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13  
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF KERN**

16 PEGGY CHRISTENSEN and PETER  
MARTIN

17 Petitioners,

18 vs.

19 CALIFORNIA JUDICIAL COUNCIL

20 Respondent.

) **CASE NO.: BCV-20-101361**  
)  
) **Assigned for All Purposes to:**  
) **Hon Eric J. Bradshaw**  
)  
) **Memorandum of Points and Authorities**  
) **in Support of Motion to Intervene**  
) **Date: 9/15/2020**  
) **Time: 8:30 AM**  
) **Department: D-12**  
)  
) *Writ Petition Filed: June 15, 2020*  
) *Hearing Date: None Set*  
)

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28

**TABLE OF CONTENTS**

**I. INTRODUCTION ..... 7**

**II. FACTUAL BACKGROUND..... 8**

    A. Californians face a looming eviction crisis..... 8

    B. The COVID-19 pandemic and the looming eviction crisis disproportionately harms the unhoused and housing unstable. .... 10

    C. The COVID-19 pandemic and the looming eviction crisis disproportionately harms Black, Latino/a, and Pacific Islander individuals, as well as people with disabilities ..... 11

    D. Various jurisdictions pass a patchwork of temporary and partial eviction protections ..... 12

    E. The Judicial Council adopts ER 1 in response to the global pandemic..... 12

    F. Petitioners file this lawsuit challenging ER 1..... 14

**III. ARGUMENT..... 15**

    A. Proposed Intervenors have a direct and immediate interest in this action..... 15

    B. Proposed Intervenors’ interests cannot be adequately represented by Respondent. 17

    C. Intervention will not enlarge the issues or otherwise delay this case. .... 19

    D. The reasons for intervention outweigh any opposition..... 19

**IV. CONCLUSION ..... 20**

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page(s)**

**Cases**

*Bustop v. Super. Ct.*,  
69 Cal. App. 3d 66 (1977) .....16

*California Building Industry Assn. v. City of San Jose*,  
61 Cal.4th 435 (2015) .....8

*Conservation Law Foundation of New England, Inc. v. Mosbacher*,  
966 F.2d 39 (1st Cir. 1992).....18

*Lincoln Nat’l. Life Ins. Co. v. Bd. Of Equal’n*,  
30 Cal. App. 4th 1411 (1994) .....15

*Rominger v. County of Trinity*,  
147 Cal. App. 3d 655 (1983) .....15, 16, 17, 19

*Sienna Court Homeowners Ass’n v. Green Valley Corp.*,  
164 Cal. App. 4th 1416 (2008) .....15

*Simac Design, Inc. v. Alciati*,  
92 Cal. App. 3d 146 (1979) .....15

*Simpson Redwood Co. v. State of California*,  
196 Cal. App. 3d 1192 (1987) .....15, 17

*Timberidge Enterprises v. City of Santa Rosa*,  
86 Cal. App. 3d 873 (1978) .....15, 16, 19

*U.S. Ecology, Inc. v. State of California*,  
92 Cal. App. 4th 113 (2001) .....15

*Utah Ass’n of Counties v. Clinton*,  
255 F. 3d 1246 (10th Cir. 2001) .....18, 19

*Ziani Homeowners Assn. v. Brookfield Ziani LLC*,  
243 Cal.App.4th 274 (2015) .....18

**Statutes**

Cal. Code of Civ. Proc. § 387 .....18

Cal. Code Civ. Proc. § 387(c) .....14, 15, 20

Cal. Health & Safety Code § 50001(a) .....16

1 **Rules and Regulations**

2 Fed. R. of Civ. P. § 24.....18

3 Fed. R. of Civ. P. § 24(b).....18

4 **Executive Orders**

5 Cal. Exec. Order No. N-28-20 (March 16, 2020), [https://www.gov.ca.gov/wp-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.16.20-Executive-Order.pdf)  
6 content/uploads/2020/03/3.16.20-Executive-Order.pdf.....12

7 Cal. Exec. Order No. N-33-20 (March 19, 2020), [https://www.gov.ca.gov/wp-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf)  
8 content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-  
9 ORDER.pdf.....13, 14

10 Cal. Exec. Order No. N-37-20 (March 27, 2020), [https://www.gov.ca.gov/wp-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-EO-N-37-20.pdf)  
11 content/uploads/2020/03/3.27.20-EO-N-37-20.pdf .....13, 14

12 Cal. Exec. Order No. N-38-20 (March 27, 2020), [https://www.gov.ca.gov/wp-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf)  
13 content/uploads/2020/03/3.27.20-N-38-20.pdf.....12

14 **Other Authorities**

15 Blaine Corren, *Judicial Council to Distribute Trial Court Funds Based on*  
16 *Workload, Need*, California Courts Newsroom, (July 24, 2020),  
17 [https://newsroom.courts.ca.gov/news/judicial-council-to-distribute-trial-court-](https://newsroom.courts.ca.gov/news/judicial-council-to-distribute-trial-court-funds-based-on-workload-need)  
18 funds-based-on-workload-need.....14

19 California Department of Public Health, *COVID-19 Updates*  
20 [https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov201](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx#)  
21 9.aspx# (last visited July 27, 2020, 2:43pm) .....8

