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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD PRICE, et al.,
Plaintiffs,

NO. CIV. S-02-65 LKK/KJM

v.

O R D E R

CITY OF STOCKTON, CALIFORNIA,
et al.,
Defendants.

_____ /

_____ This action arises out of the City of Stockton's aggressive enforcement of the City's housing codes which seeks to acquire downtown single-room occupancy hotels (SROs), which house low income and very low income persons. Plaintiffs are, inter alia, low income individuals who were evicted from the SROs in downtown Stockton. They brought this action seeking an injunction, alleging that defendants are violating duties arising under the Housing and Community Development Act, 42 U.S.C. §§ 5301 et seq., the Uniform Relocation Act, 42 U.S.C. § 4601, the California Community Redevelopment Law, Cal. Health & Safety Code §§ 33000 et seq., and

1 the California Relocation Assistance Act, Cal Gov't Code §§ 7260
2 et seq.

3 On May 2, 2002, the court granted a preliminary injunction in
4 plaintiffs' favor. This matter now comes before the court on
5 plaintiffs' motion to amend that preliminary injunction. I decide
6 the motion based on the papers and pleadings filed herein and after
7 oral argument.

8 **I.**

9 **FACTUAL BACKGROUND**

10 In 1961, the City of Stockton and its Redevelopment Agency
11 adopted the West End Urban Renewal Project Development Plan
12 ("West End Redevelopment Plan") to redevelop downtown Stockton.
13 Preliminary Injunction Order ("PI Order") at 2. The
14 Redevelopment Plan's most recent amendment in 1991 authorized
15 the Redevelopment Agency to acquire all real property in the
16 project areas for development purposes, and to remove the
17 blighting influence of surrounding properties. Id. To further
18 redevelopment of downtown Stockton, the City established "a
19 capital program" to demolish buildings and purchase properties
20 to expand available parking in the area. Id.

21 _____In June 2001, the City Council met in a closed session to
22 discuss the possibility of acquiring property in downtown
23 Stockton. The City's acquisition list included twenty nine
24 downtown properties, including many SROs.¹ Id. at 2-3.

25 _____
26 ¹ The properties on defendants' acquisition list include various
single-room occupancy hotels located within the West End Project

1 Two days after the City Council meeting, the City and its
2 Redevelopment Agency began a policy of zero tolerance for code
3 enforcement violations in downtown hotels. Id. at 3. The City
4 Manager used the newly-created Community Health Action Team
5 ("CHAT"), a group composed of five City employees, two in the
6 Stockton Police Department and three in the Department of
7 Housing and Redevelopment, to implement its policy. Id. Under
8 the policy, hotels that were cited with code enforcement
9 violations could not re-rent rooms that became vacant until all
10 code violations were corrected, without regard to the actual
11 health and safety threat of violations in particular rooms. Id.
12 If the hotels failed to correct these violations, the hotels had
13 to be vacated and closed. Id.

14 As part of their code enforcement scheme, defendants cited
15 sixteen of the twenty nine properties on defendants' 2001
16 acquisition list, which are all downtown SROs and lower income
17 apartments. Id. at 3-4. Between July 2001 and December 2002,
18 defendants vacated and closed nine of the properties on their
19 acquisition list (the Commercial, Cosmos, Earle, El Tecolote,
20 James, La Verta, Mariposa, Steve's and Terry Hotels) plus the
21 Land Hotel (not on its acquisition list), resulting in the
22 removal of 351 lower income residential units from the West end
23 redevelopment Plan area. Id. at 4 and fn. 3; see also Decl. of

24
25 _____
26 area, including the Commercial, Cosmos, Delta, Earle, El Tecolote,
Fair, James, La Verta, Mariposa, Merrill, Oxford, Phoenix, Steve's,
Terry and Toni hotels, as well as the Hunter Apartments. Id.

1 Deborah Collins in Support of Pl's Mot. to Amend PI (Collins
2 Dec.) ¶ 11, Ex. 10 at 637.

3 Plaintiffs allege that defendants continue to pursue their
4 downtown redevelopment plan by acquiring, demolishing, and
5 threatening to demolish many of the SROs that were closed.

