuisance and abatement of nuisance.
16 (*Id.*) The court then ordered the parties to provide supplemental briefing on the question of
17 whether the CC&Rs barred Orange County from using the Laguna Hills Inn as a Project Roomkey
18 site. (*Id.* at 6-7.)

19 On April 20, 2020, the Court (Honorable Thomas A. Delaney) issued an order denying
20 plaintiffs’ request for a temporary restraining order as it related to the claim for breach of the
21 CC&Rs. (*Id.* at 6-8.) The court held that Orange County was “acting consistent with the
22 Governor’s orders in the context of this state of emergency. The CC&Rs must temporarily yield
23 to the government’s limited use of its police powers during this state of emergency.” (*Id.* at 7-8.)

24 Governor Gavin Newsom filed a brief describing the critical mission of Project Roomkey
25 and explaining that local resistance threatens to undermine the State’s ability to respond to this
26 unprecedented public health emergency. (RJN Ex. 2.)
27
28

1 **E. Norwalk Objects To Project Roomkey**

2 On or about April 16, 2020, the County entered into an occupancy agreement with a
3 Norwalk hotel. (Ansell Decl. ¶ 23 & Ex. I.) The hotel agreed to provide temporary housing for
4 at-risk individuals experiencing homelessness who were not experiencing COVID-19 symptoms.
5 (*Id.* ¶ 24.) The occupancy agreement, modeled off the sample provided by the California
6 Department of Social Services, specifically stated that it was entered into “pursuant to the
7 Governor’s State of Emergency Proclamation dated March 4, 2020 and Executive Order N-25-20,
8 in response to COVID-19, and is directly related to that emergency and necessary for the
9 preservation of public health and safety.” (*Id.* ¶ 25 & Ex. I.)

10 On April 20, 2020, Norwalk called a special meeting of its City Council on 24 hours’
11 notice to consider passing the Norwalk Moratorium, an urgency ordinance enacting a moratorium
12 “to prohibit owners and/or operators of hotels and motels located in the City of Norwalk from
13 converting or utilizing businesses or properties for homeless housing purposes or uses [or for
14 COVID-19 housing or related uses or purposes], without prior city approval.” (Ansell Decl.
15 Ex. J.)

16 The ordinance also sought to “restat[e] and reaffirm[] the importance of local control over
17 land use and related activities during the current state of emergency.” (*Id.*)

18 On April 21, 2020, Norwalk wrote to the hotel that had recently entered into an operating
19 agreement with the County and threatened legal action if the hotel did not “immediately retract
20 and withdraw [its] contract with the State and County for the intended illegal use of [its]
21 Property.” (Declaration of Mira Hashmall (“Hashmall Decl.”) Ex. D.) The letter directed the
22 hotel to cancel its contract by April 22, 2020. (*Id.*)

23 On April 21, 2020, the Norwalk City Council held a special meeting via teleconference
24 and passed the Norwalk Moratorium. Because it was an urgency ordinance, it became effective
25 immediately. (*See* Ansell Decl. Ex. J at 60.)

26 The State and the County’s emergency public health programs are the direct target of the
27 City’s actions. In the Norwalk Moratorium, the City Council stated its desire to “prohibit” owners
28 and/or operators of hotels and motels located in the City of Norwalk from using their businesses or

1 properties for homeless housing purposes or COVID-19 housing purposes “without prior City
2 approval.” (*Id.* Ex. J. at 59.) Moreover, Norwalk stated that “[a]ny request for such use must be
3 evaluated by City staff and approved by the City Council prior to such use being put into effect.”
4 (*Id.*)

5 Norwalk asserted “local control” during this statewide emergency and enacted local
6 barriers to the implementation of these vital State and County public health programs, which it
7 described as the “unscrupulous” use of hotels and motels for housing and COVID-19 related uses.
8 (*Id.* at 60.)

