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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

LA FORWARD INSTITUTE, a non-profit organization; SYLVIA AROTH, an individual; KATHLEEN L. COATES, an individual; and GARY WILLIAMS, an individual,

Plaintiffs,

v.

CITY OF LOS ANGELES; LOS ANGELES CITY COUNCIL; LOS ANGELES HOUSING DEPARTMENT; LOS ANGELES DEPARTMENT OF TRANSPORTATION; and DOES 1 through 100, inclusive,

Defendants.

Case No. 24STCV17156

PLAINTIFFS' OPPOSITION TO DEFENDANT CITY OF LOS ANGELES' ANTI-SLAPP MOTION TO STRIKE

Assigned to the Hon. Robert D. Broadbelt III

Date: January 17, 2025
Time: 10:00 a.m.
Dept.: 53
Date Action Filed: July 10, 2024

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I. INTRODUCTION

This lawsuit challenges the City of Los Angeles's *actions* that unlawfully obstruct and delay Venice Dell Community (the Project), a much needed supportive and affordable housing development in a wealthy and white neighborhood properly approved by the City Council. Critically, Plaintiffs seek to hold Defendants liable for their *discriminatory actions*, not their *speech*. The City has filed a meritless anti-SLAPP motion to strike. At the outset, this case falls squarely in the public interest exemption to the anti-SLAPP statute as this action furthers important rights affecting the public interest, including enforcing the City's affordable housing obligations and compliance with anti-discrimination laws. In addition, the City has not met its burden to show that Plaintiffs' six causes of action arise from acts in furtherance of rights of petition or speech. Moreover, Plaintiffs have established a probability that they will prevail on their claims. The Court should therefore deny the City's anti-SLAPP motion.

II. BRIEF STATEMENT OF RELEVANT FACTS

Homelessness and the dire shortage of affordable housing are matters of citywide concern. In 2016, pursuant to a City initiative to identify City-owned sites for affordable housing, the City released a Request for Proposals to develop affordable housing at its parking lot in the Venice area of Council District 11. The City selected two nonprofit affordable housing developers to develop a 100% affordable and supportive housing project consisting of 140 units, 68 of which would be for chronically homeless individuals. The project would also include a public parking garage to replace all current parking spaces. Between 2017 and 2022, the project went through the City's approval processes, culminating in the City Council unanimously voting in June 2022 to approve the project and authorize the Los Angeles Housing Department (LAHD) to sign a Disposition and Development Agreement (DDA) with the developers (Dennison Declaration (Dec.), ¶¶ 9-10), which sets forth the project plan and components. (City Memorandum of Points & Authorities (MPA), Chen Dec., Exhibit (Ex.) A.) The developers then continued to work with several City departments to complete the remaining ministerial approvals for the project: (1) processing an Ellis Application to relocate tenants living in an existing 4-unit building on the site; (2) finalizing an agreement for the operation of the public parking garage; (3) cooperating with the California Coastal Commission's review and requests related to the project's coastal development permit and Land Use Plan amendment; and (4) finalizing a ground lease for the project (a template of

which was approved in the DDA). (Chen Dec., Ex. A; Abood Deposition (Dep.) 110:4-112:2; Oh Dep. 33:25-35:10;[1] Dennison Dec., ¶ 13; Rowland Dec., ¶¶ 8-9, 13; Khanmalek Dec. ¶¶ 4, 8.)

But starting in February 2023, this progress ground to a halt when newly elected officials Councilmember (CM) Traci Park and City Attorney Hydee Feldstein Soto began obstructing Project progress. City departments received orders to cease working on the project (Rowland Dec. ¶¶ 11, 14, 16-17; Khanmalek Dec., ¶¶ 8-9; Dennison Dec., ¶ 34) and to cease all communications with the developers (Rowland Dec., ¶¶ 19, 21; Abood Dep. 132:10-133:25, 135:5-18; Dennison Dec., ¶¶ 17-18, 34), effectively instituting a "gag order." (Abood Dep. 128:23-131:11, Ex. 14; Rowland Dec. ¶ 19.) LAHD informed the developers they were no longer processing the Ellis Application. (Dennison Dec., ¶¶ 21-22; Rowland Dec. ¶ 16; Abood Dep. 126:20-127:16, Ex. 13.)[2] Bureau of Engineering stopped working with the developers on the parking agreement and directed communication to the City Attorney's Office. (Dennison Dec., ¶ 17.) The City stopped cooperating with the Coastal Commission, despite issuing its own Coastal Development Permit for the project in June 2022. (*Id*., ¶¶ 26-28; McKeon Dec., Exs. B; M-O.) The City Attorney started claiming that the City's approvals were both non-existent and unlawful despite successfully defending those approvals in litigation. (Dennison Dec., ¶ 31; Abood Dep. 177:13-182:4; RJN, Ex. 1 [Judge Chalfant Ruling], Ex. 2 [Judge Fruin Ruling]; see also Oh Dep. 131:17-22 [city staff noting irregularity of post-entitlement City Attorney opposition].) As further detailed *infra*, these acts of obstruction represent severe departures from the typical expected affordable housing development process in the City. (Loop Dec., ¶¶ 2, 12-45 [describing affordable housing development process]; Khanmalek Dec., ¶¶ 6-7, 10-11; Rowland Dec., ¶ 20.) These acts were motivated by documented discriminatory community animus in a neighborhood with historic patterns of segregation. (McKeon Dec., Exs. H-J; Rowland Dec., ¶¶ 5, 10, 12, 15, 20 [showing coordination of opposition with CM Park]; Loop Dec., ¶¶ 52-58, 61-63; Henwood Dec., ¶¶ 10-11, 16.)

