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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

CARL MITCHELL, MICHEAL ESCOBEDO, SALVADOR ROQUE, JUDY COLEMAN, as individuals; LOS ANGELES CATHOLIC WORKER, CANGRESS, as organizations,

PLAINTIFFS,

v.

CITY OF LOS ANGELES, a municipal entity; LT. ANDREW MATHIS, SGT. HAMER and SGT. RICHTER, in their individual and official capacities,

DEFENDANTS.

Case No. CV16-01750 SJO (JPRx)
[Assigned to the Honorable S. James Otero, Courtroom 10C]

NOTICE OF MOTION AND MOTION TO INTERVENE FOR LIMITED PURPOSE OF OBJECTING TO SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS; [PROPOSED] MOTION FOR RELIEF FROM ORDER OR MODIFICATION THEREOF UNDER FRCP 41, 46, 59, AND 60

DATE: August 12, 2019
TIME: 10:00 a.m.
COURT: Courtroom 10C

TO THIS HONORABLE COURT, ALL PARTIES AND ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on August 12, 2019, or as soon as this matter may be heard in Courtroom 10C of the above court, located at 350 W. 1st Street, Los Angeles, CA, applicants DTLA ALLIANCE FOR HUMAN RIGHTS, JOSEPH

BURK, HARRY TASHDIJIAN, KARYN PINSKY, CHARLES MALOW, and CHARLES VAN SCOY will and hereby do move to intervene in this matter for the limited purpose of objecting to the parties' Settlement and Release Agreement and related stipulated order of dismissal, and asking this Court to set the order aside or modify it according to the attached objections. This motion is made under Federal Rule of Civil Procedure 24(a)(2) or in the alternative Federal Rule of Civil Procedure 24(b)(1)(B).

Pursuant to local Rule 7-3 Attorneys for Intervenors met and conferred with Plaintiffs' counsel and Defendants' counsel on June 10, 2019. Intervenors' counsel agreed to accommodate the schedule of both Plaintiffs' and Defendants' counsel, and all parties agreed to the following briefing schedule:

Intervenors' Moving Papers:	June 24, 2019
Opposition Briefs:	July 15, 2019
Reply Briefs:	July 29, 2019
Hearing:	August 12, 2019

This motion is based on the moving and reply papers, all declarations and evidence filed therewith, the full record of this case, and any other oral argument or evidence that may be presented at the time of hearing.

Proposed intervenors have also attached hereto as Exhibit A the Proposed Motion for Relief from Order or Modification Thereof under FRCP 41, 46, 59, and 60.

Dated: June 24, 2019

/s/ Elizabeth A. Mitchell
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Attorneys for [Proposed] Intervenors

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I. INTRODUCTION

The settlement concerning the possession of homeless individuals in skid row will trigger immense difficulties for individuals who live, work, and own property in the affected area. For example:

- Dangerous conditions have imprisoned shelter residents Charles Van Scoy and Charles Malow inside of Union Rescue Mission from 4pm-6am every day.
- The massive build-up of property and tents has made the sidewalks unpassable; Charles Van Scoy, who is restricted to a wheelchair is trapped in his own home; Karyn Pinsky must at times walk with her young son in a stroller in the middle of traffic.
- Joseph Burke has lost tenants and considerable business over the last three (3) years and with this settlement will likely continue to lose more.
- Business and property owners throughout the Designated Area including Harry Tashdijian, Joseph Burke, Mark Shinbane, Larry Rauch, and Bob Smiland have spent hundreds of thousands of dollars in increased security and sanitation costs.
- Residents and workers throughout the Designated Area, which includes each and every proposed intervenor, are confronted daily by disease, illicit drug sales and use, prostitution, and general filth and squalor.

These individuals and others like them who seek to intervene in this matter are deeply concerned about the plight of the homeless in Skid Row, but the settlement approved by this Court will make the problem worse, and will dramatically affect them, their lives, and their work. They had hoped that City of Los Angeles would consider and protect their interests in this case. Because the City did not do so, they have no choice but to move to intervene and object to the settlement. *Ctr. for Biological Diversity v. Bartel*, Civil No. 09CV1864 JAH (POR), 2010 WL 11508776,

at *4 (S.D. Cal. Sept. 22, 2010) ("[T]he settlement negotiations were confidential and thus [intervenors] had no way to know its interests were not being adequately represented by the government."); see also *Local No. 93, Int'l Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 502 (1986) ("[A]n intervenor is entitled to present evidence and have its objects heard at the hearings on whether to approve a consent decree . . . ."

