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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC.,)	Case No. CV 20-05193 DDP (JEMx)
)	
Plaintiff,)	ORDER DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION
v.)	
)	
CITY OF LOS ANGELES, ET AL.,)	[Dkt. 46]
)	
Defendants.)	

Presently before the court is Plaintiff Apartment Association of Los Angeles County, doing business as the Apartment Association of Greater Los Angeles ("AAGLA")'s Motion for Preliminary Injunction. Having considered the submissions of the parties and heard oral argument, the court denies the motion and adopts the following Order.¹

I. Background

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

1 The COVID-19 global pandemic is the gravest public health
2 crisis in over a century. At present, the novel coronavirus has
3 killed at least 230,000 Americans and infected over 9 million
4 more.² The true toll may never be known, but is likely
5 significantly higher. The Centers for Disease Control and
6 Prevention ("CDC"), for example, estimates that the number of
7 "excess deaths" in the United States is closer to 300,000.³
8 Neither the State of California nor the City of Los Angeles have
9 been spared from the ravages of COVID-19. Nearly a million
10 Californians have been infected, and nearly 18,000 have died.⁴
11 Approximately 300,000 of those cases and 7,000 of those fatalities
12 have occurred in the Los Angeles area.⁵

13 Eight months into the pandemic, the City of Los Angeles
14 remains in a state of emergency. In accordance with
15 recommendations from national, state, and local public health
16 authorities, state and local officials have taken hitherto
17 unthinkable steps to slow the spread of the virus. For a time, all
18 state and city residents were ordered to stay confined to their
19 places of residence, with limited exceptions.⁶ Although

21 ² See
22 https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#cases_casesper100k

24 ³ See <https://www.cdc.gov/mmwr/volumes/69/wr/mm6942e2.htm>

25 ⁴ See <https://www.cdph.ca.gov/Programs/OPA/Pages/NR20-293.aspx>

26 ⁵ See
27 http://dashboard.publichealth.lacounty.gov/covid19_surveillance_dashboard/

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

1 restrictions have eased somewhat at present, many types of
2 businesses and gathering places remain closed in Los Angeles,
3 including movie theaters, bars, athletic fields, theme parks, gyms
4 and fitness centers, museums, live performance venues, indoor
5 restaurants, and "non-critical" offices.⁷ These measures, in
6 conjunction with other coronavirus-related concerns, have had
7 devastating economic consequences. By one estimate, over 16
8 million California households have lost employment income as a
9 result of the coronavirus.⁸ Over the last six months, the
10 unemployment rate in the Los Angeles area has ranged from 15 to 20
11 percent.⁹

12 Crises of national scope require national responses.
13 Initially, the federal government rose to meet the economic
14 challenge presented by the COVID crisis and passed the Coronavirus
15 Aid, Relief and Economic Security Act ("CARES Act"), Pub. L. No.
16 116-136. Among the CARES Act's provisions were (1) a one-time
17 stimulus payment to taxpayers and (2) an additional \$600 weekly
18 payment to Americans collecting unemployment benefits.^{10 11} Those

19
20 ⁶(...continued)
21 [https://www.lamayor.org/sites/g/files/wph446/f/page/file/20200527%20Mayor%20Public%20Order%20SAFER%20AT%20HOME%20ORDER%202020.03.19%20\(REV%202020.05.27\).pdf](https://www.lamayor.org/sites/g/files/wph446/f/page/file/20200527%20Mayor%20Public%20Order%20SAFER%20AT%20HOME%20ORDER%202020.03.19%20(REV%202020.05.27).pdf)

22 ⁷ See
23 https://corona-virus.la/sites/default/files/inline-files/MO_COVID-19_What%27sOpen_Updated%2020201007.pdf

24 ⁸ See
25 <https://www.census.gov/data/tables/2020/demo/hhp/hhp14.html>

26 ⁹ See https://www.bls.gov/eag/eag.ca_losangeles_md.htm

27 ¹⁰ See
28 <https://home.treasury.gov/policy-issues/cares/assistance-for-american-workers-and-families;>

(continued...)

1 additional unemployment payments expired, however, at the end of
2 July, and Congress has not provided for further stimulus payments
3 or other assistance to the American people. But the crisis has not
4 abated. As the pandemic has worsened, its economic consequences
5 have persisted.

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

13 As the CDC has explained, the novel coronavirus “spreads very
14 easily and sustainably between people who are in close contact with
15 one another”¹⁵ “[H]ousing stability helps protect public

16
17 ¹⁰(...continued)
[https://www.edd.ca.gov/about edd/coronavirus-2019/cares-act.htm](https://www.edd.ca.gov/about_edd/coronavirus-2019/cares-act.htm)

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

23 ¹² See
<https://www.census.gov/data/tables/2020/demo/hhp/hhp14.html>

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

25 ¹⁴ Id. at 5:12.