22 Centers for Disease Control and Prevention (CDC), *Coronavirus Disease 2019*  
23 *(COVID-19) People with Disabilities*, [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html)  
24 ncov/need-extra-precautions/people-with-disabilities.html (last updated, April  
25 7, 2020) .....11

26 Colette Auerswald, et al., *For the Good of Us All: Addressing the Needs of Our*  
27 *Unhoused Neighbors During the COVID-19 Pandemic*, UC Berkeley School  
28 of Public Health (2020), [https://publichealth.berkeley.edu/wp-](https://publichealth.berkeley.edu/wp-content/uploads/2020/04/For-the-Good-of-Us-All-Report.pdf)  
content/uploads/2020/04/For-the-Good-of-Us-All-Report.pdf .....10

Department of Housing and Community Development, *California’s Housing*  
*Future: Challenges and Opportunities Final Statewide Housing Assessment*  
2025 (February 2018), [https://www.hcd.ca.gov/policy-research/plans-](https://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA_Final_Combined.pdf)  
reports/docs/SHA\_Final\_Combined.pdf.....8

Elizabeth Kneebone, et al., *Estimating COVID-19 Near-Term Impact on Renters*,  
UC Berkeley Turner Center for Housing Innovation (April 24, 2020),  
<https://turnercenter.berkeley.edu/blog/estimating-covid-19-impact-renters>.....9

1 Gary Blasi, *UD Day: Impending Evictions and Homelessness in Los Angeles*,  
2 UCLA Luskin Institute on Inequality and Democracy (May 28, 2020),  
3 [https://www.ohchr.org/Documents/Issues/Housing/COVID19/Academics/UD](https://www.ohchr.org/Documents/Issues/Housing/COVID19/Academics/UD_Day_Impending_Evictions_and_Homelessness_in_Los%20Angeles2020.pdf)  
4 [\\_Day\\_Impending\\_Evictions\\_and\\_Homelessness\\_in\\_Los%20Angeles2020.pdf](https://www.ohchr.org/Documents/Issues/Housing/COVID19/Academics/UD_Day_Impending_Evictions_and_Homelessness_in_Los%20Angeles2020.pdf) .....9  
5  
6 Judicial Council of California, *Report to the Judicial Council: Judicial Branch*  
7 *Administration Emergency Rules in Response to the COVID-19 Pandemic*,  
8 Item No: 20-141 for business meeting on April 6, 2020 (April 4, 2020) ..... *passim*  
9  
10 Loree Levy and Aubrey Henry, Employment Development Department,  
11 *California unemployment lowers slightly to 16.3 percent in May* (June 19,  
12 2020), <https://edd.ca.gov/newsroom/unemployment-june-2020.htm> .....8  
13  
14 Paul Ong et. al., *Economic Impacts of the COVID-19 Crisis in Los Angeles:*  
15 *Identifying Renter-Vulnerable Neighborhoods*, UCLA Center for  
16 Neighborhood Knowledge (April 30, 2020),  
17 [https://www.anderson.ucla.edu/documents/areas/ctr/ziman/UCLA-](https://www.anderson.ucla.edu/documents/areas/ctr/ziman/UCLA-CNK_OngAssoc._LA_Renter_Vulnerability_4-30-20.pdf)  
18 [CNK\\_OngAssoc.\\_LA\\_Renter\\_Vulnerability\\_4-30-20.pdf](https://www.anderson.ucla.edu/documents/areas/ctr/ziman/UCLA-CNK_OngAssoc._LA_Renter_Vulnerability_4-30-20.pdf) .....14  
19  
20 Peter Allen, *Chief Justice Suspends Vote on Eviction, Foreclosure Emergency*  
21 *Rules*, California Courts Newsroom (June 10, 2020),  
22 [https://newsroom.courts.ca.gov/news/chief-justice-suspends-vote-on-eviction-](https://newsroom.courts.ca.gov/news/chief-justice-suspends-vote-on-eviction-foreclosure-emergency-rules)  
23 [foreclosure-emergency-rules](https://newsroom.courts.ca.gov/news/chief-justice-suspends-vote-on-eviction-foreclosure-emergency-rules).....12, 13  
24  
25 UCLA Center for Health Policy Research’s California Health Interview Survey  
26 (CHIS), *COVID-19 Rates and Risk Factors by California County Dashboard*  
27 (last visited July 25, 2020, 3:28pm), [http://healthpolicy.ucla.edu/health-](http://healthpolicy.ucla.edu/health-profiles/Pages/COVID-19Dashboard.aspx)  
28 [profiles/Pages/COVID-19Dashboard.aspx](http://healthpolicy.ucla.edu/health-profiles/Pages/COVID-19Dashboard.aspx) .....11  
29  
30 Working Partnerships USA and Law Foundation of Silicon Valley, *The Eviction*  
31 *Time Bomb* (July 2020),  
32 <https://www.wpusa.org/files/reports/EvictionTimeBomb.pdf> .....9

