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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
12 **SACRAMENTO DIVISION**
13

14 Dilevon Lo, et al.,

15 Plaintiffs,

16 vs.

17 County of Siskiyou, et al.

18 Defendants.

CASE NO: 2:21-cv-00999-KJM-DMC

ADDITIONAL SUPPLEMENTAL
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF PLAINTIFFS' EX
PARTE APPLICATION FOR A
TEMPORARY RESTRAINING
ORDER AND MOTION FOR
PRELIMINARY INJUNCTION

Hearing Date: August 6, 2021
Hearing Time: 10:00 a.m.

Chief Judge Kimberly J. Mueller

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22 **I. Introduction**

23 On June 30, 2021, Plaintiffs filed a supplemental memorandum of points and
24 authorities in support of their previously-filed *ex parte* application for a temporary
25 restraining order and motion for a preliminary injunction. At the time of Plaintiffs'
26 June 30 filing, the Shasta Vista subdivision in Siskiyou County that is at the center
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1 of this case was under a mandatory evacuation order due to the Lava Fire, and
2 Plaintiffs' attorneys and investigator were accordingly having difficulty contacting
3 parties and witnesses to gather information and prepare and sign declarations.
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5 The mandatory evacuation order has since been lifted, and Plaintiffs'
6 counsel have gathered additional evidence in support of their request for injunctive
7 relief, and in response to the issues raised by the Court in its June 15 order denying
8 Plaintiffs' request for a temporary restraining order. That additional evidence is
9 being submitted concurrently with this filing.
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12 **II. Additional Evidence**

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14 Plaintiffs are hereby submitting declarations from investigator Ed Szendrey,
15 expert witness Chris Conrad, current plaintiff Jerry Vang, and proposed new
16 plaintiffs Koua Lee, Nhia Thai Vang, Zeng Lee, Der Lee, and Khue Cha.
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19 ***A. Investigator Edward Szendrey***

20 Investigator Szendrey, who has submitted earlier declarations to this Court
21 in this case, includes additional facts in his new declaration regarding Siskiyou
22 County's water permit process and the recent Lava Fire. Regarding the permit
23 system, Mr. Szendrey describes why it would not be viable for the thousands of
24 residents of the Shasta Vista subdivision and other Hmong communities subject to
25 the water truck ban to acquire the necessary permits. Other people in Siskiyou
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1 County are not subjected to this cumbersome permit process, and navigating it to
2 provide water for the daily living needs of thousands of people and their animals
3 and vegetable crops simply would not be practical. In addition, Mr. Szendrey
4 discusses how members of the Hmong community fear that providing the
5 information required for the permits would open them up to warrantless inspection
6 by the County, causing them to give up their Fourth Amendment rights to privacy
7 just to obtain water for their daily living needs.
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11 In his declaration, Mr. Szendrey also relays the account of a local trucker
12 named Mike Sousa who services the agricultural and commercial communities
13 hauling water. Mr. Sousa explained how he has spent a great deal of time
14 attempting to navigate the new Siskiyou County water permit system, including
15 going to the Siskiyou County Planning Department not less than ten to fifteen
16 times, but has been unable to obtain a permit that would allow him to delivery
17 water to the Shasta Vista subdivision.
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21 Mr. Szendrey also discusses in his declaration how he has reached out to the
22 Siskiyou County Sheriff and County Supervisor, and the local Congressman, to
23 seek a practical solution for members of the Hmong community to obtain water for
24 their daily living needs, and has not received any response.
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26 Regarding the Lava Fire, Investigator Szendrey provides information
27 relating to how many members of the Hmong community were actively fighting
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1 the fires, with the assistance of local farmer and well owner Steve Griset. As Mr.
2 Szendrey recounts, Mr. Griset was allowing Hmong water trucks to get water until
3 his power was shut off, and Hmong people were putting out fires in the Shasta
4 Vista subdivision using water trucks, buckets, and dirt, saving homes in the
5 process. Mr. Szendrey explains, however, that the Hmong people fighting the fires
6 were ordered to stop their firefighting and leave the subdivision, and that the
7 government firefighters then passively let fires burn through the subdivision,
8 without engaging in any active firefighting effort.
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12 Finally, Mr. Szendrey recounts conversations he has had with other
13 members of the Hmong community who have been impacted by the water laws
14 challenged here, including a woman named Bao Xiong who has “had to beg and
15 borrow water to meet her personal needs” due to the new water laws, and had her
16 vehicle seized after it was found to contain two orange containers, a black ice
17 chest, and two ice chests containing water. Mr. Szendrey also recounts the story of
18 a man who has been protesting the County’s treatment of the Hmong community
19 by engaging in a hunger strike in front of the Siskiyou County Courthouse.
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23 Mr. Szendrey’s new declaration establishes that the new water permit system
24 in Siskiyou County is utterly impractical for providing water to the Plaintiffs and
25 other members of the Hmong community, and that the Hmong community
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1 desperately needs water available not only for meeting the personal needs of its
2 residents, but also for emergency firefighting purposes.