6 Consistent with their redevelopment scheme, defendants
7 acquired the Terry Hotel and commenced an eminent domain action
8 against the Commercial Hotel in 2002. See PI Order at 25; see
9 also Burrows Dec. ¶ 14, Exs. 22, 23. Both were purportedly
10 needed for public parking purposes. Id., see also Collins Dec.
11 ¶ 15, Ex. 14.² The Toni Hotel was acquired on March 26, 2002 to
12 support parking for the Cineplex development (currently referred
13 to as the City Center Cinema Project). Burrows Dec. ¶ 4, Exs.
14 11, 12; ¶ 12, Ex. 20. The City acquired El Tecolote on May 9,
15 2002, and the Earle Hotel on July 11, 2002. Burrows Dec. ¶¶ 5,
16 6, Exs. 13, 14. The City Council approved an agreement to
17 purchase the Main Hotel, also to provide parking in January
18 2003. Collins Dec. ¶ 15, Ex. 14. On October 5, 2004,
19 defendants obtained a condemnation order in their eminent domain
20 action against the La Verta Hotel. Burrows Dec. ¶ 8, Ex. 16.

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25 ² In January 2003, staff reported to the City Council that it was
26 still in the process of acquiring the Commercial Hotel "for the
purpose of parking expansion." Id.

1 The Land Hotel was acquired as part of the settlement and
2 dismissal by the property owner of an action in this Court.³

3 Defendants demolished Hunter Apartments in April 2002, just
4 prior to issuance of the Preliminary Injunction, for a loss of
5 24 lower income units. Collins Dec. ¶ 10, Ex. 9 at 570; Choi
6 Dec. ¶ 3, Ex. 1. In January 2003, the CHAT reported that
7 demolition of the Mariposa and Steve's Hotels awaits "Federal
8 Court ruling." Collins Dec. ¶ 11, Ex. 10 at 642.

9 On December 14, 2004, the defendants approved the
10 demolition of and shortly thereafter demolished the Toni hotel,
11 resulting in the permanent loss of eight more SRO units.
12 Burrows Dec. ¶ 3, Ex. 10; Burrows Dec. ¶¶ 12, 13, Exs. 20, 21.
13 Plaintiffs allege that the defendant agency, however tardily,
14 adopted a replacement housing plan for the eight Toni Hotel
15 units to permit demolition to occur. Id. According to
16 plaintiffs, the Agency failed to assure that persons displaced
17 by the downtown project have a priority for the purported eight
18 "replacement" units. See Burrows Dec. ¶¶ 12, 13, Exs. 20, 21;
19 Decl. of Stanford Cobbs in Support of Pl's Mot. to Amend PI
20 (Cobbs 2005 Dec.), ¶ 4; Decl. of Dwain Henderson in Support of
21 Pl's Mot. to Amend PI (Henderson 2005 Dec.), ¶ 4.

22 Plaintiffs have submitted evidence indicating that
23 additional low-income housing may soon be removed from the
24

25 ³ The court may take judicial notice of the pleadings and record
26 in the action, Portale v. City of Stockton, Case No. Civ. S-02-988
LKK/KJM.

1 market. For example, in 2003, the Agency designated a square
2 block that includes the Delta Hotel property as a Master
3 Development Area and obtained a development proposal to
4 construct a gated and landscaped parking lot that would extend
5 right through the Delta parcel. Collins Dec. ¶ 17, 18, 19, Exs.
6 16, 17, 18.

7 According to the plaintiffs, at least 351 lower income
8 units were removed from the affordable housing market as a
9 result of the "code enforcement" closures in 2001 and 2002.
10 Thirty-two lower income units (Hunter and Toni) have been
11 demolished. Another seven to eight SRO's, with a total of 349
12 units, already acquired by defendants remain at imminent risk of
13 demolition.

14 II.

15 PROCEDURAL BACKGROUND

16 Plaintiffs filed this action in January 2002 against
17 numerous defendants, including the City of Stockton and the
18 Stockton Redevelopment Agency. The suit sought declaratory and
19 injunctive relief and a writ of mandate for alleged violations
20 of state and federal relocation assistance, replacement housing,
21 fair housing and other statutes claimed to be applicable to
22 defendants' displacement of hundreds of downtown residents and
23 closure of nine downtown SRO's. See Compl.

24 In February 2002, plaintiffs sought a preliminary
25 injunction to restrain defendants from vacating, converting and
26 demolishing those residential units without providing adequate

1 relocation assistance or adopting and implementing replacement
2 housing plans. Plaintiffs sought the Preliminary Injunction
3 pursuant to the federal Housing and Community Development Act
4 ("HCDA"), 42 U.S.C. §§ 5301 et seq., the California Relocation
5 Assistance Act, Cal. Gov't Code § 7260, and federal and state
6 fair housing statutes, 42 U.S.C. §§ 3601 et seq. and Cal. Gov't
7 Code §§ 12900 et seq.