The settlement in this case has effectively granted the area's homeless population "the right to keep a nearly unlimited amount of possessions with them on the sidewalks of skid row." *A Court Decision Letting Homeless People Keep All Their Belongings Helps No One*, Times Editorial Board, LOS ANGELES TIMES, May 31, 2019. This remarkable and problematic resolution comes at a time the City of Los Angeles has seen a 16% increase is homelessness in the last year, a significant number of whom lived on "Skid Row". (Declaration of Elizabeth Mitchell (hereinafter "E. Mitchell Decl.") ¶ 17, Ex. 4 (Los Angeles County Homeless Population.) The combination of the two events—surging homelessness and limitless accumulation of possessions—coincides with a near-catastrophic increase in the health and safety issues on Skid Row, including a rat infestation and associated diseases, the declaration of a "typhus zone" in downtown Los Angeles, police officers contracting uncommon diseases, and the potential for a major infectious disease epidemic. These life-threatening conditions directly affect not only the homeless population, but the businesses and residents of the area.

Three years ago, this Court issued a preliminary injunction enjoining the City from, *inter alia*, "[c]onfiscating property in Skid Row or its surrounding areas…absent an objectively reasonable belief that it is abandoned, presents an immediate threat to public health or safety, is evidence of a crime, or is contraband." (ECF No. 51). In response to that injunction, the City did not seek to address the problem at the core of this lawsuit by developing mechanisms and procedures to ensure that property is handled in a constitutionally and legally appropriate manner,

thereby obviating the need for continued equitable management by the Court. Instead, the City shirked its responsibility and entered into a settlement agreement which will only extend and worsen the crisis we are facing in this City.

Given the grave consequences of the settlement for affected individuals and entities, they must be provided an opportunity to have these objections heard. *Puerto Rico Dairy Farmers Ass'n v. Pagan*, 748 F.3d 13, 20 (1st Cir. 2014) ("[T]hird party intervenors who object that they are adversely affected by a settlement between a government entity and a private party should be provided with adequate notice and an opportunity to have these objections heard."). Accordingly, the Court should grant the motion to intervene as of right under Federal Rule of Civil Procedure 24(a)(2) or alternatively 24(b)(1)(B) for the limited purpose of objecting to the settlement.

II. RELEVANT PROCEDURAL HISTORY

Plaintiffs filed their complaint on March 17, 2016 and 13 days later filed an *ex parte* application for Temporary Restraining Order ("TRO") to enjoin property destruction on skid row. (*See* ECF No. 13.) Defendant City filed a motion to dismiss the case (ECF No. 37), and an opposition to Plaintiff's TRO application (ECF No. 42). In both briefs, the City vigorously defended its policies on handling property clean-up on Skid Row. On April 13, 2016, the Court issued the Preliminary Injunction, (ECF No. 51) and on May 6, 2016, partly granted the City's motion to dismiss (ECF No. 56). On May 11, 2016, the City filed a motion for clarification of the Court's April 13 order (ECF No. 58). From June 2, 2016, to May 16, 2017, the parties apparently were in negotiations regarding the motion for clarification (See ECF Nos. 63 to 90). On September 25, 2017, the Court denied the City's motion (ECF No. 102). There has been no substantive Court involvement since September 25, 2017.

Upon information and belief, the parties began settlement discussions sometime in 2018, which were conducted confidentially. (E. Mitchell Decl. ¶ 3.) During this time Defendant City of Los Angeles ("City") began discussions internally between attorneys in the Los Angeles City Attorneys' Office and the Los Angeles City Council,

all of which were held in closed-session and not open to the public. (*Id*.) On March 6, 2019, well over one hundred private citizens appeared at the City Council meeting to voice their concern about the Council's consideration of potential settlement without any disclosure about the contents of the settlement itself. (E. Mitchell Decl. ¶¶ 4-5.) City Council came out of closed session, at which point Deputy City Attorney Strefan Fauble announced only the following: "By a 10-2 vote, the council voted to authorize the City Attorney to settle the *Mitchell* case, item number 18." (E. Mitchell Decl. ¶ 6.) There was no disclosure about the terms of authorization before or after the vote was held.

Counsel for proposed intervenors then sent a letter to the City Council and the City Attorney's office objecting to the closed-session consideration of the settlement and requesting that Council consider the issue publicly in accordance with its obligations under The Brown Act. (E. Mitchell Decl. ¶ 7.) No response was received. (*Id*.) On May 17, 2019, a new, closed-session discussion of the *Mitchell* case was announced; the undersigned counsel emailed the parties to discuss the settlement and timing, but was told that the details could not be discussed until after Council approved it. (E. Mitchell Decl. ¶ 8.) On May 22, 2019, Council held no discussion on *Mitchell*, but simply announced that the Council approved the settlement. (E. Mitchell Decl. ¶ 9.)