9 Norwalk’s staunch resistance was perplexing, particularly because Norwalk itself has a
10 population of individuals experiencing homelessness, some of whom likely fall under the “at-risk”
11 category, making them eligible for the temporary emergency housing services the County, in
12 partnership with the State, is providing. Indeed, Norwalk has its own plan to prevent and combat
13 homelessness. That plan is funded, in part, by the Los Angeles County Homeless Initiative.
14 (Hashmall Decl. Ex. B at 12.)

15 **F. The County Tries To Confer With Norwalk; Norwalk Passes The Moratorium**

16 On April 21, 2020, counsel for the County emailed and called counsel for Norwalk.
17 (Declaration of Louis R. Miller (“Miller Decl.”) ¶ 2.) Norwalk’s counsel explained that the City
18 Council was voting on the Norwalk Moratorium and, after the special meeting, confirmed that it
19 had passed. (*Id.* ¶ 3.) On April 23, 2020, counsel for the County gave Norwalk notice of this
20 Application, which it set for hearing on Monday, April 27, 2020. (Hashmall Decl. ¶ 7 & Ex. E.)

21 **III. THE COUNTY IS ENTITLED TO A TEMPORARY RESTRAINING ORDER**

22 **A. Legal Standard**

23 A court may issue a temporary restraining order (“TRO”) when great or irreparable injury
24 to the applicant will result before the matter can be heard on a noticed motion. Cal. Civ. Proc.
25 Code § 527(c)(1). A TRO requires the plaintiff to meet a lower standard than it needs to for a
26 preliminary injunction. *Landmark Holding Grp., Inc. v. Superior Court*, 193 Cal. App. 3d 525,
27 528 (1987). The Court determines whether there is sufficient evidence to support the issuance of
28 an interlocutory order pending a full hearing to determine whether the applicant is entitled to a

1 preliminary injunction. *Id.*

2 In determining whether to issue a TRO, a court considers two factors: (1) the likelihood
3 that plaintiff will prevail on the merits of its case at trial; and (2) the interim harm that plaintiff is
4 likely to suffer if the injunction is denied as compared to the harm the defendant is likely to suffer
5 if the injunction is granted. *Smith v. Adventist Health Sys./W.*, 182 Cal. App. 4th 729, 749 (2010);
6 *see also* Cal. Civ. Proc. Code § 526(a). The plaintiff need not satisfy both factors: the “greater the
7 plaintiff’s showing on one, the less must be shown on the other to support an injunction.” *Butt v.*
8 *State*, 4 Cal. 4th 668, 678 (1992).

9 **B. The County Will Succeed On The Merits Of Its Claims**

10 The County brings two causes of action: (1) a petition for writ of mandate compelling
11 Norwalk to comply with the Emergency Services Act, the Governor’s Executive Orders, and
12 implementation of Project Roomkey; and (2) declaratory relief declaring that interference with the
13 Emergency Services Act, the Governor’s Executive Orders, and Project Roomkey, such as the
14 Norwalk Moratorium, is unenforceable during a state of emergency.

15 **1. The Emergency Services Act Confers Broad Authority on the State**

16 The California Emergency Services Act empowers state and local governments to declare
17 emergencies and coordinate efforts to provide services. Cal. Gov’t Code §§ 8550 *et seq.* Once an
18 emergency is declared, state and local governments have broad authority to protect citizens and
19 property. *See, e.g., Compagnie Francaise de Navigation a Vapeur v. Bd. of Health of State of La.*,
20 186 U.S. 380 (1902) (upholding quarantine law against constitutional challenges); *Rasmussen v.*
21 *Idaho*, 181 U.S. 198 (1901) (permitting a ban on certain animal imports).

22 Here, federal, state, and local emergencies have already been declared.

23 Several provisions of the California Emergency Services Act apply to the Governor’s
24 authority to enact Project Roomkey:

- 25 • The Governor has “all police power vested in the state.” Cal. Gov’t Code § 8627.
- 26 • The Governor has authority to “make, amend, and rescind orders and regulations necessary” to
27 respond to the emergency. *Id.* § 8567(a). Any such orders and regulations “shall have the
28 force and effect of law.” *Id.*

- The Governor has authority to “[u]se and employ any of the property, services, and resources of the state as necessary to carry out the purposes of this chapter.” *Id.* § 8570(c). He can also “[p]lan for the use of any private facilities, services, and property.” *Id.* § 8570(i).
- The Governor can commandeer or utilize any private property or personnel deemed necessary in carrying out his responsibilities as Chief Executive of the state. *Id.* § 8572.