26 ¹⁵ See Dep’t of Health and Human Serv.’s, Centers for Disease
27 Control and Prevention, *Temporary Halt in Residential Evictions to*
28 *Prevent the Further Spread of*
COVID-19, <https://www.govinfo.gov/content/pkg/FR-2020-09-04/pdf/20200904fa01.pdf>
(continued...)

1 health because homelessness increases the likelihood of individuals
2 moving into congregate settings . . .”¹⁶ Thus, “[i]n the context
3 of a pandemic, eviction moratoria - like quarantine, isolation, and
4 social distancing - can be an effective public help measure
5 utilized to prevent the spread of communicable disease,” and
6 “facilitate self-isolation by people who become ill or who are at
7 risk for severe illness from COVID-19.”¹⁷

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

23 ¹⁵ (...continued)
24 0-19654.pdf

25 ¹⁶ Id.

26 ¹⁷ Id.

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

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

16 Plaintiff AAGLA is comprised of thousands of owners and
17 managers of rental housing units, including over 55,000 properties
18 within the City of Los Angeles. Plaintiff's Third Amended
19 Complaint ("TAC") alleges that the City Eviction Moratorium and
20 Rent Freeze Ordinance violate landlords' rights under the Contract
21 Clause of the Constitution, as well as the Due Process Clause,
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23

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

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

1 Takings Clause, and Tenth Amendment. Plaintiff now moves for a
2 preliminary injunction on the basis of the TAC's first two claims.

3 **II. Legal Standard**

4 A private party seeking a preliminary injunction must show
5 that: (i) it is likely to succeed on the merits; (ii) it will
6 suffer irreparable harm in the absence of preliminary relief; (iii)
7 the balancing of the equities between the parties that would result
8 from the issuance or denial of the injunction tips in its favor;
9 and (iv) an injunction will be in the public interest. Winter v.
10 Natural Resources Def. Council, 555 U.S. 7, 20 (2008). Preliminary
11 relief may be warranted where a party: (i) shows a combination of
12 probable success on the merits and the possibility of irreparable
13 harm; or (ii) raises serious questions on such matters and shows
14 that the balance of hardships tips in favor of an injunction. See
15 Arcamuzi v. Continental Air Lines, Inc., 819 F.2d 935, 937 (9th
16 Cir. 1987). "These two formulations represent two points on a
17 sliding scale in which the required degree of irreparable harm
18 increases as the probability of success decreases." Id.; see also
19 hiQ Labs, Inc. v. LinkedIn Corp., 938 F.3d 985, 992 (9th Cir.
20 2019). Under both formulations, the party must demonstrate a "fair
21 chance of success on the merits" and a "significant threat of
22 irreparable injury" absent the requested injunctive relief.²¹
23 Arcamuzi, 819 F.2d at 937.

24 **III. Discussion**

25
26 ²¹ Even under the "serious interests" sliding scale test, a
27 plaintiff must satisfy the four Winter factors and demonstrate
28 "that there is a likelihood of irreparable injury and that the
injunction is in the public interest." Alliance for the Wild
Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011).

1 A. Likelihood of Success on the Merits

2 AAGLA contends that the Eviction Moratorium and the Rent
3 Freeze Ordinance run afoul of the Contract Clause's prescription
4 that states shall not pass "any Law impairing the Obligation of
5 Contracts." U.S. Const., Art. I, § 10. Although this language "is
6 facially absolute, its prohibition must be accommodated to the
7 inherent police power of the State to safeguard the vital interests
8 of its people." Energy Reserves Grp., Inc. v. Kansas Power & Light
9 Co., 459 U.S. 400, 410 (1983) (internal quotation marks omitted).
10 "The constitutional question presented in the light of an emergency
11 is whether the power possessed embraces the particular exercise of
12 it in response to particular conditions." Home Bldg. & Loan Ass'n
13 v. Blaisdell, 290 U.S. 398, 426 (1934). Thus, to determine whether
14 the Eviction Moratorium runs afoul of the Contract Clause, this
15 Court must examine (1) whether the law "operate[s] as a substantial
16 impairment of a contractual relationship," (2) whether the City
17 "has a significant and legitimate public purpose" in enacting the
18 moratorium, and (3) whether the "adjustment" of the rights of the
19 contracting parties is "based upon reasonable conditions and is of
20 a character appropriate to the public purpose justifying the
21 legislation's adoption." Energy Reserves, 459 U.S. at 411-12
22 (alterations omitted); see also Sveen v. Melin, 138 S. Ct. 1815,
23 1821 (2018) (combining public purpose and reasonableness
24 inquiries). Here, although AAGLA concedes that the Eviction
25 Moratorium is motivated by a legitimate public purpose, it

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1 nevertheless contends that the moratorium substantially and
2 unreasonably impairs landlords' contract rights.²²

3 1. Substantial Impairment

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

20 Second, the Blaisdell court, contrary to AAGLA's
21 representation, did not state that contract enforcement measures
22 are sacrosanct. Although the Court did recount its prior

23 _____
24 ²² Because the Rent Freeze Ordinance is less burdensome than
25 the Eviction Moratorium, the discussion of the former is subsumed
26 within that of the latter, herein.