On May 23, 2019, counsel for proposed intervenors again contacted the parties to obtain a copy of the settlement but was told it would be "publicly available once it is finally approved." (E. Mitchell Decl. ¶ 10.) The settlement was not published until May 29, 2019 (ECF No. 118). Two days later, on May 31, 2019, the Court signed the stipulation and closed the case (ECF No. 119).

There was no reasonable opportunity prior to dismissal for the intervenors to review the proposed settlement, conduct research, and prepare pleadings sufficient to intervene. Any suggestion that this motion is untimely or the Court lacks jurisdiction

at this juncture would be incorrect; the applicants have had no opportunity for their respective voices to be heard before the settlement was finalized and approved.

III. PROPOSED INTERVENORS

Proposed intervenors (also referred to as "applicants" throughout this motion) are stakeholders who live, work, own business and/or property within the area entitled "Skid Row and Surrounding Area" (hereinafter "Designated Area").

DTLA Alliance for Human Rights (the "Alliance") is a group of Downtown Los Angeles stakeholders who believe that mental illness and homelessness, and particularly the situation currently on Skid Row, is a human rights crisis and are working towards incremental solutions to address the crisis and its related impact on health and safety issues throughout downtown. All individual applicants herein are members of the Alliance. Additionally, the following individuals are representative of the membership as a whole:

- Donald Shaw has lived in or near Skid Row for the last 25 years; he was in and out of jail for much of that time, but has been clean and sober since 2013. He is now the residential manager of security at the Midnight Mission, located at 601 San Pedro Street, in the heart of the Designated Area. When he walks to work, he is forced to walk in the street due to the blocked sidewalks and has almost been hit by cars twice. He has also personally witnessed and experienced the significant increase in drugs and violence in the Area over the last several years.
- Galvester Gaulding has been homeless on and off since 2005. He is currently staying at the Midnight Mission and has a section 8 voucher for permanent housing but is terrified to take the offered housing on Skid Row because of the drugs, disease, and violence in the area. He has been personally attacked and in the last 14 months has seen 10 dead bodies and watched people get stabbed in front of him.

- Kyle Harpt is formerly homeless and has lived in the Designated Area since 2016. He is constantly subject to the threat of disease and has to walk in the street because the build-up of personal property makes it impossible to walk down the sidewalks. He has witnessed the increased of violence in the Area, has personally been robbed, and is terrified of leaving his home at night.
- Mark Shinbane is the President and part-owner of Ore-Cal Corporation which is a family owned business within the Designated Area. After the Court order in 2016 the area outside his business became inundated with encampments. The business' doors and driveways are often blocked. He has witnessed increased violence and drug use and sales in the last year years in addition to the vermin infestation. The business has experienced multiple break-ins and thefts, and they have had to spend tens of thousands of dollars replacing doors, adding fences, and cleaning needles out of drains and off the property. They have a difficult time hiring employees because of the conditions in the area.
- Larry Rauch is the president and part owner of Los Angeles Cold Storage Company located at 400 South Central Ave. within the Designated Area. Sanitation and security costs to the company have doubled in the last few years due to the increase in filth and crime as a result of unlimited property accumulation on the streets.
- Hal Bastian has been a pioneer of the downtown renaissance in the last twenty years. He lives within the Designated Area and has witnessed the increase in encampments and its associated increase in crime, drug use, and mental illness. He is subject to the squalor and disease of the Area daily and it has affected his enjoyment of life and his property.
- Bob Smiland is the President and CEO of Inner-City Arts which is located within the Designated Area. He lives within the Designated Area

as well. The increase in squalor, disease, and violence threatens his well-being and has caused his school to expend thousands in increased security. His students and teachers have to walk in the street to get to and from the buildings.

Joe Burk owns a historic building within the Designated Area; he lives there and rents it for film and video production. Until 2017 he also leased rooms to tenants but is no longer able to find tenants for the building. Production companies have stopped using his building for film shoots and he has gotten countless rejection emails and letters citing the conditions around his property as a reason. He has lost thousands of dollars as a result. The exits and entrances to his property are often fully blocked, and he cannot use the sidewalk outside his own home. He cannot walk anywhere, cannot utilize food delivery services, has not been able to sell the property, and has overall experienced a significant decline in his own quality of life from the increase filth, violence, and drug use in the surrounding areas.

Harry Tashdijian owns an upholstery supplier in the Designated Area, and the half-city block in which the business is located. The risk to his property from fire damage and vandalism has increased exponentially in the last several years; the business is constantly having to replace gates and other property, clean the facilities, and post security to safeguard its property. They have had to spend over $100,000 in upgrades to their system and increased monitoring and pest control just as a result of the increased homeless and property in the area. He and his employees cannot walk anywhere in the area, and are constantly subject to risk of disease due to the putrid conditions outside.