8 Finding that plaintiffs were likely to succeed on the
9 merits of their HCDA § 104(d) and state law relocation
10 assistance claims, and that the balance of hardships tipped
11 decidedly in plaintiffs' favor, this Court issued a preliminary
12 injunction on May 2, 2002, as modified on June 14, 2002. That
13 preliminary injunction restrained defendants, among other
14 things, from demolishing or converting any of the downtown
15 residential properties until they adopted and implemented a
16 valid replacement housing plan in accordance with HCDA. See
17 Order dated May 2, 2002 at 36 ¶ 2; Order dated June 14, 2002
18 at 1 ¶ 1. Determining that plaintiffs were likely to prevail on
19 their HCDA claims, the court did not reach plaintiffs' fair
20 housing claims. Id. at 33-34.

21 Upon defendants' appeal, on December 6, 2004, the Ninth
22 Circuit affirmed the preliminary injunction order with respect
23 to the relocation assistance requirements. Price v. City of
24 Stockton, 390 F.3d 1105, 1118 (9th Cir. 2004). It reversed and
25 remanded, however, as to the court's prohibition of demolition
26 or conversion of the hotels absent a replacement housing plan

1 holding that plaintiffs cannot privately enforce the replacement
2 housing provisions of HCDA. Id. at 1113-14, 1118.

3 _____In the present motion, plaintiffs assert that the
4 defendants are in violation of California's Community
5 Redevelopment Law (CRL), codified at Health and Safety Code
6 §§ 33000 et seq., the California Fair Housing & Employment Act
7 ("FEHA"), Cal. Gov't Code §§ 12900 et seq., and the federal Fair
8 Housing Act, 42 U.S.C. §§ 3601 et seq. Based upon that
9 contention, they seek to have the preliminary injunction amended
10 to prevent the demolition or conversion of the downtown single-
11 room occupancy hotels and apartments defendants removed from the
12 affordable housing market in 2001 and 2002, pending trial of the
13 action, unless they first adopt a lawful replacement housing
14 plan.

15 III.

16 STANDARD OF REVIEW

17 The Ninth Circuit has adopted two tests for determining the
18 propriety of a preliminary injunction. The moving party must
19 demonstrate either (1) a combination of probable success on the
20 merits and the possibility of irreparable injury or (2) that
21 serious questions are raised and the balance of hardships tips
22 sharply in favor of the moving party. Conn. Gen. Life Ins. Co.
23 v. New Images of Beverly Hills, 321 F.3d 878, 881 (9th Cir.
24 2003). These two formulations are not different tests but
25 represent two points on a sliding scale in which the required
26 probability of success decreases as the degree of irreparable

1 harm increases. Oakland Tribune, Inc. v. Chronicle Publishing
2 Co., 762 F.2d 1374, 1376 (9th Cir. 1985). In addition, a court
3 in either formulation of the test must also take into account
4 the public interests that are implicated by the relief sought
5 when it is balancing the harms. Caribbean Marine Services Co.
6 v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

7 The California standard is quite similar to the federal
8 standard. In deciding whether to issue a preliminary
9 injunction, a court must weigh two 'interrelated' factors: (1)
10 the likelihood that the moving party will ultimately prevail on
11 the merits and (2) the relative harm to the parties from the
12 issuance or non-issuance of the injunction. Butt v. State of
13 California, 4 Cal.4th 668, 677-78 (1992); Cohen v. Board of
14 Supervisors, 40 Cal.3d 277, 286 (1985). "The trial court's
15 determination must be guided by a 'mix' of the potential-merit
16 and interim-harm factors; the greater the plaintiff's showing on
17 one, the less must be shown on the other to support an
18 injunction" Butt, 4 Cal.4th at 677-78 (citations
19 omitted).

20 IV.

21 ANALYSIS

22 Plaintiffs contend that defendants' closure, acquisition,
23 and threatened demolition and conversion of the downtown SROs
24 are all part of defendants' West End Redevelopment Plan. They
25 assert that, because the redevelopment project is the subject of
26 a written agreement between the Agency and the City, and the

1 Agency financially assisted the project, the Agency must adopt a
2 replacement housing plan pursuant to the CRL. I examine these
3 contentions below.

4 **A. THE COMMUNITY REDEVELOPMENT LAW**

5 The CRL provides that prior to removal of lower income
6 units from the affordable housing market as part of a
7 redevelopment project, redevelopment agencies must adopt a
8 replacement housing plan that will ensure the units are replaced
9 within four years of removal pursuant to Cal. Health & Safety
10 Code §§ 33413 and 33413.5. In enacting the CRL, the state
11 legislature intended to protect and "to expand the supply of
12 low- and moderate-income housing." Cal. Health & Safety Code §
13 33071. To assure the development of affordable housing,
14 redevelopment agencies are required to comply with CRL's
15 "inclusionary" or "production" requirements as part of certain
16 redevelopment plans. Id. at § 33413(b). Specifically, the CRL
17 requires replacement of lower income housing that is destroyed
18 or removed from the housing market as part of a redevelopment
19 project.⁴ The "replacement" units must be available