1 **I. INTRODUCTION**

2 In the midst of the most severe global pandemic in a century, may the Judicial Council  
3 enact emergency rules to ensure that California’s courts comply with and implement the shelter-  
4 in-place orders of the Governor and public health officials? More specifically, may the Judicial  
5 Council enact emergency rules regarding unlawful detainers, cases which “are particularly  
6 problematic for two reasons: (1) they require very fast legal responses (within five days) from  
7 defendants who are often self-represented and at a time when court self-help centers and legal  
8 aid services are not readily available; and (2) when involving residential property, they threaten  
9 to remove people from the very homes they have been instructed to remain in”?<sup>1</sup> Petitioners filed  
10 this suit against the Judicial Council, asserting that the policymaking body of the courts cannot  
11 take these steps. Petitioners claim that Emergency Rule 1 violates constitutional principles of  
12 separation of powers and takes away from landlords a substantive “right” to utilize the summary  
13 proceeding of unlawful detainer. But the administration of the judicial procedures for unlawful  
14 detainer during a state of emergency inherently falls within the constitutional powers of the  
15 Judicial Council and no substantive right to utilize the unlawful detainer process exists.

16 Jeremy Miller, Claudia Rodriguez, Juan Alfaro, Grace Vargas, Organize Sacramento,  
17 Faith in the Valley, and Tenants Together seek to intervene in this suit because they have a direct  
18 interest in upholding Emergency Rule 1. The four individuals are all low-income tenants who  
19 have received notices or threats of eviction in recent months, and they face imminent eviction if  
20 the Emergency Rule is withdrawn with no other protections in place. Organize Sacramento is a  
21 volunteer community group that uses community and organizing power and strategy to create  
22 solutions to issues facing Sacramento residents, including issues related to housing. Faith in the  
23 Valley is a faith-based grassroots community organization that represents families throughout the  
24 Central Valley, including in Kern County. Their community-based work has focused in recent  
25 months on ensuring vulnerable households remain stably housed to comply with shelter-in-place  
26 directives. Tenants Together is a non-profit organization dedicated to defending and advancing  
27

28 <sup>1</sup> Request for Judicial Notice, Exh. 1, Judicial Council of California, Report to the Judicial Council, Item No.: 20-141 at 8 (April 4, 2020).

1 the rights of California tenants to safe, decent, and affordable housing.

2 Because so many tenants are vulnerable to eviction in the short term, one of the most  
3 important mechanisms to ensure they comply with shelter-in-place orders is the Judicial  
4 Council’s Emergency Rule 1. And because there is such a patchwork of protections and eviction  
5 moratoria throughout the state, none of the organizations proposing to intervene would be able to  
6 fulfill their missions if Petitioners were to prevail in this action. The issuance of a writ in favor of  
7 Petitioners would force the individual proposed intervenors to seek alternative housing in the  
8 midst of a pandemic and potentially into homelessness.

## 9 **II. FACTUAL BACKGROUND**

### 10 **A. Californians face a looming eviction crisis.**

11 The COVID-19 pandemic is an ongoing public health emergency that has hit California  
12 especially hard and has caused widespread disruptions in civic life. As of July 24, 2020, over  
13 445,400 Californians had tested positive for COVID-19 and over 8,000 have died of the disease.  
14 Request for Judicial Notice (RJN), Exh. 2, California Department of Public Health, COVID-19  
15 Updates. The number of cases in California continues to rise.

16 Before the pandemic, California was in the midst of an extraordinary housing crisis, one  
17 that had “reached what might be described as epic proportions in many of the state’s localities.”  
18 *California Building Industry Assn. v. City of San Jose*, 61 Cal.4th 435, 441 (2015). The state  
19 maintains “a shortfall of more than one million rental homes affordable to extremely- and very  
20 low-income households and [its] homeownership rate has declined to the lowest rate since the  
21 1940s.” RJN, Exh. 3, Department of Housing and Community Development, California’s  
22 Housing Future: Challenges and Opportunities Final Statewide Housing Assessment 2025  
23 (February 2018) at 20. And then the pandemic arrived.

24 Californians across the state began facing reduced work hours and staggering job losses.  
25 The unemployment rate climbed to 16.4%, or 2.4 million people, in April of this year. RJN, Exh.  
26 4, Employment Development Department, NR No. 20-27 (June 19, 2020). And there are many  
27 more who are employed, but face employment instability and reduced hours. These are  
28 individuals like Jeremy Miller, who worked on oil field maintenance until the shutdown.



1 Declaration of Jeremy Miller at ¶ 3. Because his hours were cut for COVID-19 related reasons,  
2 he could not pay his full rent in April of this year. *Id.* at ¶ 7. In June, he worked at an Amazon  
3 warehouse through a temp agency, has attempted to pay portions of his rent, and has offered to  
4 work out a payment plan with his landlord. *Id.* at ¶ 10–11. Instead, Mr. Miller’s landlord has  
5 threatened to evict him and his young daughter. *Id.* at ¶ 7. Until the Legislature is able to  
6 negotiate a solution that helps renters remain in their homes while ensuring that landlords do not  
7 lose their properties, Emergency Rule 1 is all that prevents hundreds of thousands of families like  
8 Mr. Miller’s from losing their homes.