Karyn Pinsky lives and works within the Designated Area along with her husband and their three-year-old son. In addition to the increased crime, drug use, and disease she and her family are subjected to daily, she can no longer allow her son to play in parks and has had to walk in the middle of the street with her small child in a

stroller because the sidewalks are completely blocked. As a woman she is particularly terrified of the increased assaults in the area and can no longer go outside at night.

Charles Malow has been living at Union Rescue Mission, within the designated area, since 2012. He, like the others, is regularly subject to the disease and risk of walking in the middle of the street. Because of the threats in the street, that have increased significantly in the last 3 years, he cannot leave the Mission between approximately 4pm and 6am. It is simply too dangerous. The increased drug use and foulness in the streets has affected his quality of life in a very direct and serious way.

Charles Van Scoy also lives at Union Rescue Mission and is confined to a wheelchair. He is essentially a prisoner in his own home because of the buildup of tents and personal belongings on the sidewalks. He relies on Access Services to transport him, but that service is often unreliable and requires qualification. It is impossible for him to traverse the sidewalks, and so he must choose every day to stay inside or risk oncoming traffic.

Each one of these individuals, and the various members of the Alliance, have faced significant difficulties and a complete breakdown in their quality of life due to the lack of restrictions on homeless individual's property over the last several years. With this settlement, which extends that policy for another 3-4 years, their personal financial expenditures, quality of life, and very well-being is at significant risk. Each of them deserves to be heard.

IV. LEGAL STANDARD

Rule 24(a)(2) requires a court to permit anyone to intervene who "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). Courts analyze Rule 24(a)(2) motions in terms of four distinct elements:

> (1) the application must be timely; (2) the applicant must have a "significantly protectable" interest relating to the transaction that is the subject of the litigation; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; and (4) the applicant's interest must be inadequately represented by the parties before the Court.

League of United Latin Am. Citizens v. Wilson (LULAC), 131 F.3d 1297, 1302 (9th Cir. 1997) (citation omitted). Rule 24(a)(2)'s requirements are "broadly interpreted in favor of intervention" (*Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011)), and courts are "'guided primarily by practical considerations,' not technical distinctions." *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001) (citation omitted).

V. ARGUMENT

A. This Application is Timely

Until the day the settlement terms were released, applicants had the right to, and did, rely on the Government to represent their respective interests; applicants moved to intervene immediately upon discovering that the Government no longer did so.

"Timeliness" is not based merely on the length of time the action has been pending but is evaluated by the totality of the circumstances. *Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d 843, 853-54 (9th Cir. 2016). In this circuit, three factors are considered: "(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of delay." *Id.* at 854. Like the rest of the factors, "timeliness" is also to be construed liberally in favor of the proposed intervenors. *Id* at 864. Moreover, ". . . the timeliness requirement for intervention as of right should be treated more leniently than for permissive intervention because of the likelihood of more serious harm." *United States v. State of Oregon*, 745 F.2d 550, 552 (9th Cir. 1984).

1. Intervention During the Settlement Stage of Proceedings is Appropriate

Applicants filed this motion to intervene as soon as practicable once they were on notice that the City's position had changed. "Where a proposed intervenor seeks to

intervene for purposes of objecting to a proposed settlement, timeliness generally is measured from the date the proposed intervenor received notice that the proposed settlement was contrary to its interest." *Glass v. UBS Fin. Serv., Inc.*, No. C-06-4069 MMC, 2007 WL 474936, at *3 (N.D. Cal. Jan.17, 2007), *aff'd*, 331 F. App'x 452 (9th Cir. 2009). In cases involving a public entity that is, by its very nature, designated to represent the interests of the public, the clock starts when the proposed intervenor is on notice that the government's position is no longer aligned with the applicant's. *United States v. Carpenter*, 298 F.3d 1122, 1125 (9th Cir. 2002) ("[U]ntil parties have notice that the government may not be representing their interests, parties are entitled to rely on the presumption that the government is representing their interests.").

In *Carpenter*, litigation between the federal government and several private parties had been pending for over a year, with mediation efforts remaining confidential. *Id* at 1124. Four weeks after the proposed settlement between the parties was announced, two citizens' groups moved to intervene and object to the settlement. *Id*. The district court found the motion to intervene untimely because the litigation had been pending for 18 months, and settlement negotiations had been pending for 6 months, yet did not move to intervene until after the parties reached a settlement. *Id* at 1125. The court of appeals reversed, finding that the intervenors "acted as soon as they had notice that the proposed settlement was contrary to their interests." *Id* at 1125. Critically, in rejecting the contention that the ongoing settlement discussions should have put the parties on notice that the government was considering changing its position, the court held:

> By entering into confidential settlement discussions the government does not give notice that it may not be adequately representing the interests of any group of citizens. We wish to encourage, not discourage, the government's participation in settlement discussions. More importantly, settlement negotiations would be severely impaired if every party that the government represents could intervene to participate as a matter of right simply because the negotiations were conducted in a confidential manner. For these reasons, we invoke the principle that until parties have notice that the government may not be representing their interests, parties are entitled to rely on the presumption that the government is representing their interests.