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

1 observation in Von Hoffman v. City of Quincy, 71 U.S. 535, 551
2 (1866), that “[n]othing can be more material to the obligation [of
3 a contract] than the means of enforcement,” the Court explained, in
4 the very same paragraph, that the Von Hoffman court itself limited
5 its “general statement” with the observation that “it is competent
6 for the States to change the form of the remedy, or to modify it
7 otherwise, as they may see fit, provided no substantial right
8 secured by the contract is thereby impaired. . . . Every case must
9 be determined upon its own circumstances.” Blaisdell, 290 U.S. at
10 430 (internal quotation marks omitted).²⁴ Indeed, the Court went
11 on to reject the very argument raised by AAGLA here.

12 [I]t does not follow that conditions may not arise in which
13 a temporary restraint of enforcement may be consistent with
14 the spirit and purpose of the constitutional provision and
15 thus be found to be within the range of the reserved power
16 of the state to protect the vital interests of the
17 community. It cannot be maintained that the constitutional
18 prohibition should be so construed as to prevent limited
19 and temporary interpositions with respect to the
20 enforcement of contracts if made necessary by a great
21 public calamity such as fire, flood, or earthquake. ***
22 And, if state power exists to give temporary relief from
23 the enforcement of contracts in the presence of disasters
24 due to physical causes such as fire, flood, or earthquake,
25 that power cannot be said to be nonexistent when the urgent
26 public need demanding such relief is produced by other and
27 economic causes.

28 Blaisdell, 290 U.S. at 439.

That said, it would be difficult to conclude that the
Moratorium does not, at a minimum, significantly interfere with
landlords’ reasonable expectations. The reasonableness of a
party’s expectations will depend, to a significant extent, on the

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

1 degree of regulation in the relevant industry. See Energy
2 Reserves, 459 U.S. at 413; Allied Structural Steel Co. v. Spannaus,
3 438 U.S. 234, 242 n.13 (1978); Snake River Valley Elec. Ass'n v.
4 PacifiCorp, 357 F.3d 1042, 1051 n.9 (9th Cir. 2004). AAGLA
5 concedes, as it must, that the landlord-tenant relationship has
6 long been subject to extensive regulation. See, e.g., 42 U.S.C. §
7 3604; Cal. Civ. Code § 1942.4. Several courts, examining Contract
8 Clause challenges to eviction moratoria in other locales, have
9 relied upon this history of regulation to conclude that eviction
10 moratoria are relatively minor alterations to existing regulatory
11 frameworks, and therefore do not interfere with landlords'
12 reasonable expectations. See, e.g., HAPCO v. City of Philadelphia,
13 C.A. No. 20-3300, 2020 WL 5095496, *7-8 (E.D. Pa. Aug. 28, 2020);
14 Auracle Homes, LLC v. Lamont, No. 3:20-cv-00829 (VAB), 2020 WL
15 4558682, *17 (D. Conn. Aug. 7, 2020); Elmsford Apt. Assocs., LLC v.
16 Cuomo, No. 20-cv-4062 (CM), 2020 WL 3498456, *1 (S.D.N.Y. June 29,
17 2020).

18 This Court respectfully concludes that the scope and nature of
19 the COVID-19 pandemic, and of the public health measures necessary
20 to combat it, have no precedent in the modern era, and that no
21 amount of prior regulation could have led landlords to expect
22 anything like the blanket Moratorium. See Baptiste v. Kennealy,
23 No. 1:20-CV-11335-MLW, 2020 WL 5751572, at *16 (D. Mass. Sept. 25,
24 2020) (“[T]he court finds that a reasonable landlord would not have
25 anticipated a virtually unprecedented event such as the COVID-19
26 pandemic that would generate a ban on even initiating eviction
27 actions against tenants who do not pay rent and on replacing them
28 with tenants who do pay rent.”). This Court cannot ignore the

1 possibility that some landlords may face, at the very least, the
2 prospects of reduced cash flow and time value of missed rent
3 payments and increased wear and tear on rental properties, and that
4 these effects were, at least in terms of degree, unforeseeable. At
5 this stage, therefore, the court concludes that AAGLA is likely to
6 succeed in showing a substantial impairment of its contractual
7 rights.²⁵

8 2. Reasonableness

9 No party disputes that the Moratorium was enacted in pursuit
10 of a legitimate public purpose. The next question, therefore, "is
11 whether the adjustment of the rights and responsibilities of
12 contracting parties is based upon reasonable conditions and is of a
13 character appropriate to the public purpose justifying the
14 legislation's adoption." Energy Reserves, 459 U.S. at 412 (quoting
15 United States Trust Co. of New York v. New Jersey, 431 U.S. 1, 22
16 (1977) (internal quotation marks and alterations omitted)).
17 "Unless the State itself is a contracting party, ... courts
18 properly defer to legislative judgment as to the necessity and
19 reasonableness of a particular measure." Id. at 412-13 (internal
20 quotation marks omitted).