9         If evictions do begin to proceed before the Legislature is able to pass a comprehensive  
10 solution, renters face a catastrophe of the state’s own making. Researchers estimate that 50  
11 million renters live in households that suffered COVID-19-related income loss, with almost 40  
12 percent occurring in low-income households. RJN, Exh. 5, Elizabeth Kneebone, *et al*, *Estimating*  
13 *COVID-19 Near-Term Impact on Renters* (April 24, 2020). One study identifies two looming  
14 waves of evictions: 1) unemployed workers with no replacement income and 2) workers whose  
15 replacement income ends. RJN, Exh. 6, Gary Blasi, *UD Day: Impending Evictions and*  
16 *Homelessness in Los Angeles* at 44-47 (May 28, 2020). In Los Angeles County alone, the study  
17 estimated that 365,000 households were at high risk of eviction. *Id.* at 54. It further estimated  
18 that between 36,000 to 120,000 of those households (including up to 184,000 children) are at risk  
19 of homelessness. *Id.* At 42. Another study found that approximately 43,490 households are at  
20 high risk of eviction in Santa Clara County, a number that represents over 16 times the amount of  
21 evictions filed in a typical year. RJN, Exh. 7, Working Partnerships USA and Law Foundation of  
22 Silicon Valley, *The Eviction Time Bomb* at 3 (July 2020). These numbers are not unique to these  
23 counties.

24         When the eviction bomb explodes, an already overburdened legal services system for the  
25 poor will not be able to represent the majority of households. And “virtually all tenants without  
26 access to legal help lose” in eviction court. RJN, Exh. 6, *UD Day* at 57. Without a statewide  
27 emergency order in place that allows the Legislature enough time to craft a fair solution, we will  
28 see “yet another round in the systematic unhousing of people. . .” *Id.* at 39.

1           **B.       The COVID-19 pandemic and the looming eviction crisis disproportionately**  
2                                   **harms the unhoused and housing unstable.**

3           When COVID-19 results in the eviction of hundreds of thousands of families, many of  
4 them will end up on the streets. Homeless individuals are already more likely than the general  
5 population to fall into one of the medically vulnerable categories which render them more likely  
6 to have poor health outcomes. RJN, Exh. 8, UC Berkeley School of Public Health, *For the Good*  
7 *of Us All: Addressing the Needs of Our Unhoused Neighbors During the COVID-19 Pandemic* at  
8 96 (April 2020). During the COVID-19 pandemic, the consequences of those poor health  
9 outcomes are intensified.

10           Social distancing and hygiene guidelines are key to controlling the pandemic. But, the  
11 conditions both on the street and in shelters do not allow individuals to follow those guidelines.  
12 “It is well documented that [persons experiencing homelessness] already experience negative  
13 health outcomes due to poor access to sanitation and hygiene facilities. Many [persons  
14 experiencing homelessness] do not have the level of access to water and toilets that is required  
15 by international standards for refugee camps . . .” *Id.* at 99. So unsurprisingly, “[u]nhoused  
16 individuals living in congregate settings, encampments, and on the streets do not have the option  
17 to follow [the CDC’s COVID-19] recommendations.” *Id.* at 92. For example, in Boston, testing  
18 of one shelter’s residents found that 37% of individuals had contracted the virus. *Id.* at 97.

19           Not only are unhoused individuals more likely to become infected with COVID-19, data  
20 and modeling indicate that unhoused individuals are more likely to require hospitalization (two  
21 to three times more likely), to require ICU care (two to four times more likely), and to die (twice  
22 as likely). *Id.* Case studies have borne out those models. For example, the “hospitalization rates  
23 of [persons experiencing homelessness] in New York City who tested positive [for COVID-19]  
24 are between 30 to 40 percent.” *Id.* at 96. California, already home to an overwhelming  
25 percentage of the nation’s homeless, stands to add hundreds of thousands more to that ignoble  
26 number. The devastation will worsen the pandemic.

27 ///

28 ///

1           **C.     The COVID-19 pandemic and the looming eviction crisis disproportionately**  
2           **harms Black, Latino/a, and Pacific Islander individuals, as well as people**  
3           **with disabilities.**

4           Not all have been similarly impacted by COVID-19. People of color and people with  
5           disabilities – often intersecting populations – have faced greater harm from the pandemic. In  
6           California, Native Hawaiian and Pacific Islanders have experienced more than three times the  
7           infection rate compared to white counterparts. RJN, Exh. 9, UCLA Center for Health Policy  
8           Research, *COVID-19 Rates and Risk Factors by California County*. And Black people have  
9           suffered nearly twice as many deaths from the virus compared to whites. *Id.* These same groups  
10          will likely face greater eviction rates. Indeed, “Black and Latinx California renters are more than  
11          three times as likely to report being unable to pay their June rent (26.1% and 23.6% respectively)  
12          compared to white or Asian renters (6.5% and 7.8%).” RJN, Exh. 7 at 80. This level of inequity  
13          can only be expected to compound as the crisis wears on.

14          Many people with disabilities are also uniquely at risk for COVID-19 harm. According to  
15          the Centers for Disease Control and Prevention (CDC), “adults with disabilities are three times  
16          more likely than adults without disabilities to have [COVID-19 risk factors like] heart disease,  
17          stroke, diabetes, or cancer than adults without disabilities.” RJN, Exh. 10. The CDC also warns  
18          that “[p]eople who have limited mobility or who cannot avoid coming into close contact with  
19          others who may be infected, such as direct support providers and family members” are at greater  
20          risk of contracting COVID-19. Others who can be disproportionately impacted include “[p]eople  
21          who have trouble understanding information or practicing preventive measures” and “[p]eople  
22          who may not be able to communicate symptoms of illness.” *Id.* California’s most burdened  
23          renters – people of color, people with disabilities, those living in poverty, are those at most risk  
24          of both eviction and contracting COVID-19.