Id.

In this case, all settlement discussions were conducted in confidence, and the parties declined to discuss the terms until they were released. (E. Mitchell Decl. ¶ 3.) Had applicants attempted to intervene prior to the release of the settlement terms, such an application would have been unripe because i) applicants could not demonstrate that the government was not adequately representing their respective interests due to the confidential nature of the discussions, and ii) public policy would prohibit intervention of right during the confidential negotiation stage.

All City Council consideration and discussion took place in secret, closed-session meetings despite significant outcry from the public on the perceived lack of transparency. (E. Mitchell Decl. ¶¶ 4-5.) *Cf Orange Cty. v. Air California,* 799 F.2d 535, 537 (9th Cir. 1986) (where "[t]he progress of the negotiations was chronicled by the press"). Prior to the settlement, the City vigorously defended its policies on handling property in Skid Row and throughout the city. (*See, e.g.* Defendant City's Opposition to Plaintiff's Ex Parte Application for Temporary Restraining Order as to Enjoin Property Destruction, ECF No 38 and exhibits thereto.) Viewing the totality of the circumstances, there is nothing on the record or off that put applicants on notice that the City was in fact changing its position until the settlement was filed on May 29, 2019, and in fact applicants would have been unable to intervene sooner.

While intervention by parties seeking only to "attack or thwart a remedy rather than participate in the future administration of the remedy" is traditionally "disfavored", *United States v. Alisal Water Corp*., 370 F.3d 915, 922 (9th Cir. 2004)), here the applicants are more than willing to "participate in the future administration of the remedy" because it is the remedy that concerns them, not the liability or lack thereof.[1] And unlike cases where there has already been "a lot of water . . .

[1] Courts have also recognized that parties have the right to intervene in whatever portion of the litigation affects their interests. *See, e.g. United States v. City of Los Angeles*, 288 F.3d 391, 401-02 (9th Cir. 2002) (police league had right to intervene despite no protectible interest in liability because it did have an interest in the remedies being sought); *United States v. S. Florida Water Mgmt. Dist.*, 922 F.2d

underneath [the] litigation bridge" such as appeals, summary judgment motions, class certifications and the like (*see LULAC,* 131 F.3d at 1303), here the only substantive Court involvement was granting the plaintiff's Temporary Restraining Order application in 2016, partially granting the City's motion to dismiss in 2016, and denying the City's motion for reconsideration in 2017. No motions for summary judgment, appeals, evidentiary motions, pre-trial motions, or any other substantive issues have been ruled upon. *See also Mountain Top Condo. Ass'n v. Dave Stabbert Master Bldg., Inc.*, 72 F.3d 361, 369 (3d Cir. 1995) ("[T]he critical inquiry is: what proceedings of substance on the merits have occurred?").

The settlement terms were released May 29, 2019, and no party would discuss the terms prior to that date. (E. Mitchell Decl. ¶ 11.) The Court signed the proposed settlement and order only two (2) days later on May 31, 2019. (*See* ECF No. 119.) Applicants sought to meet and confer only three business days later on June 5, and met and conferred with the parties per their respective requests on June 10, 2019.[2] The proposed intervenors acted as quickly as one can imagine under the circumstances.

Given the applicants' reliance on government representation until the settlement terms were released, the lack of notice prior to release of settlement that the City was abandoning its previously-held position defending its policies, the applicants' willingness to continue to participate in crafting an appropriate remedy, and the lack

704, 707 (11th Cir. 1991) ("A nonparty may have a sufficient interest for some issues in a case but not others, and the court may limit intervention accordingly."), *aff'd in part, rev'd in part*, 28 F.3d 1563 (11th Cir. 1994). In this case applicants have no 'protectible interest' in the actual liability of the City vis-à-vis the four individual plaintiffs; applicants' interest is in the proposed remedy which will affect each of them in a very real and tangible way.

[2] Applicants originally proposed to file this motion on June 17, 2019. Both Plaintiffs' counsel and Defendants' counsel had scheduling issues and requested the extended briefing schedule as described herein; applicants agreed as a courtesy. (E. Mitchell Decl. ¶ 13.)

of substantive involvement by the court in the proceedings to date, this stage of proceedings is absolutely appropriate for the applicants' intervention.