21

22 ²⁵ This is not to say, of course, that further factual
23 development could not affect the court's conclusion. In Baptiste,
24 for example, the court found it "not possible to determine
25 conclusively the extent of the impairment of plaintiffs'
26 contractual right to evict" because of factual uncertainties
27 regarding the temporal extent of Massachusetts' eviction
28 moratorium. Baptiste, 2020 WL 5751572, at *17. That particular
concern is less salient here, as the Moratorium's limitation on
evictions will persist for at least one year from today, and likely
until March 2022. Further factual development, however, such as on
the question whether landlords are able, in practice, to secure
their contractual rights without recourse to eviction, could yet
affect the substantial impairment question.

1 Notwithstanding the Supreme Court’s prescription, AAGLA urges
 2 this Court to set aside the City’s determination that the
 3 Moratorium is necessary to protect public health, life, and
 4 property, and to conclude that the law is not a reasonable means of
 5 achieving its stated end.²⁶ AAGLA’s argument rests largely upon
 6 unsupported factual assertions and a misreading of Supreme Court
 7 precedent. First, AAGLA asserts, without citation to any source,
 8 that “there is no need for the Ordinances now . . . , with COVID
 9 cases decreasing” (Reply at 16:18-19.) It is unclear to
 10 the court whether that representation has been true at any point
 11 since the onset of the pandemic.²⁷ But even assuming that COVID
 12 cases were decreasing at the time of writing, that is most
 13 definitely not the case now, as fall wanes and winter approaches.²⁸

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

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 21

22 ²⁶ See Moratorium at 2.
 23 ²⁷ See <https://covid.cdc.gov/covid-data-tracker/#trends totalandratecases>
 24 ²⁸ See <https://covid.cdc.gov/covid-data-tracker/#trends dailytrendscases>
 25 ²⁹ As discussed in further detail below, in the context of the
 26 irreparable harm analysis, this position is somewhat surprising in
 27 light of AAGLA’s argument that a separate, statewide eviction
 28 moratorium is more reasonable than the City Ordinance, and that “we
 can certainly assume that the state law is constitutional.” As
 discussed below, that state law, like the Moratorium, prohibits
 evictions for COVID-related nonpayment of rent, even where a tenant
 has paid no rent for a period of as much as eleven months.

1 In 1933, in the midst of a state of economic emergency brought
2 on by the Great Depression, Minnesota passed the "Mortgage
3 Moratorium Law." Blaisdell, 290 U.S. at 416. The Mortgage
4 Moratorium Law automatically extended the period of redemption from
5 foreclosure sales for thirty days, and empowered county courts to
6 grant "just and equitable" further extensions, during which
7 mortgagee-purchasers would be unable to take possession or obtain
8 title. Id. In Blaisdell, defaulting mortgagors obtained a two
9 year extension of the redemption period, subject to the condition
10 that they make payments equal to the reasonable rental value of the
11 property. Id. at 420. The mortgagee, a building and loan
12 association, contended that the Mortgage Moratorium Law violated
13 the Contract Clause, Due Process Clause, and Equal Protection
14 Clause of the Fourteenth Amendment. Id. at 416.

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

27
28 ³⁰ "No State shall . . . pass any . . . Law impairing the
Obligation of Contracts." U.S.Const., Art. I, § 10.

1 Blaisdell, 290 U.S. at 445-46; Allied Structural Steel, 438 U.S. at
2 243. The relevant conditions included (1) a continuation of the
3 mortgage indebtedness, (2) the continued validity of the
4 mortgagee's right to title or a deficiency judgment, (3) the
5 mortgagor's obligation to pay the reasonable rental value, and (4)
6 the fact that most mortgagees were corporations and banks "not
7 seeking homes or the opportunity to engage in farming." Id.

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

23 In upholding the state mortgage moratorium law, the
24 [Blaisdell] Court found five factors significant. First,
25 the state legislature had declared in the Act itself that
26 an emergency need for the protection of homeowners existed.
27 Second, the state law was enacted to protect a basic
28 societal interest, not a favored group. Third, the relief
was appropriately tailored to the emergency that it was
designed to meet. Fourth, the imposed conditions were
reasonable. And, finally, the legislation was limited to
the duration of the emergency.

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

16 In the absence of any specific prerequisite for
17 reasonableness, let alone a requirement that the Moratorium provide
18 for rent payments to landlords, this Court will defer to the City
19 Council's weighing of the interests at stake. In so doing, the
20 court joins at least four other courts that have found eviction
21 moratoria reasonable in light of the COVID-19 pandemic at the
22 preliminary injunction stage, notwithstanding the lack of any
23 provision for partial rent payments. See Baptiste, 2020 WL
24 5751572, at *19; HAPCO, 2020 WL 5095496, at *10; Auracle, 2020 WL
25 4558682, at *18-19; Elmsford, 2020 WL 3498456, at *15.^{31 32}

26
27 ³¹ To be sure, although all four of these cases involve
28 eviction moratoria with no partial rent requirement, the moratoria
at issue differ in their particulars from each other and from the
(continued...)