2. Project Roomkey Is Authorized by the California Emergency Services Act and the Governor’s Executive Orders

In accordance with his broad authority under the California Emergency Services Act, Governor Gavin Newsom enacted Executive Orders to protect citizens, including citizens experiencing homelessness. Executive Orders issued pursuant to statutory authority have the force and effect of law. *Martin v. Municipal Court*, 148 Cal. App. 3d 693 (1983).

As applicable here, the Governor issued an Executive Order (N-25-20) that, among other things, included the following directive:

The California Health and Human Services Agency and the Office of Emergency Services shall identify, and shall otherwise be prepared to make available—including through the execution of any necessary contracts or other agreements and, if necessary, through the exercise of the State’s power to commandeer property—hotels and other places of temporary residence

(Ansell Decl. Ex. D.)

The Governor also issued Executive Order N-32-20, which states:

[T]he emergency of COVID-19 necessitates a more focused approach, including emergency protective measures to bring unsheltered Californians safely indoors, expand shelter capacity, maintain health and sanitation standards and institute medically indicated interventions, and add new isolation and quarantine capacity to California’s shelter and housing inventory to slow the spread of the pandemic. On April 3, 2020, the Governor announced Project Roomkey.

(*Id.* Ex. G.)

3. The County Is Obligated to Implement Project Roomkey, and Authorized to Create Its Own Programs

Under Government Code section 8568, a political subdivision of the State, which includes the County, is obligated to take all actions necessary to carry out a statewide emergency plan once the Governor has declared an emergency. Cal. Gov’t Code § 8568; *see also id.* § 8557(b) (defining “[p]olitical subdivision” to include any county). The County is therefore obligated to

1 implement Project Roomkey by securing hotel and motel rooms for vulnerable individuals
2 experiencing homelessness. *Id.*

3 The County is also authorized to create, implement, and enforce its own programs, like the
4 quarantine and isolation programs. Cal. Gov't Code § 8634 (local governing bodies can
5 promulgate orders and regulations necessary for the protection of life and property).

6 At bottom, the County has the ultimate power to govern the disaster area, which includes
7 the cities. 62 Op. Cal. Att'y Gen. 701 (1979). By law: "Cities within a county are bound by
8 county rules and regulations adopted by the county pursuant to section 8634 of the Government
9 Code during a county proclaimed local emergency when the local emergency includes both
10 incorporated and unincorporated territory of the county" *Id.*

11 **4. Any Actions Taken to Prohibit or Inhibit Implementation of the State's**
12 **Emergency Orders Are Unenforceable**

13 In the letter Norwalk sent to a participating hotel, Norwalk stated that it would revoke the
14 hotel's Conditional Use Permit and threatened to pursue fines, penalties and other actions if the
15 hotel proceeded with its participation in Project Roomkey. (Hashmall Decl. Ex. D.) Norwalk
16 even threatened to take immediate legal action and suggested that the hotel's ability to conduct
17 business in the city would be in jeopardy if it participated in the County's emergency temporary
18 housing program. (*Id.*)

19 In the Norwalk Moratorium, the City Council stated its desire to "prohibit" owners and/or
20 operators of hotels and motels located in the City of Norwalk from using their businesses or
21 properties for homeless housing purposes or COVID-19 housing purposes "without prior City
22 approval." (Ansell Decl. Ex. J.) Moreover, Norwalk stated that "[a]ny request for such use must
23 be evaluated by City staff and approved by the City Council prior to such use being put into
24 effect." (*Id.*)

25 Norwalk asserted "local control" during the emergency and enacted local barriers to the
26 implementation of these vital State and County public health programs, which it described as the
27 "unscrupulous" use of hotels and motels for housing and COVID-19 related uses. (*Id.*)

28 The foregoing actions, and any others that are intended to prohibit or inhibit

1 implementation of Project Roomkey and other temporary emergency housing programs for at-risk
2 individuals experiencing homelessness, take direct aim at State and County orders during an
3 emergency. They are invalid and unenforceable.