2. Parties Will Suffer Little Prejudice from the Delay in Moving to Intervene

The parties will remain in materially the same position regardless of the timing of applicant's intervention; as such little if any prejudice can be attributed to any alleged delay in filing this motion.

"The focus . . . 'is whether existing parties may be prejudiced by the delay in moving to intervene, not whether the intervention itself will cause the nature, duration, or disposition of the lawsuit to change.'" *EEOC v. Georgia-Pac. Corrugated LLC*, No. C 07-03944 SBA, 2008 WL 11388687, at *7 (N.D. Cal. Apr. 9, 2008) (citing *United States v. Union Elec. Co.*, 64 F.3d 1152, 1159 (8th Cir. 1995)). "Thus, where the parties' stated concerns regarding intervention would in fact be no different had the movant intervened in the past, there is no prejudice." *Id.*; s*ee also State of Or.*, 745 F.2d at 553 (finding no prejudice where parties' problems are not "materially different now than they would have been had [proposed intervenor] sought to intervene a decade or more ago.").

The Court issued the preliminary injunction in April 2016; the proposed settlement at its core extends that preliminary injunction for an additional 3-4 years. It would make no material difference if the implementation of the agreement is delayed long enough for the Court to hear and consider the applicants' objections to the proposed settlement because the preliminary injunction would continue to remain in place during that time, causing no upset or change in policy. *Cf Alaniz v. Tillie Lewis Foods*, 572 F.2d 657, 659 (9th Cir. 1978) (finding prejudice to parties where intervention would delay "relief from long-standing inequities"). Moreover, there is no significant difference in the delay that would occur from the court evaluating the applicant's motion to intervene and object now, rather than a motion to intervene

several years ago, and an objection to the settlement now. As such, no real prejudice to the parties can be assumed as a result of any claimed delay in filing this suit.

3. Delay Was Warranted Due to Applicants' Right to Rely on Government Representation

Under *Carpenter*, the applicants properly relied on the City to represent their respective interests in this suit and have only moved to intervene when it became apparent the City no longer did so. *See also Bartel*, 2010 WL 11508776, at *4 ("[T]he settlement negotiations were confidential and thus [intervenors] had no way to know its interests were not being adequately represented by the government.").

Applicants have timely moved – indeed incredibly fast under the circumstances – to file this motion less than a month after the settlement terms were disclosed. *See id.* (Two months after settlement does not constitute a significant delay); *cf Smith*, 830 F.3d at 854 (intervention permitted 20 years after commencement of litigation because renegotiating of consent decree newly affected intervenor's interests.) The length of delay was minimal and reason for delay – reliance on government representation – lawful and reasonable under the circumstances.

B. Proposed Intervenors Have a Significantly Protectible Interest

Each individual applicant has a "significantly protectible interest" in the settlement insofar as they live, work, own a business, and/or own property in the roughly one-square mile designated as "Skid Row and Surrounding Area" affected by the settlement. DTLA Alliance for Human Rights similarly is comprised of individuals who live, work, or own property in and around that designated area. This settlement directly affects each one of them not only in an economic capacity but also their basic quality of life.

The phrase "significantly protectible interest" is not a "term of art in the law" and "sufficient room for disagreement exists over the meaning of the term." *Arakaki v. Cayetano*, 324 F.3d 1078, 1084 (9th Cir. 2003). Regardless, this circuit has generally found that the requirement is satisfied when "the interest is protectable under some

law, and that there is a relationship between the legally protected interest and the claims at issue." *Id*. (citation omitted). The Ninth Circuit has clarified:

> The relationship requirement is met if the resolution of the plaintiff's claims actually will affect the applicant. The "interest" test is not a clear-cut or bright-line rule, because no specific legal or equitable interest need be established. Instead, the "interest" test directs courts to make a practical, threshold inquiry, and is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.

In re Estate of Ferdinand E. Marcos Human Rights Litig., 536 F.3d 980, 984-85 (9th Cir. 2008) (quoting *S. California Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir. 2002)). Importantly, this circuit has rejected the contention that a proposed intervenor must have a "specific legal or equitable interest." *Cty. of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980). Instead, "a party has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation." *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006). When the case involves a "public interest question or is brought by a public interest group" it "may be judged by a more lenient standard." *Brumfield v. Dodd*, 749 F.3d 339, 344 (5th Cir. 2014).[3]

As detailed in the attached objection and declarations thereto, all applicants have been subjected to and under this settlement will continue to be subjected to increased squalor, disease, interference with the enjoyment of their respective life and property, and obstruction of free passage or use of public spaces as a direct result of