Just last month, the advisory Board of Transportation Commissioners (BOTC) voted to recommend that the lot not be used for development and that LAHD instead study the feasibility of

[1] Abood and Oh deposition transcript excerpts are included as McKeon Declaration, Exs. W&X.

[2] Two more attempts to sign the Ellis Application also failed. (Dennison Dec., ¶¶ 23-25.) The third attempt in Fall 2024 was scuttled because some LAHD staff believed that signing the Application would "start a war" within the City (Abood Dep. 148:16-149:5). A senior staffer held off on making progress on the project until just before she retired for fear of retribution. (Abood Dep. 139:14-145:6.)

using a different, smaller lot for a brand new affordable housing project, essentially seeking to undo Venice Dell after years of City review and approvals and court rulings upholding those approvals. (Dfdts' Suppl. RJN, Exs. 15 & 16; RJN, Exs. 1-2 [Rulings in separate lawsuits]; Dennison Dec., ¶ 34-37; Rowland Dec., ¶ 6 [showing coordination between the BOTC recommendation and CM Park]; McKeon Dec., Ex. F.) At the Coastal Commission hearing the day following that meeting, the City Attorney's Office told the Commission that this advisory vote denied the use of the parking lot for the project. (RJN, Ex. 3; McKeon Dec., ¶ 14.) In spite of the City's actions, the Coastal Commission unanimously granted conditional approval of the Project. (Dennison Dec., ¶ 33.)

III. ARGUMENT

A. This Action Is Brought Solely in the Public Interest, on Behalf of the General Public. It Is Therefore Exempt From the Anti-SLAPP Statute.

By its terms, California's anti-SLAPP statute "does *not* apply to any action brought solely in the public interest or on behalf of the general public." (Code Civ. Proc., § 425.17(b), emphasis added.)[3] The Legislature has found that "it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of . . . Section 425.16." (§ 425.17(a).) This lawsuit falls within this public interest exemption. The exemption applies when: (1) the "plaintiff does not seek any relief greater than or different from the relief sought for the general public;" (2) the action "would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons;" (3) "[p]rivate enforcement is necessary;" and (4) the action "places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter." (§ 425.17(b).) The "public interest exemption is a threshold issue based on the nature of the allegations" in the complaint "and scope of relief sought in the prayer." (*Tourgeman v. Nelson & Kennard* (2014) 222 Cal.App.4th 1447, 1460.) This lawsuit satisfies all four conditions of the public interest exemption.

Under the first condition, the exemption does not apply if a plaintiff seeks personal relief or "a more narrow advantage for a particular plaintiff." (*Club Members for an Honest Election v. Sierra Club* (2008) 45 Cal.4th 309, 316-317.) Here, none of the four Plaintiffs seeks personal relief. Plaintiffs only request a declaration that Defendants have violated anti-discrimination housing laws and constitutional

[3] Hereinafter, unless otherwise indicated all statutory citations are to the Code of Civil Procedure and internal citations and quotation marks are omitted from quotations from cases.

protections, and an injunction prohibiting them from further violations. (Prayer, ¶¶ 1–6.) Plaintiffs' prayer for costs and fees is expressly authorized by the public interest exemption. (§ 425.17(b)(1).)

For the second condition, an action enforces important rights affecting the public interest and confers a significant benefit on the general public when it seeks to "vindicate public policy by assuring enforcement" of a city's policies that benefit a class of people. (*N. Cal. Carpenters Reg'l Council v. Warmington Hercules Assocs.* (2004) 124 Cal.App.4th 296, 300-301.) Plaintiffs seek to enforce the City's affordable housing obligations under California statutory and constitutional law. If successful, this action would enforce important rights affecting the public interest and would confer significant benefits on the general public. (See, e.g., McKeon Dec., Exs. R-V [L.A Times coverage].)