1 Notably, here, as in Blaisdell, the Moratorium is addressed to
2 protect a basic societal need, is temporary in nature, does not
3 disturb landlords' ability to obtain a judgment for contract
4 damages, does not absolve tenants of any obligation to pay any
5 amount of rent, does not appear to impact landlords' ability to
6 obtain housing, and was implemented in the context of a state of
7 emergency. Indeed, the current emergency is arguably more serious
8 than that brought on by the Great Depression, coupling, as it does,
9 the consequences of economic catastrophe with a serious, and
10 worsening, threat to public health.

11 AAGLA makes much of the fact that the Moratorium does not
12 require tenants affected by COVID-19 to make an affirmative
13 declaration to that effect. Although such a requirement would
14 certainly make it more difficult for ill-intentioned, financially
15 secure tenants to game the Moratorium, landlords remain free to
16 seek to evict such nonpaying tenants, so long as there exists a
17 good faith basis to believe that the tenant falls outside the
18 Moratorium's protections. (Moratorium at 2.) There does not
19 appear to this Court to be anything inherently unreasonable about
20 the City Council's decision to spare legitimately-impacted tenants
21 the burden of attestation.

22

23

24 ³¹(...continued)
25 Moratorium here. Of the four moratoria at issue in the cited
26 cases, the City's Moratorium is most akin to the City of
27 Philadelphia's, discussed in HAPCO, 2020 WL 5095496, at *2-4.

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

1 Lastly, although the Moratorium does not mandate that tenants
 2 pay a reasonable, or any, amount of rent, neither has the City
 3 Council simply thrown landlords to the wolves. Along with the
 4 Moratorium and other coronavirus-related measures, the City
 5 implemented an Emergency Rental Assistance Program ("ERAS"), which
 6 will provide over \$100 million in rental assistance payments to
 7 approximately 50,000 low-income households by the end of this year.
 8 (City Request for Judicial Notice, Ex. Y.) This rent subsidy "will
 9 be a grant paid directly to the tenant's landlord" (Id. at
 10 5-6 (emphasis added).) The ERAS program does not impose any
 11 requirements on landlords beyond those already implemented by the
 12 Moratorium and the Rent Freeze Ordinance. (Id.) Although it is
 13 unlikely that the ERAS program will be sufficient to make up the
 14 entire shortfall of rent owed to AAGLA's members, the amount is not
 15 insignificant, and is at the very least indicative of the City
 16 Council's reasoned balancing of competing interests, including
 17 those of tenants, landlords, and the public health.³³

18
 19 ³³ AAGLA's Due Process claim fails for these same reasons.
 20 "Substantive due process provides no basis for overturning validly
 21 enacted state statutes unless they are clearly arbitrary and
 22 unreasonable, having no substantial relation to the public health,
 23 safety, morals, or general welfare." Spoklie v. Montana, 411 F.3d
 24 1051, 1059 (9th Cir. 2005) (internal quotation marks omitted). The
 25 Moratorium clearly meets this relatively low bar. Despite AAGLA's
 26 urging, this Court does not read Block v. Hirsh, 256 U.S. 135, 155
 27 (1921) to create some different standard for cases involving
 28 regulation of rents. Indeed, AAGLA's argument appears to be no
 more than a due process recasting of its "reasonable rental value"
 theory. The court in Block, as in Blaisdell, conducted a
 reasonableness analysis to determine whether the District of
 Columbia Rents Act "goes too far." Block, 256 U.S. at 156.
 Although the fact that "[m]achinery is provided to secure the
 landlord a reasonable rent" was a relevant factor in that due
 process analysis, the existence of such "machinery" is not a
 prerequisite to constitutional validity, any more than is
 "reasonable rent" in the Contract Clause context. Id. at 157.

(continued...)

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

6 B. Irreparable harm

7 A plaintiff seeking a preliminary injunction must demonstrate
8 not just a possibility, but a likelihood of irreparable harm.
9 Winter, 555 U.S. at 22; Alliance for the Wild, 632 F.3d at 1135.
10 Although AAGLA asserts that irreparable harm can be presumed in the
11 context of constitutional violations, the Ninth Circuit has
12 cautioned that the irreparable harm requirement does not "collapse

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14 ³³(...continued)
15 Indeed, the Blaisdell court, having concluded that there was no
16 Contract Clause violation, summarily disposed of a corresponding
17 due process claim. Blaisdell, 290 U.S. at 448-49. ("We are of the
18 opinion that the Minnesota statute . . . does not violate the
19 contract clause Whether the legislation is wise or unwise
20 as a matter of policy is a question with which we are not
21 concerned. What has been said on that point is also applicable to
22 the contention presented under the due process clause.") (citing
23 Block) (emphasis added).