[3] When an association seeks to intervene, this circuit has "acknowledged" that standing is "implicitly addressed" by the interest requirement (*Berg*, 268 F.3d at 821, n.3), and permits an association to intervene on behalf of its members when "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Washington State Apple Advert. Comm'n*, 432, U.S. 333, 343 (1977). Here the Alliance satisfies that test: (a) its members have a legally protectible interest individually, (b) the intervention and objection to the settlement here is directly related to the Alliance's purpose in working towards solutions to address both homelessness and the related health and safety issues affecting downtown residents and workers, and (c) individual members are not necessary participants in this intervention.

this settlement. The upsurge in rats and associated diseases alone has made the area nearly unlivable. *Collapse of a City That's Lost Control: Shocking New Pictures From Downtown LA Capture The Huge Problem it Faces With Trash and Rats Amid Fear of Typhoid Fever Outbreak Among LAPD*, Lauren Fruen, *Daily Mail and Associated Press*, June 2, 2019, https://www.dailymail.co.uk/news/article-7095533/Pictures-downtown-LA-capture-problem-faces-trash-tries-rodents.html (last accessed June 24, 2019). Los Angeles has declared Skid Row a "typhus zone." *'Typhus Zone': Rats and Trash Infest Los Angeles' Skid Row, Fueling Disease*, Dennis Romero and Andrew Blankstein, *NBC News*, October 14, 2019, https://www.nbcnews.com/news/us-news/typhus-zone-rats-trash-infest-los-angeles-skid-row-fueling-n919856 (last accessed June 24, 2019). Los Angeles Police Department ("LAPD") Officers working Central Division (within the Designated Area) have recently contracted typhoid fever, caused by contamination of human fecal matter. *Officer at LAPD Station in Downtown Contracts Typhoid Fever*, City News Service, *Los Angeles Daily News*, May 30, 2019, https://www.dailynews.com/2019/05/30/officer-at-lapd-station-in-downtown-contracts-typhoid-fever/(last accessed June 24, 2019). Experts have predicted a "major infectious disease epidemic" this summer in Downtown LA, including measles and/or tuberculosis. *Dr. Drew Pinsky Warns Los Angeles Could be at Risk of a Deadly Epidemic This Summer*, Victor Garcia, *Fox News*, May 23, 2019, https://www.foxnews.com/us/dr-drew-pinsky-major-epidemic-los-angeles-kill-thousands (last accessed June 24, 2019).

The increased violence over the last few years, correlating directly with the rise in property and its concomitant anonymity, has imprisoned Charles Van Scoy and Charles Malow inside of Union Rescue Mission from 4pm-6am every day. The massive build-up of property and tents has made the sidewalks unpassable; Charles Van Scoy, who is restricted to a wheelchair, every day must choose between remaining inside or risk traversing the middle of the street with oncoming cars. Joseph Burke has lost tenants and considerable business over the last three (3) years

and with this settlement will likely continue to lose more. Businesses, including those run by Harry Tashdijian, Bob Smiland, Larry Rauch, and Mark Shinbane, have collectively spent hundreds of thousands of dollars on increased security and maintenance, and as a result of this settlement that huge financial loss will be compounded. Residents and workers in the area are subject daily to filth, disease, violence, narcotics, and the literal risk to life and limb when walking in traffic.

Each of the applicants has an interest in this settlement, which is protected under the law, including: working and living in an environment without unreasonable subjection to disease, squalor, foul odors, and violence; using and traversing public sidewalks, particularly for Mr. Malow who is confined to a wheelchair and is protected by the Americans with Disabilities Act; and economic interest in their respective businesses and/or properties. *See, e.g. Solid Waste Agency of N. Cook Cty. v U.S. Army Corps of Engs.*, 101 F.3d 503, 505-07 (7th Cir. 1996) ("A reduction in property values caused by activities on a neighboring piece of land, and an assault on the senses by noise, dust, and odors" both qualify as a "legally protected interest.").

Importantly, this inquiry is separate from whether the settlement terms themselves are valid; the fact that applicants have very real tangible interests which are protected under the law is sufficient to the meet "significantly protectible interests" element. *Id*.

C. Settlement of This Lawsuit on Proposed Terms Will Adversely Affect Applicants' Interests Unless Intervention is Allowed

Because the applicants have a significant interest in this settlement, their respective abilities to protect their interests would necessarily be impaired by disposition of this lawsuit in the way the parties have agreed.

If a proposed intervenor "would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." *Berg*, 268 F.3d at 822 (citing Fed. R. Civ. P. 24, advisory committee notes). "Notably the question of impairment is not separate from the existence of an

interest and generally, after determining that the applicant has a protectable interest, courts have little difficulty concluding that the disposition of the case may affect such interest." *Murphy Co. v. Trump*, Case No 1:17-cv-00285 CL, 2017 WL 979097, at *3 (D. Or. Mar. 15, 2017) (citing *Nat. Res. Def. Council, Inc. v. U.S. Nuclear Regulatory Comm'n,* 578 F.2d 1341, 1345 (10th Cir. 1978); *Jackson v. Abercrombie*, 282 F.R.D. 507, 517 (D. Haw. 2012) (internal quotation marks omitted).