Interpreting section 1021.5, upon which the Legislature modeled the public interest exemption (*Tourgeman*, 222 Cal.App.4th at 1459-60, 1465, fn. 14), courts have held that actions seeking to enforce the same rights as those at issue here have enforced important rights and conferred significant benefits on large groups of people. (*Kennedy Commission v. City of Huntington Beach* (2023) 91 Cal.App.5th 436, 463-464 [action enforcing city's affordable housing obligations]; *Sokolow v. County of San Mateo* (1989) 213 Cal.App.3d 231, 245 [action enforcing equal protection and anti-discrimination rights].) Plaintiffs meet the second requirement of the public interest exemption.

As for the third condition, where, as here, an action is filed against a city charged with illegal actions, "the necessity of private, as compared to public, enforcement becomes clear." (*Woodland Hills Residents Assn, Inc. v. City Council* (1979) 23 Cal. 3d 917, 941.) That no public entity has sought to enforce the rights at issue "alone is a sufficient basis to conclude the action is 'necessary,' within the meaning of the public interest exception." (*The Inland Oversight Comm. v. Cty. of San Bernardino* (2015) 239 Cal.App.4th 671, 676.)

The final condition is that an action place "a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter." (§ 425.17(b)(3).) Plaintiffs seek no monetary damages, and most of the plaintiffs have no personal stake in the outcome; these "fact[s], alone, support[] the conclusion that the financial burden on [plaintiff] is disproportionate to [their] stake in the action." (*Tourgeman,* 222 Cal.App.4th at 1465.) Plaintiff Coates could conceivably benefit if the Project were completed and she were selected to be one of the people to live there, far from a certain outcome. But

the "relevant inquiry is whether the cost of the [plaintiffs'] legal victory transcends [their] personal interest." (*Ibid*.) And the monetary value of possible future housing for Ms. Coates is dwarfed by the hundreds of thousands of dollars in attorneys' fees necessary to litigate this action.

Satisfying the four conditions of section 425.17(b), Plaintiffs' action is exempt from the anti-SLAPP statute.[4] The Court should deny the City's anti-SLAPP motion on this ground alone. (*Tourgeman*, 222 Cal.App.4th at 1460 [If a lawsuit falls within the public interest exemption, a trial court may deny the special motion to strike without analysis of the first and second prongs].)

B. The City Cannot Carry Its Burden on the First Anti-SLAPP Prong Because Plaintiffs' Causes of Action "Arise From" the City's Discriminatory Delay and Obstruction of Venice Dell, and Not From Protected Speech Activity.

The City's anti-SLAPP motion must be denied for the additional reason that Plaintiffs' claims do not arise from any protected speech. Anti-SLAPP motions may only target claims "arising from any act of [a defendant] in furtherance of the [defendant's] right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue. ..." (§ 425.16(b).) Contrary to the City's mischaracterization of the Complaint as being "based on the alleged public comments of elected officials regarding a proposed development" (MPA at 6:6-7), this lawsuit challenges the City's actions and not any individuals' right to make public comments. Decades of precedent clarify the distinction "between activities that form the basis for a claim and those that merely lead to the liability-creating activity or provide evidentiary support for the claim." (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1062-1067 [reviewing cases].) The City fails to acknowledge these cases or this critical distinction.

In *Park*, a former professor brought a FEHA claim, asserting that he was denied tenure because of his Korean origin. (*Id*. at 1068.) The complaint alleged that a school dean "made comments to Park and behaved in a manner that reflected prejudice against him on the basis of his national origin." (*Ibid*.) The trial court denied an anti-SLAPP motion, holding that "the complaint was based on the University's decision to deny tenure, rather than any communicative conduct in connection with that decision." (*Id*. at 1061.) The Supreme Court agreed: "a claim is not subject to a motion to strike simply because it

[4] The City's allegation that Plaintiffs are a "proxy" for the non-profit developers is baseless. The City has only offered that Plaintiff Aroth was once a board member of one of the non-profit developers. She resigned long before this lawsuit and appears only in her individual capacity. (Aroth Dec., ¶ 6.) Further, the statute only considers the relief sought by "[t]he plaintiff" and not any third party. (§ 425.17(b).)

contests an action or decision that was arrived at following speech or petitioning activity, or that was thereafter communicated by means of speech or petitioning activity. Rather, a claim may be struck only if the speech or petitioning activity *itself* is the wrong complained of." (*Id*. at 1060.) The Court found that the dean's alleged comments "may supply evidence of animus, but that does not convert the statements themselves into the basis for liability," and that the claims depended only on the denial of tenure itself and whether the motive for that action was impermissible. (*Id*. at 1068.)