20
21 ⁴ The statute provides:

22 Whenever dwelling units housing persons and families of
23 low or moderate income are destroyed or removed from the
24 low- and moderate-income housing market as part of a
25 redevelopment project that is subject to a written
26 agreement with the agency or where financial assistance
has been provided by the agency, the agency shall,
within four years of the destruction or removal,
rehabilitate, develop, or construct, or cause to be
rehabilitated, developed, or constructed, for rental or
sale to persons and families of low or moderate income,

1 at an affordable housing cost at the same or a lower income
2 level as the persons displaced from the units that are destroyed
3 or removed. Id.⁵

4 Further, a redevelopment agency must adopt a replacement
5 housing plan well in advance of removing the units:

6 Not less than 30 days prior to the execution of an
7 agreement for acquisition of real property, or the
8 execution of an agreement for the disposition and
9 development of property, or the execution of an owner
10 participation agreement, which agreement would lead to
the destruction or removal of dwelling units from the
low- and moderate-income housing market, the agency
shall adopt by resolution a replacement housing plan
. . . .

11 Cal. Health & Safety Code § 33413.5. The plan must specify the
12 general location of the replacement housing units, an adequate
13 means of financing those units, the number of units housing
14 lower income persons and families that will be removed from the
15 market, and the timetable for meeting the plan's relocation,
16 rehabilitation and replacement housing obligations. Id. Prior

17 an equal number of replacement dwelling units that have
18 an equal or greater number of bedrooms as those
19 destroyed or removed units at affordable housing costs
20 within the territorial jurisdiction of the agency
. . . .

21 Cal. Health & Safety Code § 33413(a).

22 ⁵ If the units were removed or destroyed between September 1, 1989
23 and January 1, 2002, 75% of the replacement units were required to
24 be affordable at the same or lower income levels as the persons
25 displaced. For any units removed or destroyed after January 1,
26 2002, 100% of the replacement units must be affordable to the
persons displaced. Further, the replacement units must be
restricted by recorded covenants to remain affordable at such
income categories for the longest feasible time, and not less than
55 years for rental units or 45 years for homeownership units. Cal.
Health & Safety Code § 33413(c)(1).

1 to the adoption of the replacement housing plan, however, "the
2 agency shall make available a draft of the proposed . . . plan
3 for review and comment by the project area committee, other
4 public agencies, and the general public. Id. Thus, the CRL
5 provides a scheme to ensure both public participation and the
6 timely replacement of the lower income units at appropriate
7 affordability levels.

8 Finally, whenever any lower income housing units are
9 developed pursuant to Health & Safety Code § 33413, a
10 redevelopment agency must require by contract or other
11 appropriate means that the lower income families displaced by
12 the redevelopment project shall have a priority for renting or
13 buying the replacement housing. Id. at § 33411.3. The agency
14 also must maintain a list of all persons entitled to such a
15 priority, and may establish reasonable rules for determining the
16 order or priority on the list. Id.

17 **1. Applicability of the CRL**

18 Defendants' primary defense against the plaintiffs' CRL
19 cause of action is that the replacement housing obligations are
20 not applicable to the defendant City. The simple but fatal flaw
21 to this argument is that the plaintiffs never allege that the
22 City is burdened by such obligations, rather, they argue that it
23 is the defendant agency which must act. While it is true that
24 plaintiffs contend that the City was the main protagonist behind
25 the challenged actions, they maintain that the City did not act
26 alone, since the actions at issue were part of downtown

1 redevelopment scheme agreed to by both the Agency and the City.
2 According to plaintiffs, the Agency's obligations under the CRL
3 were triggered by the City's actions because they acted in
4 concert.

5 Contrary to defendants' suggestion, the Agency cannot
6 escape obligations under § 33413 of the Cal. Health & Safety
7 Code simply because the City, and not the Agency, led the code
8 enforcement, closing, and demolition campaign. The CRL makes
9 clear that the provisions of § 33413 are triggered and imposed
10 on the Agency whenever it is a party to a written agreement for
11 a redevelopment project that leads to the removal of low or
12 moderate income housing from housing market, which is
13 plaintiffs' actual allegation. Cal. Health & Safety Code
14 § 33413(a).

15 The defendants also maintain that, even if City actions may
16 trigger the Agency's CRL responsibilities, the actions
17 complained of here cannot do so because they were independent
18 and separate from the downtown redevelopment plan. They
19 maintain that the code enforcement and acquisition activities
20 had nothing to do with the redevelopment plan and were
21 undertaken only in the interest of protecting the health and
22 safety of Stockton's citizens, including plaintiffs.
23 Unfortunately for defendants, both this court and the Ninth
24 Circuit have already rejected this position.