24 ³⁴ As suggested above, nothing in this Order shall be read to
25 suggest that further litigation of this matter could not affect the
26 Court's conclusions. See note 25, above. Although the Court finds
27 the Moratorium reasonable on balance at this stage of proceedings,
28 the rationales for each of the Moratorium's various provisions are
not all equally apparent. For example, it stands to reason that
economic difficulties will lead to some consolidation of households
and an increase in the number of inhabitants in some units, and
that to evict that entire expanded household would have serious
public health consequences. And it may well be that, absent a
prohibition on interest and late fees, tenants might "self-evict"
rather than incur additional debt. (Intervenors' brief at 20
(citing HAPCO, 2020 WL 5095496, at * 12)). This Court will not
second-guess the City's apparent conclusion that the risk of such
outcomes warrants a temporary suspension of interest charges, or
that impacted renters should not be penalized in the form of late
fees for missed payments that are, by definition, attributable to
the current emergency. It remains to be seen, however, whether a
blanket prohibition on pet-related evictions in fact promotes, or
can reasonably be assumed to protect, public safety.

1 into the merits question," even where a plaintiff demonstrates a
2 likelihood of success on the merits of a constitutional claim.
3 Cuviello v. City of Vallejo, 944 F.3d 816, 831 (9th Cir. 2019). At
4 the same time, however, the court has stated that certain
5 constitutional violations, including First Amendment violations and
6 unlawful detentions without due process, "unquestionably"
7 constitute irreparable harm. See, e.g., Klein v. City of San
8 Clemente, 584 F.3d 1196, 1207 (9th Cir. 2009) (First Amendment);
9 Hernandez v. Sessions, 872 F.3d 976, 994 (9th Cir. 2017) (Due
10 Process). Even assuming that economic injuries could also rise to
11 the level of irreparable harm, this Court need not resolve this
12 apparent tension because, for the reasons stated above, AAGLA has
13 not demonstrated a likelihood of success on the merits of its
14 constitutional claims.

15 AAGLA argues further that it is likely to suffer irreparable
16 harm because, in the absence of injunctive relief, "tenants may
17 simply live rent-free for the foreseeable future, without providing
18 any documentation to their landlords." (Mem. in support at 19:18-
19 19.) Although at first glance, it is somewhat unclear how
20 landlords could possibly be irreparably harmed by the possibility
21 of a temporary delay in rent payments "for the foreseeable future,"
22 AAGLA's reply makes clear that its theory of irreparable harm is
23 that landlords have "no realistic chance of being paid"
24 (Reply at 25:24.) It has long been established, however, "that
25 economic injury alone does not support a finding of irreparable
26 harm, because such injury can be remedied by a damage award."
27 Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc.,
28 944 F.2d 597, 603 (9th Cir. 1991) (citing

1 Los Angeles Memorial Coliseum Comm'n v. National Football League,
2 634 F.2d 1197, 1202 (9th Cir.1980); see also Goldie's Bookstore,
3 Inc. v. Superior Court of State of Cal., 739 F.2d 466, 471 (9th
4 Cir. 1984) ("Mere financial injury, however, will not constitute
5 irreparable harm if adequate compensatory relief will be available
6 in the course of litigation."). Indeed, the Ninth Circuit has
7 relied upon that principle in denying a preliminary injunction,
8 even when the economic injury at issue stemmed from an alleged
9 constitutional violation. Amwest Sur. Ins. Co. v. Reno, 52 F.3d
10 332 (9th Cir. 1995) (unpublished disposition).

11 AAGLA contends that, notwithstanding the Ninth Circuit's
12 pronouncements, economic harm may be irreparable where there is a
13 significant risk that damages will never be collected. (Reply at
14 25.) Some courts, including this one, have occasionally found
15 irreparable harm where a plaintiff seeks monetary damages from a
16 defendant that is, or is likely to become, insolvent or may
17 dissipate assets to avoid judgment. See, e.g., DirecTV, LLC v. E&E
18 Enterprises Glob., Inc., No. 17-06110-DDP-PLA, 2017 WL 4325585, at
19 *5 (C.D. Cal. Sept. 25, 2017); Aliya Medicare Fin., LLC v. Nickell,
20 No. CV1407806MMMSHX, 2014 WL 12526382, at *5 (C.D. Cal. Nov. 26,
21 2014); Laguna Commercial Capital, LLC v. Se. Texas EMS, LLC, No. CV
22 11-09930 MMM PLAX, 2011 WL 6409222, at *6 (C.D. Cal. Dec. 21,
23 2011). Those cases, however, bear little resemblance to the
24 instant suit. Here, AAGLA seeks only declaratory and injunctive
25 relief, not monetary damages. AAGLA does not cite, nor is this
26 Court aware of, any authority for the proposition that an imminent
27 irreparable harm exists simply because a plaintiff may be unable to
28 collect a monetary judgment against some unascertained third party

1 at the conclusion of some unrelated, separate suit that has yet to,
2 and may never, be filed in the first instance. AAGLA's reliance on
3 Baptiste is also misplaced. Although the Baptiste court did opine
4 that landlords' contract remedies "will often be illusory" because
5 tenants may be judgment-proof, it did so in the course of the
6 substantial impairment analysis, and not as part of an irreparable
7 harm inquiry. Baptiste, 2020 WL 5751572, at *16.