This distinction is especially important in discrimination suits where courts must take "care not to treat . . . claims as arising from protected activity simply because the discriminatory animus might have been evidenced by one or more communications by a defendant." (*Id*. at 1065; see also *DFEH v. 1105 Alta Loma Rd. Apartments, LLC* (2007) 154 Cal.App.4th 1273, 1284-1285 ["the communications and the actual eviction itself were not the acts attacked in DFEH's complaint. Instead, the allegations of wrongdoing . . . arose from . . . alleged acts of failing to accommodate [a] disability. The letters, email and filing of unlawful detainer actions constituted DFEH's *evidence* of [the] alleged disability discrimination."].) In this context, what ultimately gives rise to liability "is not that the defendant spoke, but that the defendant denied the plaintiff a benefit, or subjected the plaintiff to a burden, on account of a discriminatory or retaliatory consideration." (*Park*, 2 Cal.5th at 1065; see also *USA Waste of California, Inc. v. City of Irwindale* (2010) 184 Cal.App.4th 53, 65 [making "[a]ctions to enforce, interpret or invalidate governmental laws . . . subject to being stricken under [section 425.16]" would significantly burden "efforts to challenge governmental action"].)

The City does not and cannot carry its burden on the first step of an anti-SLAPP motion. As *Park* noted, this analysis requires consideration of "the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability." (*Park,* 2 Cal.5th at 1063.) Here, protected activity does *not* "supply an essential element" of any of Plaintiffs' six causes of action, even when using the City's own formulation of those elements. (MPA, p. 14, fn. 1 [listing elements, and showing that none of the elements arise out of speech]; see also, *infra*, Sec. III.C [detailing the elements of each cause of action].) Protected activities cited in the Complaint and referenced in the City's motion are not "liability-creating activities"; they merely provide evidence of liability. (*Park*, 2 Cal.5th at 1064-1065.) Just as in *Park*, "Plaintiff[s] could have omitted allegations

regarding communicative acts . . . and still state the same claims." (*Ibid.*; see also *San Ramon Valley Fire Protection Dist. v. Contra Costa County* (2004) 125 Cal.App.4th 343, 353-354.)

Rather than grapple with this precedent, the City merely asserts that the Complaint describes a form of speech that relates to a matter of public interest. "But to prevail on an anti-SLAPP motion, a defendant must do more than identify some speech touching on a matter of public interest," as it must also establish that the protected activity "suppl[ies] elements of the challenged claim." (*Rand Resources, LLC v. City of Carson* (2019) 6 Cal.5th 610, 621.) The City fails to do this. Instead, it relies primarily on three inapposite cases that predate *Park. Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1109, only addressed the question of whether a statement made in connection with an issue under consideration at an official proceeding must also "demonstrate separately that the statement concerned an issue of public significance."[5] In *Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, the Court of Appeal acknowledged that the plaintiff "only briefly addresses" whether the challenged causes of action arise from protected activity, and then detailed a list of written communications that it concluded was the "activity underlying each of [plaintiff's] causes of action." (*Id*. at 1228-1229, 1233.) The City is unable to make any similar showing here. Finally, *City of Montebello v. Vazquez* (2016) 1 Cal.5th 409, was a suit brought by a city against three of its former councilmembers and a former city administrator as individuals in which the Court emphasized the "distinction between action taken by a government body and the expressive conduct of individual representatives." (*Id*. at 425.) In contrast, Plaintiffs do not name any individuals as defendants, and instead claim that the City has violated state law through its discriminatory acts.[6]

The City cannot meet its first-prong burden, and the Motion should be denied on this basis.

C. Plaintiffs Are Likely to Prevail on the Merits on All of Their Causes of Action.

If the Court were to reach the second prong, Plaintiffs have met their burden to establish a

[5] The City relies on *Briggs* and *Navallier v. Sletten* (2002) 29 Cal.4th 82 even though the Legislature added the public interest exemption because of anti-SLAPP "abuse" against public interest cases, finding that the "increased use of the SLAPP motion appears to coincide with the California Supreme Court's decision in *Briggs* . . . ." and *Navallier*. (RJN, Ex. 5 [Sen. Judiciary Com. Report], pp. 6-7.)

[6] The City's remaining cases are also inapposite. (See *Wilson v. CNN, Inc.* (2019) 7 Cal.5th 871, 893, 897 (*CNN, Inc.*) [holding that the act of firing a content producer "like virtually everything a news organization does—facilitates the organization's speech to some degree" particularly given allegations of plagiarism]; *Navellier*, 29 Cal.4th at 90 [acts arose out of speech where defendant was "being sued because of the affirmative counterclaims he filed in federal court"].)

"probability" of prevailing on their claims. (§ 425.16(b).) Plaintiffs must demonstrate that each claim is "supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821.) A plaintiff has "a degree of leeway in establishing a probability of prevailing on its claims due to the early stage at which the [anti-SLAPP] motion is brought and heard and the limited opportunity to conduct discovery." (*Integrated Healthcare Holdings, Inc. v. Fitzgibbons* (2006) 140 Cal.App.4th 515, 529; *CNN, Inc.*, 7 Cal.5th at 891 ["[T]he plaintiff's second-step burden is a limited one. The plaintiff need not prove her case to the court; the bar sits lower, at a demonstration of 'minimal merit'"].)