4 (a) **Norwalk Is Required to Implement the State's Orders**

5 The Norwalk Moratorium purports to “restate[] and reaffirm[] the importance of local
6 control during this emergency period of COVID-19, as established in California Government
7 Code Section 8634 and other provisions of law.” (Ansell Decl. Ex. J.) That is wrong. When the
8 California Emergency Services Act is triggered, as Norwalk concedes it has been here, the State’s
9 orders control.

10 Under the Emergency Services Act, Norwalk, like the County, “*shall* take such action as
11 may be necessary to carry out the provisions [of the State Emergency Plan].” Cal. Gov’t Code
12 § 8568 (emphasis added); *see also id.* § 8557(b) (defining “[p]olitical subdivision” to include any
13 city). That plan includes implementation of the State’s orders to provide temporary housing for
14 at-risk individuals experiencing homelessness.

15 (b) **Project Roomkey Is a Matter of Statewide Concern**

16 Under Article 11, section 7 of the California Constitution, cities can only regulate their
17 local affairs to the extent there is no conflict with state or federal law. Local legislation in conflict
18 with general law is void. *Cal. Fed. Sav. & Loan Ass’n v. City of Los Angeles*, 54 Cal. 3d 1, 17
19 (1991); *Anderson v. City of San Jose*, 42 Cal. App. 5th 683, 693 (2019). In *Anderson*, the Court of
20 Appeal held that the City of San Jose’s policy for the sale of surplus city-owned land was
21 preempted by the State’s affordable housing act. 42 Cal. App. 5th at 693.

22 Here, the County’s emergency use of hotels/motels under Project Roomkey and for other
23 temporary emergency housing programs for at-risk individuals experiencing homelessness, as
24 authorized by the California Emergency Services Act and the Governor’s Executive Orders, is a
25 matter of statewide concern. Housing individuals experiencing homelessness is necessary to
26 protect public health and save lives. Individuals experiencing homelessness, particularly the
27 elderly and the medically compromised, are particularly vulnerable to COVID-19, whether they
28 are on the streets or in crowded shelters where isolating is not feasible.

The COVID-19 crisis has placed unprecedented demands on California’s hospital system. Hospitals are struggling to provide patients with sufficient medical facilities and life-saving equipment, while healthcare professionals report severe staffing shortages and limited protective equipment. Carmela Coyle, President and Chief Executive Officer of the California Hospital Association, has been quoted as stating that: “The need in this pandemic is so different and so extraordinary and so big that a hospital’s typical surge plan will be insufficient for what we’re dealing with in this state and across the nation.” (Hashmall Decl. Ex. C.) Individuals experiencing homelessness are more likely to use hospital emergency rooms when ill. (Declaration of Megan McClaire (“McClaire Decl.”) ¶ 14 & Ex. A.) A program that provides these at-risk individuals with temporary housing will relieve the pressure on the already-strained health system.

(c) **The County’s Emergency Orders Control**

If there are conflicts between county and city emergency ordinances/orders, the county’s emergency ordinances/orders control. 62 Op. Cal. Att’y Gen. 701. The County’s implementation of Project Roomkey, and its quarantine and isolation programs, therefore, control. Cities cannot contradict, or interfere with, a county’s efforts to carry out a statewide emergency plan. *See* Cal. Gov’t Code § 8568.

The Norwalk Moratorium, and other actions taken to prohibit or inhibit implementation of Project Roomkey, does exactly that. It seeks to prevent hotels and motels “from converting or utilizing businesses or properties for homeless housing purposes or uses [or for COVID-19 housing or related uses or purposes], without prior city approval.” (Ansell Decl. Ex. J.) The Norwalk Moratorium thereby places the power to implement Project Roomkey within the exclusive control of *Norwalk*. This authority does not belong to Norwalk. It belongs to the State and the County, which have not only the authority but the *obligation* to implement California’s emergency plan.