Here, there can be no doubt that proposed intervenors are and will continue to "be substantially affected" by the settlement agreement between the parties. The conditions in the designated area have been nearly unlivable for applicants over the last three years; with the number of homeless increasing in the area daily, combined with this settlement prohibiting City workers from enforcing nearly any property restrictions in the area, this crisis can only deteriorate further. Proposed intervenors would not even be able to separately file a lawsuit against the City without it being considered a collateral attack on the settlement. *See, e.g. Nat. Res. Def. Council, Inc. v. City of Long Beach*, Case No. CV 10-826 CAS (PJWx), 2010 WL 11595729, at *2 (C.D. Cal. Dec. 13, 2010) (separate lawsuit constituted collateral attack on settlement order; "[T]he proper way for plaintiffs to have challenged the settlement agreement at issue in the instance case is by way of a motion pursuant to Rule 60(b)(4)."); *Lockyer*, 450 F.3d at 443 (finding intervention appropriate where there is no "alternative forum" to protect proposed applicants rights). Under *Berg*, the parties should be permitted to intervene.

D. The Existing Parties Do Not Adequately Represent Applicants' Interests

Proposed intervenors have very different – opposite in fact – interests when compared with the existing parties, therefore neither can possibly adequately represent their interests in this issue. Courts consider three factors in determining adequacy of representation: "(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present

party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary input to the proceedings that other parties would neglect." *Arakaki*, 324 F.3d at 1086. "[I]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." *Id*. (citing Fed. R. Civ. P. 24, advisory committee notes). The burden on proposed intervenors is "minimal" and is satisfied by showing representation of their interests "'may be' inadequate." *Id*. (citation omitted). "There is . . . an assumption of adequacy when the government is acting on behalf of a constituency that it represents. In the absence of a 'very compelling showing to the contrary,' it will be presumed that a state adequately represents its citizens when the applicant shares the same interest." *Id*. (citation omitted).

Here, however, the City and proposed intervenors have markedly different interests, and the settlement terms make it clear that the City is certainly not willing to or making proposed intervenor's arguments. Indeed, the City is entering into a binding, -several-years-long agreement that will materially impair proposed intervenors' interests. It may be doing so for a variety of reasons, from a cost-savings analysis or a misguided analysis of the law or facts. Whatever the reason may be, the City is certainly not representing applicants' specific interests as individuals who live and work in the Skid Row area, in not being subjected to increased squalor, disease, foul odors, obstruction of free passage in public areas, violent activity and decreased economic use of their property

E. In the Alternative, Applicants Should be Permitted to Intervene Under Federal Rule of Civil Procedure 24(b)(1)(b) (Permissive Intervention)

Should the Court determine the parties do not qualify for Intervention of Right under Rule 24(a)(2), the parties respectfully request the Court permit them to intervene under Rule 24(b)(1)(b) because they each respectively have "a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(b).

Unlike intervention as of right under Rule 24(a), there is no requirement of a "significant protectable interest" to be able to intervene under Rule 24(b). *Emp. Staffing Servs., Inc. v. Aubry*, 20 F.3d 1038, 1042 (9th Cir. 1994) ("[T]he requirement of a legally protectable interest applies only to intervention as of right under Rule 24(a), not permissive intervention under Rule 24(b)."). Once the conditions for permissive intervention are met, the court has discretion to allow or disallow intervention, *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998), and may limit intervention to certain issues. *Dep't of Fair Emp't & Hous. v. Lucent Techs., Inc.*, 642 F.3d 728, 741 (9th Cir. 2011) ("The district court's discretion . . . under Rule 24(b), to grant or deny an application for permissive intervention includes discretion to limit intervention to particular issues."). Courts considering permissive intervention evaluate the timeliness, prejudice to existing parties, and judicial economy, among other factors which the court deems relevant. *Venegas v. Skaggs*, 867 F.2d 527, 530-31 (9th Cir. 1989), *aff'd*, 495 U.S. 82 (1990).

Applicants respectfully request the Court permit each of them to intervene permissively, should the Court determine one or more of them cannot do so as of right. Each of them has the right to be heard on this settlement, which affects them daily. Each of them certainly has a claim that "shares with the main action a common question of law" on the basic legality and propriety of the parties' actions in coming to this resolution and causing such appalling conditions to exist.

VI. CONCLUSION

For all the reasons articulated herein, applicants respectfully request the Court grant them limited intervention to object to this settlement.

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