25 This court has determined that the code enforcement
26 activities were likely "undertaken in connection with the

1 redevelopment of the downtown." PI Order at 25. As explained
2 in that order, both the Redevelopment Agency and the City of
3 Stockton adopted the West End Redevelopment Plan in 1961, which
4 was amended in 1991. Id. at 2. The court found that, in pursuit
5 of the downtown redevelopment, the City created a property
6 acquisition list and thereafter it, "and its Redevelopment
7 Agency[,] began a policy of zero tolerance for code enforcement
8 violations in downtown hotels," using a "Community Health Action
9 Team ('CHAT')." Id. at 3. After reviewing the defendants'
10 arguments, similar to the ones made here, the court concluded
11 that the "defendants' actions are likely part of a single
12 orchestrated redevelopment plan." Id. at 23, n. 14. The Ninth
13 Circuit affirmed, stating that an abundance of evidence
14 supported plaintiffs' claims that the aggressive code
15 enforcement campaign by the CHAT against the downtown
16 residential hotels, acquisition, threatened demolition, and
17 conversion of the hotels to parking lots or other uses are all
18 part and parcel of defendants' West End Redevelopment Plan.
19 Specifically, that court noted that:

20 The [district] court . . . found . . . that the City's
21 "redevelopment activities, which included code
22 enforcement, notices of vacating and demolition, and
23 the acquisition of hotels through purchase and eminent
24 domain proceedings, amounted to a 'single
25 undertaking.'" . . . Indeed, "the circumstances
26 strongly suggested" that 'the City's goals to
redevelop downtown through acquisition of buildings in
the area . . . precipitated code enforcement.'" . . .
Accordingly, the court concluded that Plaintiffs'
displacement occurred "in connection with" downtown
redevelopment activities. None of these findings are
clearly erroneous; indeed, all are amply supported by

1 evidence in the record.

2 Price v. City of Stockton, 390 F.3d at 1116 (quoting PI Order at
3 2-5, 21-25.)

4 Accordingly, because the code enforcement activities were
5 likely part of the downtown redevelopment project, plaintiffs
6 may properly seek to hold the Agency liable pursuant to
7 § 33413(a) based on those actions.

8 **2. Written Agreement**

9 The defendants insist that the Agency cannot be held liable
10 for the City's code enforcement or SRO closing and acquisition
11 activities because the plaintiffs cannot point to any part of an
12 agreement entered into by the Agency that calls for those
13 specific activities. As I explain, defendants' understanding of
14 § 33413 is too narrow and must be rejected.

15 Contrary to defendants' contentions, there is nothing in
16 the CRL that limits the Agency's § 33413 obligations to only
17 those agreements that specifically outline the removal of low-
18 incoming housing. If that were the case, redevelopment agencies
19 would always be able to circumvent CRL's replacement housing
20 mandate by simply omitting housing removal language from such
21 agreements, even if the redevelopment project that is the
22 subject of the agreement would in fact inevitably lead to low
23 income housing removal. The CRL's plain language clearly does
24 not allow for that result. Section 33413 provides that whenever
25 low or moderate income housing is "destroyed or removed . . . as
26 part of a redevelopment project that is subject to a written

1 agreement with the agency or where financial assistance has been
2 provided by the agency, the agency shall . . . rehabilitate,
3 develop, or construct . . . replacement dwelling units." Cal.
4 Health & Safety Code § 33413(a). Therefore, as long as any part
5 of the redevelopment project results in the removal of low
6 income housing, and the Agency is a party to a written agreement
7 entered into pursuant to that redevelopment project, the Agency
8 must comply with the CRL replacement housing obligations,
9 regardless of which entity actually and directly does the
10 removing.

11 Here, the plaintiffs have presented sufficient evidence
12 supporting their contention that the Agency entered into an
13 agreement concerning a redevelopment project that led to the
14 removal of low and moderate income housing from the City of
15 Stockton's housing market. As the defendants necessarily
16 concede, the Agency was a party to the West End Redevelopment
17 Plan. Plaintiffs allege, and the court has determined it
18 likely, that the code enforcement and SRO closing and
19 acquisition activities were part of that redevelopment project.
20 Plaintiffs also point to evidence showing both that the Agency
21 played an integral part in the execution of the redevelopment
22 project and that the project has resulted in the displacement of
23 low and moderate income housing. In July 1998, the defendant
24 City applied to the U.S. Department of Housing and Urban
25 Development ("HUD") for an Economic Development Initiative
26 ("EDI") grant and Section 108 loans to further the downtown