1. First Cause of Action: Plaintiffs are likely to prevail on their FEHA claim.

The City's actions to obstruct Venice Dell violate the Fair Employment and Housing Act (FEHA) by making housing opportunities unavailable to prospective residents on the basis of race, disability, and source of income. These acts constitute intentional discrimination *and* have a discriminatory effect. FEHA (Gov. Code, § 12955 et seq.) makes it unlawful for Defendants to "discriminate through public or private land use practices, decisions, and authorizations," because of protected characteristics, including "race, color, . . . disability, . . . [or] source of income." (*Id*., § 12955(l).) Discrimination includes any land use action "that make housing opportunities unavailable" (*ibid*) and is intentional when "race, . . . source of income, [or] disability . . . is a motivating factor in committing a discriminatory housing practice even though other factors may have also motivated the practice." (*Id*., § 12955.8(a).) A housing practice is also unlawful when it has the effect, regardless of intent, of unlawfully discriminating on the basis of "race, . . . source of income, [or] disability." (*Id*., subd. (b); see also 2 Cal. Code Regs., § 12161(b).)

a. Defendants are liable for intentional discrimination.

"An intent to discriminate may be established by direct or circumstantial evidence." (Gov. Code, § 12955.8(a).) Circumstantial evidence includes evidence related to "historic background of the decision, the specific sequence of events leading up to the challenged decision, departures from the normal procedural sequence or criteria for the decision, . . . [and] statements by decision makers." (2 Cal. Code Regs., § 12042(i).)

There is ample evidence to satisfy a prima facie showing of discriminatory intent. First, the

sequence of events demonstrates that the City is obstructing the Project despite the City's official approvals. As outlined in Section II, after years of review and approvals, progress and coordination between the developers and the City on Venice Dell halted beginning in early 2023 after the elections of CM Park and the City Attorney. At the direction of CM Park and the City Attorney, cease-work and "gag" orders were implemented, and no City approvals have moved forward since then. (Rowland Dec., ¶¶ 7, 16, 19-21; Abood Dep. 126:20-135:18; Dennison Dec., ¶ 20; Khanmalek Dec., ¶¶ 8-9.)

This obstruction is discriminatory because decision makers are acquiescing to a vocal minority that has discriminatory motives (Rowland Dec., ¶¶ 5, 10, 12, 15, 20 [showing coordination of opposition with CM Park].) "Where a public or private land use practice reflects acquiescence to the bias, prejudices or stereotypes of the public, members of the public, or organizational members, intentional discrimination may be shown even if officials or decision-makers themselves do not hold such bias, prejudice or stereotypes." (2 Cal. Code Regs., § 12161(c).) "The presence of community animus can support a finding of discriminatory motives by government officials, even if the officials do not personally hold such views." (*Avenue 6E Investments v. City of Yuma* (9th Cir. 2016) 818 F.3d 493, 504.) The Court in *Ave. 6E Investments* found plausible circumstantial evidence existed when "community opposition to Developers' proposed development was motivated in part by animus" and "the City Council was fully aware of these concerns when it took the highly unusual step of acceding to the opposition and overruling the recommendations of its zoning commission and planning staff." (818 F.3d at 507.) The use of "code words" may also demonstrate discriminatory intent. (*Id.* at 505.)

Here, too, public opposition to Venice Dell has often reflected negative and discriminatory stereotypes and "code words" against low-income, disabled, and unhoused individuals (McKeon Dec., Exs. J ["Venice has become the Skid Row of the West Side."], I ["this is not a place to house undesirables"], H ["Creating a space with such polar economic people doesn't lead use [sic] to a harmonious situation. It will be chaotic. More crime."], Y-BB [showing community animus, letter from CM Park alleging that "this project will forever change the character of the historic Venice Canal community"].) These facts provide plausible circumstantial evidence of discriminatory intent.

Next, the City's actions also represent a departure from its normal procedure for affordable housing projects. It is unprecedented for City staff to be directed not to work on a City Council approved

affordable housing project and to cease *all* communication with the developer, and for the directive to come from the City Attorney. Indeed, trade groups and former and current City staff have stated that they are not aware of any project that has stalled after a DDA was signed. (Khanmalek Dec., ¶¶ 10-12; see also Loop Dec., ¶¶ 2, 36-38; Oh Dep. 122:18-123:18).) The December 10, 2024 BOTC vote at this stage of the process was equally unprecedented and a departure from normal procedure, contradicting the recommendations of LAHD, DCP, and the approval of City Council, as well as court opinions upholding the approvals. (RJN, Ex. 1 [Judge Chalfant ruling]; Dennison Dec., ¶¶ 35-37; Khanmalek Dec., ¶ 13; Oh Dep. 111:11-25 [authenticating DCP approvals]); see also *Ave. 6E Investments,* 818 F.3d at 507 ["[a] city's decision to disregard the zoning advice of its own experts can provide evidence of discriminatory intent, particularly when, as here, that recommendation is consonant with the municipality's general zoning requirements and plaintiffs proffer additional evidence of animus."].)