8 Although monetary losses alone cannot, in this context,
9 constitute irreparable harm, foreclosure theoretically could, as
10 landlords' properties are unique. See Sundance Land Corp. v. Cmty.
11 First Fed. Sav. & Loan Ass'n, 840 F.2d 653, 661 (9th Cir. 1988).
12 Here, however, AAGLA has failed to demonstrate a likelihood, as
13 opposed to a mere possibility, that landlords are in imminent
14 danger of losing their properties to foreclosure. AAGLA has
15 admittedly submitted declarations from only "a few" of its member
16 landlords, only two of whom make any reference to mortgage
17 difficulties.³⁵ (Mem. in support at 16-17.) One declarant states
18 that four of twelve units he and his wife manage are not paying
19 rent, but the declarant does not indicate that he is unable to make
20 mortgage payments.³⁶ (Declaration of Fred Smith ¶¶ 4,6.) Although
21

22 ³⁵ Of the other two declarants, only one mentions a mortgage
23 at all, and, despite a pre-Covid negative cash flow of \$11,000 to
24 \$26,000 per year, does not appear to have any difficulty making
25 mortgage payments. (Declaration of Natalie Adomian ¶ 3).
26 Adomian's declaration also undercuts AAGLA's contention that
27 landlords will not be able to recover monetary damages, as she
28 states that her delinquent tenant earns at least \$225,000 per year,
and likely significantly more. (Id. at ¶ 5.)

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

1 the second declarant does state that her father is unable to make
2 mortgage payments, and that one out of seven of his tenants is
3 currently not paying rent, she further states that the mortgagor
4 bank has agreed to one lengthy extension, and the declaration does
5 not indicate that the bank has expressed any intention to foreclose
6 in the foreseeable future. (Declaration of Evelyn Garcia, ¶¶ 4,
7 8.) The court is not aware of any evidence that mortgagors are, in
8 fact, generally eager or likely to foreclose on residential rental
9 units in the current environment. See Aliya Medicare, 2014 WL
10 12526382, at *4 (“It is not enough that the claimed harm be
11 irreparable; it must be imminent as well.” (citing Caribbean Marine
12 Servs. Co., Inc. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988))).
13 Indeed, under the present circumstances, including the very
14 Moratorium that AAGLA seeks to invalidate, mortgagors may have
15 little incentive to foreclose and significant motivations to come
16 to accommodations with property owners. Furthermore, it is not
17 clear that Mr. Garcia’s difficulties are attributable to the
18 Moratorium, as his mortgage was already delinquent by April 2,
19 2020.³⁷ (Garcia Decl., Ex. A.)

20 Even putting all these considerations aside, AAGLA has failed
21 to show that the preliminary injunction it seeks will prevent the
22 harms it alleges. The Moratorium represents but one layer of
23 protection Los Angeles renters currently enjoy. California state
24 authorities have not remained idle in the face of the COVID crisis.
25 In late August, the state legislature passed Assembly Bill 3088,

26

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

1 the COVID-19 Tenant Rights Act (the "State Law"). The State Law is
2 similar in some ways to the City's Moratorium, insofar as it also
3 prohibits no-fault evictions and evictions for COVID-related rent
4 delinquencies, without limiting landlords' ability to seek unpaid
5 rent through other means. Cal. Code Civ. P. §§ CCP § 116.223,
6 1179.03, 1179.03.5. The State Law generally does not affect pre-
7 existing local measures, such as the Moratorium, except to (1)
8 trigger the commencement of any existing local rent repayment grace
9 periods, including those conditioned upon the end of a declared
10 state of emergency, on March 1, 2021, and (2) terminate any such
11 repayment periods on March 31, 2022. Cal. Code Civ. P. § 1179.05.