25          Proposed Intervenor Claudia Rodriguez’s situation illustrates this disparate impact. She  
26          has two children, and is pregnant with her third. Declaration of Claudia Rodriguez at ¶ 2. As a  
27          school custodian, she has seen her work hours and income reduced during this pandemic. *Id.* at ¶  
28          13. She and one of her children suffer from severe asthma. *Id.* at ¶ 3. Her other child lives with a

1 rare brain disorder. *Id.* Her COVID-19 risks are already high and now her landlord is seeking to  
2 displace her – just as she is scheduled to give birth. *Id.* at ¶ 10. The resulting homelessness would  
3 place Claudia and her children in COVID-19’s direct path.

4 **D. Various jurisdictions pass a patchwork of temporary and partial eviction**  
5 **protections.**

6 “Stay at home.” In order to implement this directive, a number of California cities  
7 implemented varying, temporary, and partial eviction protections. To date, of the 482 cities and  
8 58 counties in California, approximately 150 have temporary, partial restrictions on evictions  
9 during the pandemic. Declaration of Lupe Arreola at ¶ 9. And Governor Newsom’s Executive  
10 Order Executive Order N-28-20 (March 16, 2020) confirmed that state law does not prohibit  
11 those local protections. RJN, Exh. 11. Indeed, proposed intervenors Faith in the Valley, Organize  
12 Sacramento, and Tenants Together have advocated for, and continue to advocate for those local  
13 protections. Arreola Decl. at ¶ 10-11; Declaration of Daulton Jones at ¶¶ 7-14; Declaration of  
14 Tamie A. Dramer at ¶ 4. But “[c]urrent state and local government restrictions will have little  
15 effect on the numbers of tenants being evicted in UD cases, because some restrictions depend  
16 upon tenants knowing their details and complying with detailed requirements; few tenants—  
17 especially those at immediate risk—will be able to comply with these requirements without  
18 assistance.” RJN, Exh. 6 at 50. The only thing that has prevented the reality of an unprecedented  
19 eviction crisis is Emergency Rule 1.

20 **E. The Judicial Council adopts ER 1 in response to the global pandemic.**

21 On March 27, Governor Newsom used his broad emergency powers to issue Executive  
22 Order N-38-20, allowing the Judicial Council to issue statewide rules. RJN, Exh. 12. On April 6,  
23 2020, the Judicial Council adopted Emergency Rule 1 (ER1): a temporary emergency measure  
24 “designed to protect the health and safety of the public while ensuring that access to justice  
25 remains available.”<sup>2</sup> Specifically, ER 1 addresses the impact of the COVID-19 pandemic on  
26 California’s residential tenants and courts by: 1) suspending “the issuance of summons and entry  
27

28 <sup>2</sup> Chief Justice Suspends Vote on Eviction, Foreclosure Emergency Rules (2020)  
<https://newsroom.courts.ca.gov/news/chief-justice-suspends-vote-on-eviction-foreclosure-emergency-rules> (last  
visited July 15, 2020)

1 of default and default judgments on unlawful detainer complaints,” and 2) allowing “courts to set  
2 trials on any unlawful detainer actions in which a defendant has appeared more than 60 days  
3 after the request for such a trial.” RJN, Exh. 1 at 7. The Judicial Council also provided an  
4 exception to ER 1 that allowed courts to issue an unlawful detainer summons or set an earlier  
5 trial date if “necessary to protect public health and safety.” *Id.*

6 The Judicial Council’s passage of ER 1 was supported by each of the chairs of its six  
7 internal committees, the California Executive Branch<sup>3</sup>, and statewide legal services working with  
8 impacted communities. ER 1 was a means to ensure the health and safety of the public. At the  
9 time of ER 1’s passage, Governor Newsom had recently proclaimed a State of Emergency due to  
10 the rapid spread of COVID-19 in the state and had ordered all Californians “to stay home or at  
11 their place of residence” with few exceptions. RJN, Exh. 13, Executive Order No. 33-20. The  
12 Judicial Council noted that “[a]t a time when people are being urged to stay at home to protect  
13 public health and safety, unlawful detainers are particularly problematic...” because “they  
14 threaten to remove people from the very homes they have been instructed to remain in.” RJN,  
15 Exh. 1 at 8.

16 ER 1 also protects the due process rights of tenants facing eviction. In contemplating the  
17 threat to due process caused by COVID-19, the Judicial Council noted that the short five-day  
18 period allotted for answers in unlawful detainer cases, combined with a lack of available services  
19 such as self-help and legal aid centers due to COVID-19, would leave tenants – many of whom  
20 are self-represented –without meaningful access to justice in their unlawful detainer proceedings.  
21 *Id.* Lastly, ER 1 also enables the due process goals of Executive Order N-37-20, which intended  
22 to give tenants facing hardships due to COVID-19 60 days to respond to a summons for an  
23 unlawful detainer. RJN, Exh. 14. The Judicial Council reasoned that at the summons stage, it was  
24 not possible to tell on the face of the complaint whether a person qualified for such an extension,  
25 thus every summons would still include a five-day deadline to answer and would lead tenants to  
26 believe they were not protected by the Executive Order. Having systems in place that halt

27 \_\_\_\_\_  
28 <sup>3</sup> Chief Justice Suspends Vote on Eviction, Foreclosure Emergency Rules (2020)  
<https://newsroom.courts.ca.gov/news/chief-justice-suspends-vote-on-eviction-foreclosure-emergency-rules> (last  
visited July 15, 2020).