Lastly, as further described infra, section III.C.1.b, the historic animus to affordable housing in Venice also establishes discriminatory intent. When a City is aware that action will disproportionately impact protected classes "in light of historical patterns of segregation by race and class" this "tend[s] to make the disparate-treatment claims plausible." (*Ave. 6E Investments*, 818 F.3d at 508.) The demographics, income levels, and development patterns of Venice reflect a historic segregation pattern, a fact acknowledged in City documents (Loop Dec., ¶¶ 52-58, 61-63; Henwood Dec., ¶¶ 10, 11, 16.)

b. The City's actions have illegally discriminatory effects.

The City's actions also have two types of discriminatory effects: (1) disparate impact, i.e., "a greater adverse impact on one protected group than on others"; and (2) "segregative effect", i.e., "harm to the community generally by the perpetuation of segregation that prevents interracial association." (*Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 257, 270, citing 2 Cal. Code Regs., § 12060(b).)

i. The City's actions have disparate impact on protected classes.

To show disparate impact under FEHA, the plaintiff "has the burden of proving that a challenged practice caused or predictably will cause a discriminatory effect." (2 Cal. Code Regs., § 12061(a).) The City's challenged actions arise from the *de facto* practice of allowing individual City officials to veto approved affordable housing projects. As detailed above, City officials have issued cease-work and "gag" orders to staff to obstruct the project, thereby imposing different requirements on a residential

development that is publicly assisted. Moreover, the *ultra vires* BOTC action to "disapprove" the use of the lot for the Project the day before the Coastal Commission meeting evinces further effort by the LADOT to acquiesce to CM Park's goals to override the City Council. Eliminating 120 units of new affordable and supportive housing in Venice, a high opportunity area, predictably has a disparate impact on people of color and people with disabilities. (Henwood Dec., ¶ 17; Lutzker Dec., ¶¶ 7, 14.)

The burden now shifts to the City to prove that "there is a legally sufficient justification of the practice" by showing there "is no feasible alternative practice that would equally or better accomplish the identified purpose with a less discriminatory effect." (2 Cal. Code Regs., § 12062(b); see also Gov. Code, § 12955.8(b).) The City has not attempted to do this, and its own Assessment of Fair Housing admits that "[t]he lack of affordable housing disproportionately impacts households most likely to face housing discrimination" as "[c]ost burdens disproportionately impact households by race and ethnicity." (RJN, Ex. 4 [Assessment of Fair Housing].) To address this problem, the Assessment promised to "[i]dentify and facilitate the use of City-owned and other public land suitable for affordable housing development, particularly in high opportunity or gentrifying areas," and explicitly relates to the fair housing issues of "disparities in access to opportunity, segregation/integration, disproportionate housing needs." (*Id*. at Ex. 4, p. 297.) The City has done the opposite in delaying and obstructing the Project.

ii. The City's actions have reinforced racial segregation.

FEHA also recognizes that a public land use "that is proven . . . to create, reinforce, or perpetuate segregated housing patterns also is a violation of the [FEHA] independently of the extent to which it produces a disparate effect on protected classes." (2 Cal. Code Regs., § 12060(b).) "The elements of a segregative effect claim are (1) a practice that (2) ... reinforces, or perpetuates segregated housing patterns because of a protected characteristic." (*Martinez*, 90 Cal.App.5th at 258.)

The population of Venice compared to Los Angeles at large demonstrates that segregation patterns currently exist on the bases of race, economic status, and disability. (Henwood Dec., ¶ 9; Loop Dec., ¶ 52; Lutzker Dec., ¶ 9.) The Project will advance integrated living patterns in Venice given the demographics of those households eligible for residency at the Project. (Henwood Dec., ¶ 17.) Thus, City practices that obstruct the Project perpetuate the existing segregated housing patterns. (See *Martinez,* 90 Cal.App.5th at 262 [City's failure to zone for affordable housing perpetuated segregated

housing patterns based on historical analysis of demographics compared to neighboring community].)

2. Plaintiffs are likely to prevail on their Equal Protection cause of action.

A person "may not be deprived of life, liberty, or property without due process or be denied equal protection of the laws." (Cal. Const., art. 1, § 7(a).) If a governmental actor engages in intentional discrimination, such conduct also violates equal protection guarantees. (*Ave. 6E Investments,* 818 F.3d at 502, citing *Arlington Heights v. Metro. Hous. Corp*. (1977) 429 U.S. 252, 265–66.) As discussed *supra*, section III.C.1, Plaintiffs are likely to prove discriminatory intent and thus, their Equal Protection claim.