1 redevelopment project, to support the development of a multi-
2 modal transportation station, renovation of the Hotel Stockton,
3 development of a multi-screen movie cinema and retail complex,
4 renovation of the Fox Theater, and the Mercy Charities
5 affordable housing development. Pinkerton Dec., ¶¶ 7, 9, 12;
6 Collins Dec., Exs. 2, 3, 7 and 11. In the application, the City
7 acknowledged that “[t]he EDI and Section 108 funded projects
8 will require the relocation of approximately 200 residential
9 units and 37 businesses” Collins Dec., Ex. 2 at DEF
10 03155. The City also identified the Redevelopment Agency as the
11 lead player in its redevelopment scheme, indicating that “[t]he
12 Redevelopment Agency has a long history of playing the
13 coordination role and as the Agency responsible for the
14 comprehensive project implementation. . . .” Id. at DEF 03185.
15 Therefore, the defendants cannot seriously dispute that the
16 Agency did not enter into an agreement of the type contemplated
17 by § 33413.

18 **2. Financial Support**

19 I now examine plaintiffs' contention that the Agency is
20 also subject to § 33413 of the CRL because it provided financial
21 assistance for the redevelopment project which led to the
22 removal of low and moderate income housing.

23 Plaintiffs point to the City's EDI grant and § 108 loan
24 applications as proof that the Agency helped finance the
25 challenged activities. Collins Dec. ¶ 3, Ex. 2. According to
26 that application, the Agency was to contribute over \$2.7 million

1 as matching funds in support of the EDI application. Id. at DEF
2 03183, 03191. Further, in May 2000, the City and the
3 Redevelopment Agency entered into an agreement whereby the City
4 agreed to grant \$14.5 million to the Redevelopment Agency to
5 carry out the redevelopment project, and the Agency agreed to
6 assist the City, as needed, in repaying a \$13 million § 108 loan
7 the City obtained from HUD. Collins Dec. ¶ 6, Ex. 5 at 14682-
8 83. The evidence indicates that the Agency provided matching
9 redevelopment funds of over \$2.7 million for the EDI grant and
10 secured the § 108 loan. Collins Dec., Ex. 2 at DEF 03183,
11 03191; Ex. 5 at DEF 15002-03. Accordingly, plaintiffs have
12 sufficiently shown that the Agency financially supported the
13 redevelopment project at issue, thereby triggering § 33413(a).

14 **B. CRL COMPLIANCE**

15 According to plaintiffs, defendants have violated the CRL
16 in at least three ways: (1) by failing to adopt a replacement
17 housing plan for the SRO's within the time line mandated by
18 § 33413.5, (2) by failing to adopt an adequate replacement
19 housing plan for the Toni Hotel units, and (3) by evading its
20 obligation to assure that the persons displaced to accommodate
21 the downtown redevelopment project actually receive a priority
22 for any replacement units developed pursuant to Health & Safety
23 Code § 33413. I address these contentions below.

24 **1. Adoption of a Replacement Housing Plan**

25 The CRL mandates that the defendant agency replace low and
26 moderate income units removed from the housing market as a

1 consequence of the redevelopment plan within four years. Cal.
2 Health & Safety Code § 33413(a). As noted above, to meet that
3 deadline, the agency must plan for the replacement well in
4 advance of the actual implementation of the redevelopment
5 project.

6 As plaintiffs assert, the defendants have long since
7 removed hundreds of lower-income residential units from the
8 affordable housing market. See supra; PI Order at 4, fn. 3;
9 Collins Dec. ¶ 10, Ex. 9 at 570. By virtue of the statute, the
10 replacement units should have been made available between June
11 2005 and May 2006, and the plan to meet that deadline should
12 have been adopted years ago.⁶

13 Defendants admit that, with the exception of the Toni
14 Hotel, the Agency has not adopted a replacement housing plan for
15 any of the units that were removed from the market during the
16 code enforcement phase of the project. Defs.' Opp'n. at 23-25.
17 Therefore, because replacement plans were never adopted, the
18 hundreds of SROs should never have been removed from the low-
19 income housing market. Section 33413.5 is unambiguous in
20 providing that:

21 A dwelling unit whose replacement is
22 required by Section 33413 but for which no
23 replacement housing plan has been prepared,
shall not be destroyed or removed from the

24 ⁶ Plaintiffs also submit that § 33413.5 was triggered as early as
25 May of 2000, when the City and the Agency entered into the
26 "Subrecipient Agreement" that secured the funding for the
redevelopment project because it provided for the removal of at
least 200 residential units. Collins Dec. ¶6, Ex. 5 at 14682-83.

1 low- and moderate-income housing market
2 until the agency has by resolution adopted a
3 replacement housing plan.