1 evictions is especially important where research has shown that one of the greatest barriers to  
2 implementing current eviction protections is “the difficulty of informing the public in a timely  
3 fashion, especially to those who are limited or non-English speakers.” RJN, Exh. 15, Ong, P. *et*  
4 *al.*, *Economic Impacts of the COVID-19 Crisis in Los Angeles: Identifying Renter-Vulnerable*  
5 *Neighborhoods*, UCLA: Center for Neighborhood Knowledge (2020). By generally preventing  
6 summons from being issued absent a public health need for the case to proceed, ER 1 effectuates  
7 the intent behind Executive Order N-37-20.

8         On June 10, 2020, the Judicial Council elected to postpone a vote on sunseting ER 1. In  
9 doing so, the Council emphasized the temporary nature of the order and the need to work with  
10 the Legislative and Executive Branches to ensure that the public remains protected as the rule is  
11 lifted. The Judicial Council has once again signaled an intent to sunset the rule<sup>4</sup>, and it is unclear  
12 whether another rule, an Executive Order, or Legislative action will replace it.

13         The statewide Stay at Home order, now in place for over four months, requires all  
14 Californians to remain at their place of residence except for permitted work, necessary errands,  
15 or as otherwise authorized. RJN, Exh. 13, Executive Order N-33-20, Executive Dep’t State of  
16 California (March 19, 2020). But Californians can only stay at home if they have a home.  
17 Families without stable home environments cannot effectively practice social distancing, optimal  
18 hygiene practices, or quarantining – some of the top interventions recommended by the Centers  
19 for Disease Control and Prevention (CDC).

20         **F.         Petitioners file this lawsuit challenging ER 1.**

21         On June 15, Petitioners filed this action for a peremptory writ of mandate ordering the  
22 Judicial Council to revoke Emergency Rule 1. Petition ¶ 39. The Judicial Council has not yet  
23 answered the Petition as of August 6, 2020. The proposed intervenors now seek leave to  
24 intervene.

25         ///

26         ///

27 \_\_\_\_\_

28 <sup>4</sup> <https://newsroom.courts.ca.gov/news/judicial-council-to-distribute-trial-court-funds-based-on-workload-need>

1 **III. ARGUMENT**

2 Code of Civil Procedure § 387(c) provides, in pertinent part, “Upon timely application,  
3 any person, who has interest in the matter in litigation, or in the success of either of the parties,  
4 or an interest against both, may intervene in the action or proceeding.” The purpose of  
5 intervention is to “promote fairness” by allowing “all parties” who may be affected by the  
6 outcome of litigation to participate. *Lincoln Nat’l. Life Ins. Co. v. Bd. Of Equal’n*, 30 Cal. App.  
7 4th 1411, 1423 (1994) (intervention proper where party has an interest and intervention neither  
8 expands scope of litigation nor infringes upon original parties’ right to litigate case). For that  
9 reason, while permitting intervention under § 387(c) is a matter of the court’s discretion, courts  
10 must liberally construe the statute in favor of intervention. *Simpson Redwood Co. v. State of*  
11 *California*, 196 Cal. App. 3d 1192, 1200 (1987) (reversing trial court order refusing  
12 intervention).

13 A third party may intervene in an action if: (1) the party has a direct and immediate  
14 interest in the action; (2) the intervention will not enlarge the issues in the litigation; and (3) the  
15 reasons for intervention outweigh any opposition by the parties presently in the action. *U.S.*  
16 *Ecology, Inc. v. State of California*, 92 Cal. App. 4th 113, 139 (2001). Proposed intervenors meet  
17 these requirements.

18 **A. Proposed Intervenors have a direct and immediate interest in this action.**

19 The proposed intervenors’ “interest must be of such a direct and immediate nature that  
20 the moving party will either gain or lose by the direct legal operation and effect of the  
21 judgment.” *Sienna Court Homeowners Ass’n v. Green Valley Corp.*, 164 Cal. App. 4th 1416,  
22 1428 (2008). To show a “direct and immediate interest” in this litigation, intervenors need not  
23 have any pecuniary interest in the dispute, or a specific legal or equitable interest in the subject  
24 matter of the litigation. *Rominger v. County of Trinity*, 147 Cal. App. 3d 655, 661 (1983). Nor is  
25 it “necessary that his interest in the action be such that he will inevitably be affected by the  
26 judgment. It is enough that there is a substantial probability that his interests will be so affected.”  
27 *Timberidge Enterprises v. City of Santa Rosa*, 86 Cal. App. 3d 873, 881 (1978).  
28

1 Applying these standards, courts have routinely granted the intended beneficiaries of law  
2 or policy leave to intervene in an action challenging that law or policy, and appellate courts have  
3 found abuse of discretion when trial courts refuse to allow intervention in such circumstances.  
4 *See, e.g. Simac Design, Inc. v. Alciati*, 92 Cal. App. 3d 146, 157 (1979) (permitting intervention  
5 of association of citizens who campaigned for local growth initiative, in action against  
6 municipality challenging enforcement of that initiative); *Timberidge Enterprises*, 86 Cal. App.  
7 3d at 881-82 (reversing trial court decision denying school district leave to intervene in action by  
8 developer challenging city’s school impact fee); *Bustop v. Super. Ct.*, 69 Cal. App. 3d 66, 70-71  
9 (1977) (holding that parents opposed to school busing had sufficient interest “in a sound  
10 educational system and in the operation of that system in accordance with the law” to permit  
11 intervention in an action concerning school district’s desegregation plan).