3. Plaintiffs are likely to prevail under Government Code section 65008(b).

A city is prohibited from discriminating "against any residential development or emergency shelter" because of protected characteristics such as the disability or race of the intended occupants or "because the development or shelter is intended for occupancy by persons and families of very low, low, or moderate income. . . ." (Gov. Code, § 65008(b)(1)(B)(i), (c).) Discrimination includes "practices that inhibit the development" of housing intended for low-income individuals. (*Martinez,* 90 Cal.App.5th at 278.) A disparate impact, regardless of intent, is cognizable under the statute for both racial and income-based discrimination. (*Keith v. Volpe* (C.D. Cal. 1985) 618 F.Supp. 1132, 1158 ["[A] showing of discriminatory impact is sufficient to establish a violation under subsection (b) of section 65008."]; *Martinez*, 90 Cal.App.5th at 281 ["The standards used to prove a discriminatory effect for a housing discrimination claim under the FEHA also apply to a discrimination claim" under section 65008(b)].)

As already described, the City has obstructed the Project in ways that discriminates based on the disability or race of the intended occupants or because the Project is intended for occupancy by persons and families of very low, low, or moderate income.

4. Plaintiffs are likely to prevail under Government Code section 65008(d)(1).

Local governments are prohibited from imposing "different requirements on a residential development . . . that is [publicly] financed, insured, or otherwise assisted than those imposed on nonassisted developments." (Gov. Code, § 65008(d)(1).) Discrimination, as used here, "includes the denial or conditioning of a residential development . . . based in whole or in part on the fact that the development is" publicly assisted. (*Ibid*.) As detailed above, the City's unprecedented methods of obstruction imposed unique requirements on the project.

5. Plaintiffs Are Likely to Prevail on Government Code section 8899.50.

Government Code section 8899.50 requires that local governments affirmatively further fair housing (AFFH), meaning: "taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity" including "replacing segregating living patterns with truly integrated and balanced living patterns. . . ." (*Id*., § 8899.50(a)(1).) A "practice with a discriminatory effect on persons of color or housing intended to be occupied by lower income households [] violates the AFFH duty." (*Martinez*, 90 Cal.App.5th at 289.) The AFFH duty "is not only a mandate to refrain from discrimination but *a mandate to take the type of actions that undo historic patterns of segregation and other types of discrimination* and afford access to opportunity that has long been denied." (*Id*. at 288.)[7] The City obstructs "access to opportunity that has long been denied," violating its AFFH duty.

6. Plaintiffs are likely to establish that Defendants have violated Los Angeles City Charter, § 244, and City of Los Angeles Administrative Code, § 2.1.

"All legislative power of the City except as otherwise provided in the Charter is vested in the Council and shall be exercised by ordinance . . . ." (RJN, Ex. 6 [Los Angeles Admin. Code, § 2.1]; see also RJN, Ex. 7 [City Charter Section 244] ["Except as otherwise provided in the Charter, action by the Council *shall be taken by a majority vote of the entire membership* of the Council."].) As detailed above, the City violates section 244's non-delegation principles by allowing CM Park to have a *de facto* veto over Venice Dell through unprecedent cease-work and "gag" orders and unprecedented administrative maneuvering like the BOTC's unauthorized attempt to kill the project.[8] The delegation of veto power to an individual Councilmember and an advisory commission is illegal.

D. All of the City's Affirmative Defenses in Its Motion Lack Merit.

Unable to dispute the elements of Plaintiffs' six causes of action, the City instead emphasizes several of its affirmative defenses. None of these affirmative defenses has merit.

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[7] *See also* McKeon Dec., Ex. P (letter from Cal. Dept. of Housing & Community Dev. (HCD) expressing support for the Project given that it "is in a 'high resource' area. . . . The development of affordable housing in higher resource areas is an important strategy for creating an inclusive community and AFFH." HCD concludes that by not developing the Project, the City would "run[] counter to those commitments, to AFFH, and meeting critical needs for affordable housing.").

[8] Judge Chalfant upheld the DDA while holding that "the City Council did not delegate its power to the [BOTC] concerning the conveyance of an interest in City-owned parking lots. Nothing in the City Charter grants initial or ultimate decision-making authority to the [BOTC] to dispose of City-owned parking lots, regardless of whether they are operated by LADOT." (RJN, Ex. 1, p. 19, final paragraph).