4 Health & Safety code § 33413.5.

5 Plaintiffs also assert that the Agency further violated the
6 CRL when it failed to timely adopt a replacement housing plan
7 for the Toni Hotel. Defendants erroneously assert that the
8 replacement plan must be adopted "at least 30 days prior to
9 *implementing* a project." Burrows Dec. ¶ 12, Ex. 20 at 425
10 (emphasis added). The statute makes clear, however, that
11 defendants were required to adopt such a plan thirty days prior
12 to the *execution of the agreement* regarding the acquisition or
13 disposition of the hotel. Because plaintiffs provide proof that
14 such an agreement was entered into as early as May, 2000,
15 Collins Dec. ¶ 20, Ex. 19; Burrows Dec. ¶ 12, Ex. 20, defendants
16 may have been required to be adopt a plan as early as April of
17 2000.⁷ Instead, however, defendant agency waited until December
18 14, 2004, on the eve of demolition, to adopt any replacement
19 housing plan for the eight Toni Hotel SRO units. Burrows Dec.
20 ¶ 12, Ex. 20. Therefore, plaintiffs are likely to succeed on
21 their claim that defendant agency violated the CRL.

22 ////

23 ////

24 ⁷ Moreover, the offer to purchase the Toni Hotel was made on
25 November 27, 2001 (Collins Dec. ¶14, Ex. 13), and the Toni Hotel
26 site was deeded to the City on March 26, 2002. Burrows Dec. ¶4,
Exs. 11, 12. Thus, execution of the acquisition agreement, which
also can trigger the replacement planning obligation, occurred
sometime before March 26, 2002.

1 **2. Affordability Requirements**

2 The CRL requires that replacement housing be made available
3 to the same or lower income levels as the residents that were
4 displaced. Health & Safety Code § 33413.5. The replacement
5 housing plan for the Toni Hotel provides that the former
6 residents of the Toni Hotel were all very low income, Burrows
7 Dec. ¶ 12, Ex. 20 at 430, and accordingly provides that the
8 replacement housing will be affordable to persons of that income
9 level. Plaintiffs complain that defendants' income level
10 determination is inappropriately based on pure speculation.
11 According to plaintiffs, the former residents of the Toni Hotel
12 may have just as likely been persons with "extremely low,"
13 rather than very low incomes. As such, the Toni Hotel
14 replacement units would not be affordable to those former
15 residents.

16 The defendants respond that replacing the plaintiffs'
17 proposed gradation of income level to include "extremely low
18 income" is nowhere contemplated by the CRL, and that instead,
19 the statute provides only for "very low income," "low income,"
20 and "moderate income." As plaintiffs point out, however, the
21 term "very low income" expressly includes "extremely low income
22 households, as defined in [HSC] Section 50106. . . ." See
23 Health & Safety Code § 50105(b). It would appear the defendants
24 have a duty to ascertain the income level of those displaced,
25 and in the absence of evidence that they did so, plaintiffs may
26 well succeed on their claim that defendants violated section

1 33413(a).

2 **3. Priority Requirements**

3 Plaintiffs also contend that the defendant agency failed to
4 assure that any displaced persons will receive priority for any
5 replacement units produced or replaced, as required by
6 § 33411.3. The named plaintiffs in this case assert that they
7 have never been notified by defendants of their right to have
8 priority for a replacement unit at the Hotel Stockton. Henderson
9 2005 Dec. ¶ 4; Cobbs 2005 Dec. ¶ 4. Further, according to
10 plaintiffs, all 155 of the replacement units at the Hotel
11 Stockton are restricted to seniors and will only be affordable
12 to very low income persons, thereby denying all displaced
13 persons from a meaningful opportunity to obtain replacement
14 housing. To highlight the detrimental impact of the housing
15 restriction, plaintiffs point out that approximately 70% of the
16 persons recorded on defendants' Relocation Assistance Log are
17 *not* seniors, and are therefore ineligible for the replacement
18 units. Cobbs 2005 Dec. ¶ 3; Henderson 2005 Dec. ¶ 3.

19 The defendants dispute plaintiffs' contention by citing to
20 a declaration of Steven Pinkerton, director of the City's
21 Housing and Redevelopment department, who states that, although
22 Hotel Stockton was initially planned as senior housing, that
23 restriction was never realized. Pinkerton Decl. §§ 12-14. The
24 record also contains evidence supporting plaintiffs' position,
25 however, rendering this issue a factual dispute. For the
26 purposes of this motion, however, the court determines that the

1 plaintiffs may prevail on this claim.