12 In some aspects, however, the State Law goes beyond the
13 Moratorium in ways that are more burdensome on landlords. The
14 Moratorium, for example, allows evictions for back rent that
15 remains unpaid at the conclusion of the Moratorium's twelve-month
16 grace period. Under the State Law, in contrast, tenants can never
17 be evicted for any COVID-related missed rent incurred between March
18 1, 2020 and August 31, 2020. Cal. Code Civ. P. § 1179.04(a).
19 Similarly, tenants can never be evicted for failure to pay rent
20 that comes due between September 1, 2020 and January 31, 2021, so
21 long as the tenant pays, no later than January 31, twenty-five
22 percent of the rent due during that period.³⁸ Cal. Civ. Code §
23 1179.03(g)(2)(B). Thus, although the State Law provides for a
24 shorter grace period than does the City Moratorium, it also
25 essentially forgives, for eviction purposes (and eviction purposes

26
27 ³⁸ These protections only apply to tenants who provide
28 landlords with a declaration that the tenant has missed rent due to
decreased income or increased expenses attributable to COVID-19.
The City Moratorium has no equivalent attestation requirement.

1 only), 100% of six months' rent and up to 75% of rent for a further
2 five months. The City Moratorium includes no comparable
3 "forgiveness" provisions.

4 Notwithstanding the seemingly greater impacts of the State
5 Law, AAGLA does not challenge the constitutionality of the State
6 Law. To the contrary, AAGLA argues that the State Law is more
7 reasonable than the Moratorium and, at that "we can certainly
8 assume that the state law is constitutional." Against the backdrop
9 of a presumptively valid State Law, however, it is unclear to the
10 court how a preliminary injunction setting aside the Moratorium
11 would aid Los Angeles landlords or, by the same token, how denial
12 of such relief would put landlords in a materially worse position
13 than that in which they would otherwise be. In arguing that the
14 Moratorium is unreasonable, AAGLA made much of the fact that the
15 City Ordinance does not guarantee landlords even partial payments
16 contemporaneous with occupancy. But neither does the State Law.
17 Under the State Law, for example, a qualifying tenant who paid zero
18 rent for the month of September, and pays zero rent for four months
19 thereafter, cannot be evicted until February. AAGLA's members will
20 not possibly suffer irreparable harm in the absence of an order
21 preliminarily enjoining a Moratorium that, at the current juncture,
22 does essentially the same thing as the admittedly reasonable and
23 presumptively valid State Law.³⁹

24
25 ³⁹ Of course, as discussed above, the City Moratorium and the
26 State Law are not coterminous. But none of the most salient
27 differences changes the result here. Although the State law does
28 not restrict landlords' ability to seek late fees or interest at
some point in the future, neither does it allow them to pursue
evictions for such sums now. Furthermore, such purely economic
damages cannot constitute irreparable harm, as explained above.
(continued...)

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

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

4 "Where the government is a party to a case in which a
5 preliminary injunction is sought, the balance of the equities and
6 public interest factors merge." Padilla v. Immigration & Customs
7 Enf't, 953 F.3d 1134, 1141 (9th Cir. 2020) (citing Drakes Bay
8 Oyster Co. v. Jewell, 747 F.3d 1073, 1092 (9th Cir. 2014)). As the
9 court's prior discussion makes clear, the COVID-19 crisis is
10 unparalleled in this country's modern history. It is, quite
11 literally, a matter of life and death. The economic damage the
12 pandemic has wrought, if left unmediated by measures such as the
13 City Moratorium, would likely trigger a tidal wave of evictions
14 that would not only inflict misery upon many thousands of displaced
15 residents, but also exacerbate a public health emergency that has
16 already radically altered the daily life of every city resident,
17 and even now threatens to overwhelm community resources. The
18 hardships wrought upon residential landlords as an unintended
19 consequence of the City's efforts are real, and are significant,
20 but must yield precedence to the vital interests of the public as a
21 whole.

22 This Court will defer to the judgment of local authorities,
23 who have the unenviable task of weighing all of the relevant
24 considerations and choosing the least of all possible evils.

25
26 ³⁹(...continued)

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

1 It bears repeating, however, that the COVID-19 crisis is national
2 in scope, and demands a national response.

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

10 Courts are an imperfect tool to resolve such conflicts. So
11 too are ordinances and statutes that shift economic burdens from
12 one group to another. The court respectfully implores our
13 lawmakers to treat this calamity with the attention it deserves.
14 It is, but for the shooting, a war in every real sense. Hundreds
15 of thousands of tenants pitted against tens of thousands of
16 landlords - that is the tragedy that brings us here. It is the
17 court's reverent hope, expressed with great respect for the
18 magnitude of the task at hand, that our leaders, and not the
19 courts, lead us to a speedy and fair solution.

20 IV. Conclusion

21 Although it appears at this stage of proceedings that the City
22 Moratorium substantially affects landlords' contract rights, the
23 manner in and extent to which it does so appears reasonable under
24 the circumstances. AAGLA has not, therefore, demonstrated a
25 likelihood of success on the merits of its constitutional claims.
26 Nor has AAGLA demonstrated a likelihood of irreparable harm, or
27 that the balance of the equities or the public interest weigh in

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1 favor of preliminary relief. Accordingly, AAGLA's motion for a
2 preliminary injunction is DENIED, without prejudice.

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7 IT IS SO ORDERED.

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10 Dated: November 13, 2020

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DEAN D. PREGERSON
United States District Judge