The City contends that Plaintiffs "lack standing" to enforce the DDA because they "are not parties to that contract" (*See* MPA at 15:6-153-7). In fact, Plaintiffs have *not* alleged any claims against the City for breach of the DDA. (Complaint (Compl.), ¶¶ 120-157). The City further challenges the standing of Plaintiffs LA Forward Institute (LAFI) and Coates to bring the First Cause of Action for FEHA violations (Compl., ¶¶ 120-129). But the City does not dispute that LAFI has established organizational standing to bring this FEHA claim. (*See* Levitus Dec., ¶ 5.) Instead, the City contends that Plaintiffs' housing discrimination claims "are speculative and premature." (MPA at 15:16-17). This is refuted by the fact that LAFI not only sustained injury from the City's obstruction tactics beginning last year but will continue to sustain injury in the future. (See Levitus Dec., ¶¶ 5-6.)

Plaintiffs Coates, Aroth, and Williams have brought additional taxpayer claims under section 526a against the City for its statutory and constitutional violations described above. (Compl., ¶¶ 130-157). Section 526a confers standing to challenge illegal government spending on any person who has paid a tax to the defendant jurisdiction within a year before filing suit. All three Plaintiffs have paid a sales tax and Ms. Aroth has also paid a property tax within one year of bringing this lawsuit. (*See* Coates Dec., ¶ 5, Aroth Dec., ¶ 5, and Williams Dec., ¶ 4). The City's taxpayer standing argument (MPA at 15-16) misreads the law. First, the City mistakenly quotes the portion of *Chiatello v. City & Cnty. of San Francisco* (2010) 189 Cal.App.4th 472, 495, describing taxpayer standing in *federal* court. As the same opinion then stated, "these considerations have not found expression in California decisions considering section 526a." (*Ibid*.) Second, the City cites an opinion stating payment of sales tax is insufficient to establish taxpayer standing under section 526a, but that holding has been superseded by a 2018 amendment to the statute, which now expressly identifies as a qualifying tax a "sales and use tax . . . initially paid by a customer to a retailer." (§ 526a(a)(2), added by Stats. 2018, ch. 319, § 1.) Plaintiffs have standing to bring these taxpayer claims pursuant to § 526a(a)(2) and (3).

The City contends that this lawsuit is "unripe" in that the "land use review and approval process . . . is ongoing and the dispute has not 'sufficiently congealed'." (MPA at 16:21-22). "A controversy is 'ripe' when it has reached, but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made." (*Dent v. Wolf* (2017) 15 Cal.App.5th 230, 235.) Plaintiffs challenge the City's unofficial acts beginning early 2023 and continuing until the present that

have unlawfully obstructed the Project from obtaining final administrative action. (Compl., ¶¶ 69-89.) Where the City obstructs action, lack of action may not provide a ripeness defense. This lawsuit is ripe.

The City's separation of powers affirmative defense seems perfunctory as none of its citations are even remotely on point. (*See* MPA at 17:16-18:10). This Court is well within its constitutional authority to determine whether, after entitlements have been granted and a DDA executed, the subsequent refusal of City employees to take ministerial steps to advance the Project violates housing discrimination laws and other laws and, if so, to order the appropriate prospective relief. (See *Marine Forests Society v. Cal. Coastal Com.* (2005) 36 Cal.4th 1, 45.) The City has not offered any legal analysis or authorities to the contrary. Separation of powers is not an issue here.

The City's absolute privilege argument is a red herring. (Mtn., at 18:11-19:2.) Whether City officials' statements might qualify as privileged under Civil Code section 47 is irrelevant because, as discussed above, none of plaintiffs' claims are based on speech.

The City next contends that Plaintiffs cannot bring claims against the City Council or City departments. (MPA at 19:4-17). But courts have adjudicated claims against the City Council and departments of the City. (See, e.g., *Comunidad en Accion v. Los Angeles City Council* (2013) 219 Cal.App.4th 1116; *Marshall v. Dept. of Water & Power* (1990) 219 Cal.App.3d 1124.) Regardless, the City is undeniably a proper party and Plaintiffs are likely to prevail on their claims against it.

Lastly, the City contends that the developers and the California Coastal Commission are "indispensable" parties to this lawsuit. (*See* MPA at 19:18-20:11). "[I]t is fundamental that a person should not be compelled to defend himself in a lawsuit when no relief is sought against him." (*Pinnacle Holdings, Inc. v. Simon* (1995) 31 Cal.App.4th 1430, 1437.) Plaintiffs do not seek any relief against the developers or the Coastal Commission.[9] This affirmative defense, like the others, should be rejected.

IV. CONCLUSION

For these reasons, Plaintiffs respectfully request that the Court deny the Anti-SLAPP Motion.

[9] The City has not demonstrated that these third parties fall within the compulsory joinder statute, section 389, and likely no longer believes the Coastal Commission is indispensable after it approved the Project. Even if these third parties are considered indispensable, the Court should still give Plaintiffs leave to amend to add them as parties. (See *Summers v. Colette* (2019) 34 Cal.App.5th 361, 374.)

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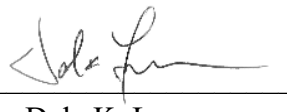
By 
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