2 **C. IRREPARABLE INJURY**

3 Defendants contend that the relief sought by the plaintiffs
4 is unwarranted because they will suffer no irreparable harm
5 without it. This court has previously found that defendants'
6 failure to comply with their replacement housing obligations law
7 "works a profound hardship" on plaintiffs. PI Order at 34.
8 Nothing suggests that conclusion was in error.

9 As set forth in the declarations of plaintiffs Henderson
10 and Cobbs, defendants' failure to comply with the CRL has
11 resulted in repeated instances of homelessness for Henderson.
12 Henderson 2005 Dec. ¶ 5; Cobbs 2005 Dec. ¶ 5. The destruction
13 of additional units of low income housing units without an
14 adequate plan for replacement or reasonable and timely steps to
15 ensure that plaintiffs will receive the benefit of a priority
16 for any newly-developed units continues to threaten plaintiffs
17 with recurring and protracted homelessness.

18 Defendants insist that presently plaintiffs will suffer
19 only a "harmless delay" in awaiting replacement of their homes.
20 See Defs.' Opp'n. at 4-5. Given the circumstances, any delay
21 threatens displacement and homelessness.⁸

22
23 ⁸ In any event, defendants' heartless argument rests on a
24 misreading of the law. Defendants' argument is premised on the
25 notion that even if the Agency adopted a replacement housing plan,
26 it would have four years from the date of *demolition* to replace the
units, which defendants estimate to be 2009 or 2010. As explained
above, that calculation is incorrect as to many of the buildings
that have already been vacated.

1 Regarding SROs that are in danger of future vacation, the
2 defendants concede that, without the requested amendment, the
3 replacement housing may be delayed by six months. According to
4 defendants, “[i]t is hard to see how any of the plaintiffs would
5 be irreparably harmed by that kind of delay.” Defs.’ Opp’n at 5.
6 Sadly, defendants continue to fail to come to grips with the
7 harm that plaintiffs will likely suffer from what defendants
8 characterize as a short delay in replacement housing, giving
9 this court even more cause for concern. Although it may “be
10 hard” for the defendants to “see” how even short-term
11 homelessness can cause harm, in this court’s view, it does not
12 take more than common sense to understand the extent of that
13 hardship.

14 First, it is likely that many of the displacees may not
15 find or be able to afford temporary housing while they await
16 their replacement housing to become available. Indeed,
17 “plaintiff Henderson has experienced repeated bouts of
18 homelessness since his displacement” while awaiting a
19 replacement units. Henderson Dec. ¶ 5. Further, plaintiffs
20 Watson and White have had difficulty in securing an affordable,
21 permanent home. Decls. of Lucinda Watson and Lance White in
22 Supp. of Pls’ Mot. to Amend PI (Watson Dec. ¶¶ 3, 4); (White
23 Dec. ¶¶ 2, 3, 6). Such short-term homelessness may result in
24 plaintiffs living in conditions even more deplorable than those
25 found in the units closed by defendants, exposing plaintiffs to
26 illness and other dangers. Further, the loss of opportunity to

1 live in replacement housing that is safe, sanitary, decent and
2 integrated and that is accessible to jobs cannot be
3 underestimated. As put by one court, short-term homelessness
4 can mean the loss of that opportunity "'to escape the never-
5 ending and seemingly unbreakable cycle of poverty.'" Gresham v.
6 Windrush Partners, Ltd., 730 F.2d 1417, 1424 (quoting Banks v.
7 Perk, 341 F. Supp. 1175, 1185 (N.D. Ohio 1972), aff'd in part
8 and rev'd in part, 473 F.2d 910 (6th Cir. 1973)).

9 Moreover, the defendants overlook the harm that stems from
10 depriving plaintiffs of their procedural rights to review and
11 comment on a replacement plan *before* any of the hotels are
12 demolished. Health & Safety Code § 33413.5. As noted, a
13 replacement housing plan must demonstrate where the replacement
14 units will be located, the number and affordability levels of
15 the units to be removed and replaced, and that adequate
16 financing is or will be available to replace the units in a
17 timely manner. Id. The proposed housing replacement plan must
18 be made available for review and comment by a Project Area
19 Committee (PAC) comprised of residents, businesses and
20 organizations within the project area, other public agencies and
21 the public. Id.; see also Health & Safety Code § 33385. Were
22 defendants permitted to continue to remove low and moderate
23 income housing from the housing market, plaintiffs would plainly
24 be deprived of their right to comment on and advocate for a
25 responsible replacement housing plan.

26 ////

1 accordance with Health & Safety Code §§ 33413, 33413.5, 33411.3
2 and 42 U.S.C. § 5304(d), or further order of the court.

3 IT IS SO ORDERED.

4 DATED: August 9, 2005.

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/s/Lawrence K. Karlton
LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

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