C. **The County Will Suffer Irreparable Harm If A TRO Does Not Issue**

Because the County has shown that it is likely to succeed on its claims, this Court may presume that the County will suffer irreparable harm in the absence of a TRO. *See Jay Bharat*

1 *Developers, Inc. v. Minidis*, 167 Cal. App. 4th 437, 444 (2008) (“Based upon respondents’
2 showing of likelihood of success on its claims, we conclude that the trial court could presume
3 irreparable injury.”). In any event, the balance of harms here weighs in favor of the County.

4 **1. Norwalk’s Actions Are Threatening the Public Health During a State of**
5 **Emergency**

6 In the wake of the COVID-19 pandemic, an urgent need has arisen to provide options for
7 the most vulnerable portions of the County’s homeless population to shelter-in-place and self-
8 isolate. (McClaire Decl. ¶ 12.) Because of the higher likelihood of pre-existing health conditions
9 and the transient nature of the homeless population, people who are homeless, and the people who
10 interact with this population, may have an increased risk of COVID-19 infection and greater
11 potential to increase COVID-19 transmission. (*Id.*)

12 From a public health perspective, providing non-congregate shelter for the homeless
13 population in the County is imperative to (1) reduce community transmission and introduction of
14 COVID-19 into new communities; (2) relieve pressure on the hospital system and minimize strain
15 on the health care system as a whole during this public health emergency; and (3) protect human
16 life. (*Id.* ¶ 15.)

17 There are at least 15,000 County residents experiencing homelessness who meet FEMA’s
18 vulnerability criteria. (Declaration of Heidi Marston (“Marston Decl.”) ¶ 11.) Put simply, these
19 individuals would likely be hospitalized, or die, if they contracted COVID-19. That is why the
20 State and the County have been working tirelessly to find temporary housing for at-risk
21 individuals experiencing homelessness. All hotel and motel sites that the County is securing are
22 necessary to relieve pressure on the hospital system and save lives.

23 Norwalk itself has a population of individuals experiencing homelessness. In 2018,
24 acknowledging what it described as “a significant increase in its total homeless population,”
25 Norwalk put in place a plan to prevent and combat homelessness. (Hashmall Decl. Ex. B at 14.)
26 Norwalk received funding from the Los Angeles County Homeless Initiative. (*Id.* at 12.) Now,
27 just two years later, Norwalk is a staunch opponent to the State’s, and the County’s, efforts to
28 bring at-risk individuals experiencing homelessness indoors.

1 The Norwalk Moratorium, and its other efforts to interfere with, and ultimately block,
2 Project Roomkey, impede the County's goal of saving as many lives as possible during a state of
3 federal, state, and local crisis. Indeed, Norwalk's interference has already stopped the County's
4 operationalization process for the hotel that is already under contract. (Marston Decl. ¶¶ 48-51.)
5 The County was supposed to take possession of the hotel on April 26, 2020, and start accepting
6 residents on April 27, 2020. (*Id.* ¶ 47.) Because of the Norwalk Moratorium, the County now has
7 to delay that process. (*Id.* ¶ 49-50.)

8 The Norwalk Moratorium, and any other actions intended to prohibit or inhibit the ability
9 of businesses in Norwalk to participate in Project Roomkey or other temporary emergency
10 housing programs, threatens to endanger the health and safety of individuals and families in the
11 County by delaying and, potentially, derailing the emergency measures that the State and County
12 are putting in place to address COVID-19. (*Id.* ¶ 51.)

13 2. A TRO Will Not Harm Norwalk

14 Norwalk will not be harmed by the issuance of a TRO. The County's agreements with
15 hotels and motels are temporary, emergency, measures. The County is not turning hotels into
16 homeless shelters, nor is it creating new medical facilities. In the case of the Norwalk hotel that is
17 currently under contract, it has the capacity to provide temporary housing to approximately 200 at-
18 risk individuals experiencing homelessness who are *not* exhibiting symptoms of COVID-19.
19 (Ansell Decl. Ex. I; Marston Decl. ¶ 11.)