12 *Rominger v. County of Trinity* is instructive. The Court of Appeal held that a trial court  
13 abused its discretion when it denied an environmental organization leave to intervene in a case in  
14 which the plaintiff challenged an ordinance restricting certain pesticide and herbicide use. 147  
15 Cal. App. 3d at 655. The appellate court reasoned, “[w]here a statute exists specifically to protect  
16 the public from a hazard to its health and welfare that would allegedly occur without such  
17 statute, members of the public have a substantial interest in the protection and benefit provided  
18 by such statute. If a party brings an action to invalidate such statute, such action has an  
19 immediate and direct effect on the public’s interest in protecting its health and welfare.” *Id.* at  
20 662-63.

21 Here, “the subject of housing is of vital statewide importance to the health, safety, and  
22 welfare of residents” because “[d]ecent housing is an essential motivating force in helping  
23 people achieve self-fulfillment in a free and democratic society.” Health & Safety Code  
24 §50001(a). Further, a “healthy housing market is necessary both to achieve a healthy state  
25 economy and to avoid an unacceptable level of unemployment.” *Id.* at (b)(d). This is particularly  
26 true during a time when “[t]he COVID-19 pandemic presents an unprecedented crisis that  
27 threatens the lives, health, and safety of all Californians” and remaining at home is its salve.  
28 RJN, Exh. 1 at 10. The individual Proposed Intervenors have a “substantial interest in the



1 protection and benefit provided” by ER 1 because it ensures they can shelter in place, avoid  
2 homelessness, and not increase their COVID-19 risk factors. Decls. of Jeremy Miller, Claudia  
3 Rodriguez, Grace Vargas, and Juan Alfaro. If Petitioners succeed in invalidating ER 1 as it  
4 applies in the current state of emergency, it also would have a direct and immediate effect on  
5 Organize Sacramento, Faith in the Valley, and Tenants Together, because they will have to  
6 expend significantly more resources to advance their mission by engaging in or supporting  
7 advocacy across the communities they serve to keep tenants housed – and safer from COVID-19.  
8 Arreola Decl. at ¶ 15; Jones Decl. at ¶ 18; Dramer Decl. at ¶ 8.

9 **B. Proposed Intervenors’ interests cannot be adequately represented by**  
10 **Respondent.**

11 Organize Sacramento, Faith in the Valley, and Tenants Together have a direct interest in  
12 upholding ER 1 because all three organizations are dedicated to promoting tenants’ rights for  
13 California’s lowest income residents. All three organizations have been challenged by trying to  
14 provide tenants with up to date information about the constantly evolving patchwork of  
15 protections for tenants in the communities where they work. Arreola Decl. at ¶ 10-11, 15; Jones  
16 Decl. at ¶¶ 7-14, 18; Dramer Decl. at ¶ 4-6. The individual tenants have direct interests in  
17 upholding ER 1 because they would face unlawful detainer actions, and potential homelessness,  
18 if ER 1 is withdrawn or the State’s ability to pass a similar measure in the future is thrown into  
19 doubt. Decls. of Jeremy Miller, Claudia Rodriguez, Grace Vargas, and Juan Alfaro. These  
20 interests are distinct and cannot be adequately represented by the Judicial Council.

21 While the Judicial Council has an interest in promoting the rights of litigants in unlawful  
22 detainer proceedings in general, its interest lies principally in protecting the legality of its own  
23 actions and it must represent the interests of the general public, landlords and renters alike. Such  
24 governmental interest is not coincident with the personal stake of Proposed Intervenors, and does  
25 not justify denying intervention. In *Rominger v. County of Trinity*, 147 Cal. App. 3d at 665, the  
26 Court of Appeal held that even though the county was concerned with protecting its residents  
27 when it defended a local ordinance limiting pesticide use, the county did not represent individual  
28 community members, so intervention by an environmental group was warranted. *See also*

1 *Simpson Redwood v. State of California*, 196 Cal. App. 3d at 1203-04 (reversing trial court’s  
2 refusal to allow intervention and reasoning that “appellant’s own substantial interests probably  
3 cannot be adequately served by the State’s sole participation”). Claudia Rodriguez and her two  
4 children may face homelessness just as her new baby is born. Rodriguez Decl. at ¶ 14. Jeremy  
5 Miller and his daughter (Decl. at ¶ 14), Grace Vargas and her three-generation household (Decl.  
6 at ¶ 10), and Juan Alfaro and his family are in the same position (Decl. at ¶ 7). Their interest in  
7 this case is their very lives. The Judicial Council cannot adequately represent that.

8         As a governmental entity, the Judicial Council is subject to conflicting and shifting  
9 constituent pressures from many segments of the public, which renders representation of  
10 Proposed Intervenors’ particular interests inadequate. Decisions interpreting Code of Civil  
11 Procedure section 387’s federal analog, Federal Rule of Civil Procedure Rule 24(b), are also  
12 instructive. *Ziani Homeowners Assn. v. Brookfield Ziani LLC*, 243 Cal.App.4th 274, 282 (2015)  
13 (“in adopting section 387, the Legislature intended it to be interpreted consistently with federal  
14 cases interpreting rule 24”). Those cases recognize that government entities cannot adequately  
15 represent the interests of an organization dedicated to serving a particular segment of the public  
16 or addressing a particular issue. *Utah Ass’n of Counties v. Clinton*, 255 F. 3d 1246, 1254-55  
17 (10th Cir. 2001) (reversing denial of environmental group’s motion to intervene and finding that  
18 group’s interest would not be adequately represented by government); *Conservation Law*  
19 *Foundation of New England, Inc. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992) (granting  
20 intervention and noting that it is impossible for a government entity to represent the general  
21 public interest and the narrower interest of a private group simultaneously). In comparison, the  
22 Judicial Council’s inability to adequately represent the interests of Proposed Intervenors is  
23 heightened because this lawsuit pits landlords against the Judicial Council, an entity that must  
24 ensure the courts’ ability to serve all litigants, including landlords and renters. Neither the  
25 individual nor the organizational Proposed Intervenors have those broad loyalties. Their interest  
26 is particularly in furthering renter rights. It is far from certain that Respondent will make all of  
27 Proposed Intervenors’ arguments; indeed, Respondent lacks the information to be able to do so.  
28

1           In balancing the competing interests of its various constituencies, the Judicial Council  
2 may also make different decisions with regard to litigating the case. It may decline to appeal or  
3 seek Supreme Court review for an adverse judgment. Further, Respondent may not raise  
4 important harms that will occur should ER 1 be withdrawn or raise all of the arguments that  
5 Proposed Intervenors may raise. In this regard, the Proposed Intervenors’ arguments will differ  
6 from those of Respondent precisely because their interests are different. *Utah Ass’n of Counties*  
7 *v. Clinton*, 255 F.3d at 1256 (“In litigating on behalf of the general public, the government is  
8 obligated to consider a broad spectrum of views, many of which may conflict with the particular  
9 interest of the would-be intervenor.”) Proposed Intervenors have firsthand knowledge of the  
10 challenges facing tenants struggling in the midst of a global pandemic and a severe economic  
11 downturn and will be directly impacted should the Rule be withdrawn; they should be allowed to  
12 intervene.

13           **C.       Intervention will not enlarge the issues or otherwise delay this case.**

14           While the Proposed Intervenors seek to join this suit to protect their individual and  
15 organizational interests in the potential outcome of the suit, the legal defenses and issues asserted  
16 by Proposed Intervenors are similar to those already asserted in the litigation and based on the  
17 same facts. Proposed Intervenors also do not seek to delay any proceedings or alter deadlines in  
18 the case. Intervention will not enlarge the issues or change the relationship between petitioners  
19 and respondent, and the original parties remain able “to conduct their lawsuit on their own  
20 terms.” *See Rominger*, 147 Cal. Ap. 3d at 661.

21           **D.       The reasons for intervention outweigh any opposition.**

22           The reasons for intervention outweigh any opposition. Proposed Intervenors and their  
23 members have a direct and immediate interest in the validity of ER 1, or any similar measure,  
24 and in ensuring tenants statewide are able to maintain their housing in the midst of a global  
25 pandemic. The individual intervenors must intervene to protect their specific interests in  
26 protecting their families from eviction. As discussed above, appellate courts have consistently  
27 allowed the beneficiaries of a law to intervene in litigation challenging that law, and more than  
28 once have found refusal to allow intervention in such a case to be an abuse of discretion.

1 *Timberidge Enterprises*, 86 Cal. App. 3d at 881-82; *Utah Ass'n of Counties v. Clinton*, 255 F.3d  
2 at 1255 (listing cases where intervention found appropriate because government would not  
3 adequately represent organizational interest). Petitioners cannot demonstrate any prejudice  
4 because of intervention. Proposed Intervenors have sought intervention at the early stages of this  
5 case, and will not enlarge the issues. As such, the balance of interests strongly supports  
6 permitting Proposed Intervenors to participate in this lawsuit.

7 **IV. CONCLUSION**

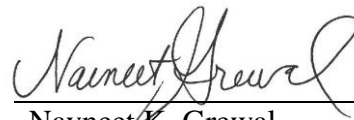
8 For the foregoing reasons, Organize Sacramento, Faith in the Valley, Tenants Together,  
9 Jeremy Miller, Claudia Rodriguez, Juan Alfaro, and Grace Vargas respectfully request that the  
10 Court grant them leave to intervene pursuant to Code of Civil Procedure § 387(c).

11  
12  
13 Date: July 30, 2020

Respectfully submitted:

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15 \_\_\_\_\_  
Matthew Warren

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17 

18 \_\_\_\_\_  
Navneet K. Grewal

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