20 Moreover, the County, with State and federal funding and support, is providing
21 wraparound services to provide safety and security measures at the hotel site, and give residents
22 vital health and wellness resources to mitigate their risk of COVID-19 exposure. LAHSA, not
23 Norwalk, is in charge of all operations. LAHSA's services are comprehensive.

24 For example:

- 25 • Prior to opening, each site is inspected by the hotel/motel management, the
26 homeless service provider, and LAHSA. (Marston Decl. ¶ 17.) No one is allowed
27 access to the site unless they have been referred to the program and approved.
28 (*Id.* ¶ 16.)

- Onsite operations at each hotel are led by a local homeless service provider that has experience working with the unhoused population. (*Id.* ¶ 21.) The Los Angeles County Fire Department works with LAHSA to support overall logistics. (*Id.* ¶ 22.) All staff receive onboarding training on homelessness in the County, basic best practices for operations and trauma-informed care. (*Id.* ¶ 18.)
- Each site provides supportive services to its residents, onsite supervision and three meals per day to participants in a hotel/motel setting. (*Id.* ¶ 23.) This includes contracted licensed security and healthcare services. (*Id.* ¶ 24.)
- All clients are screened before being transported and/or admitted to the facility. (*Id.* ¶ 25.) Anyone who has been screened and determined consistent with COVID-19 symptoms or has a temperature of 100.4 degrees Fahrenheit or greater is not allowed to be transported or enter the facility. (*Id.*)
- Once onsite, each client receives three daily screenings by a healthcare professional. (*Id.* ¶ 26.) This includes taking the person's temperature and issuing a health screening questionnaire. (*Id.*) All temperature checks and health screenings are logged for each client. (*Id.*)
- Residents may leave and enter the facility between the hours of operation established at the hotel/motel, and only to do any of the allowed Safer at Home activities. (*Id.* ¶ 28.) All residents are re-screened upon return. (*Id.*)
- Each facility is supplied with Personal Protective Equipment, sanitizing products, other cleaning supplies, and soap for frequent handwashing. (*Id.* ¶ 31.)

Other rules, protocols, and procedures are set forth in the Declaration of Heidi Marston, the Interim Executive Director of LAHSA. Put simply, Norwalk does not need to do anything other than allow the County to implement Project Roomkey by operationalizing the site set to open at the hotel located in Norwalk.

D. The Court Should Also Issue An Order To Show Cause

The County further requests a full hearing on a preliminary injunction, on an expedited basis, for the same reasons and under the same authorities as set forth herein. The County requests

1 that an OSC be issued along with the TRO to afford Norwalk the opportunity to show why it
2 should not be restrained and enjoined in accordance with the terms of the TRO sought herein for
3 the remainder of this litigation.

4 **IV. CONCLUSION**

5 The Court should immediately issue a temporary restraining order that:

- 6 1. Orders Norwalk to comply with the Emergency Services Act and the Governor's
7 Executive Orders by allowing the County to implement Project Roomkey, and
8 other temporary emergency housing programs for at-risk individuals experiencing
9 homelessness;
- 10 2. Enjoins Norwalk from enforcing the Norwalk Moratorium; and
- 11 3. Enjoins Norwalk from taking any actions intended to prohibit or inhibit the ability
12 of businesses in Norwalk to participate in Project Roomkey or other temporary
13 emergency housing programs for at-risk individuals experiencing homelessness.

14 For good cause showing, the Court should also issue an Order to Show Cause regarding
15 the issuance of a preliminary injunction consistent with the requested TRO.

16
17 DATED: April 23, 2020

MILLER BARONDESS, LLP

18
19 By: /s/ Louis R. Miller

20 LOUIS R. MILLER

21 Attorneys for Petitioner/Plaintiff
22 COUNTY OF LOS ANGELES
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