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4 ***B. Expert Chris Conrad***

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6 Expert witness Chris Conrad is submitting a declaration establishing that he
7 has confirmed via satellite images on Google, as well as a review of other records
8 previously submitted in this case, that there are numerous large cannabis grows
9 concentrated in other areas of Siskiyou County not subject to the water truck
10 ban. This contradicts the Defendants' claim that the Hmong communities subject
11 to the water truck ban are uniquely situated regarding cannabis grows, and that
12 there are no other regions with similarly concentrated cannabis grows.
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16 Mr. Conrad also provides his expert opinion that, based on the materials
17 previously submitted in this case, and recent studies that he cites, any cannabis
18 grows in the Shasta Vista subdivision would not use a substantial quantity of water
19 or threaten the availability of water for other uses in the County. This expert
20 opinion undercuts the Defendants' claim that the water restrictions at issue here are
21 justified as a water conservation measure, as opposed to being motivated by racial
22 animus.
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1 ***C. Declarations from Existing and Proposed New Plaintiffs***

2 With this brief, Plaintiffs are also submitting new declarations from current
3 Plaintiff Jerry Vang, and proposed new plaintiffs Koua Lee, Nhia Thai Vang, Zeng
4 Lee, Der Lee, and Khue Cha. These declarations establish that each of these
5 individuals are themselves likely to suffer irreparable harm absent injunctive
6 relief. The new declarations establish that the current and proposed new plaintiffs
7 own livestock and grow crops, that they have legitimate concerns about difficulties
8 finding water to meet their basic needs over the next few weeks, and that they have
9 been deprived of water under the existing water regulations targeting their
10 community.
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15 Current plaintiff Jerry Vang recounts how he has had to beg friends for
16 water, has suffered headaches and blurry vision due to being dehydrated, showers
17 only every three days due to the limited water, and has been depressed and had
18 suicidal thoughts due to fear of dying from a lack of water. Proposed new plaintiff
19 Koua Lee describes how he and his wife farm their own food and previously relied
20 upon their vegetables and animals for food, but now do not have enough water to
21 keep their animals alive or to grow their own food, and suffer from a lack of
22 water. Proposed new Plaintiff Nhia Thai Vang describes how he has chickens and
23 ducks that he relies on for food, but that many of them have died due to lack of
24 water, and he has had to ask friends to borrow water. Proposed new plaintiff Zeng
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1 Lee discusses how many of his chickens and pheasants have recently died due to
2 lack of water, that he depends on the water trucks to bring water to his property,
3 that his family has been unable to bathe more than once per week due to the water
4 shortage, and that he suffers from high blood pressure and is afraid of suffering a
5 heat stroke or heart attack due to lack of water. Proposed new plaintiff Der Lee
6 describes how he depends on the water trucks to bring him water, has recently had
7 to drive 25 miles to a Walmart to fill up 5-gallon jugs of water, when it is
8 available, that all of his vegetable garden and many of his animals that he relies
9 upon for food, have died due to lack of water.
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13 Collectively, these new declarations correct the deficiencies noted in the
14 Court's June 15 ruling denying Plaintiffs' request for a temporary restraining
15 order, and Plaintiffs respectfully request that the Court consider this new evidence
16 in deciding how to rule on the request for injunction.
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20 ***D. Additional Evidence***

21 Some of the residents of the Shasta Vista subdivision and surrounding
22 communities have not yet returned to their homes following the mandatory Lava
23 Fire evacuation, and Plaintiffs' counsel may seek submit additional evidence as
24 people return to the community and events further develop.
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1 **III. The Recent Events Document in the Declarations Bolster Plaintiffs’**
2 **Fourteenth Amendment Claims**

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4 Racially targeted actions (or intentional inaction) committed by local
5 governments violate the United States Constitution, even if the laws being
6 enforced are facially neutral. In the case of *Yick Wo v. Hopkins*, 118 U.S. 356
7 (1886), the United States Supreme Court held that certain purportedly neutral or
8 impartial laws affecting Chinese laundry businesses in San Francisco were
9 unconstitutional and void because they amounted to a denial of the equal
10 protection of the laws in violation of the Fourteenth Amendment. In *Yick Wo*, the
11 San Francisco law at issue provided that it was unlawful for any person to engage
12 in the laundry business within the corporate limits "without having first obtained
13 the consent of the board of supervisors, except the same be located in a building
14 constructed either of brick or stone." In practice, enforcement of this law resulted
15 in many Chinese laundry businesses being shut down, while other similarly-
16 situated businesses were allowed to operate. As the Supreme Court explained in
17 striking down the law: "Though the law itself be fair on its face and impartial in
18 appearance, yet, if it is applied and administered by public authority with an evil
19 eye and an unequal hand, so as practically to make unjust and illegal
20 discriminations between persons in similar circumstances, material to their rights,
21 the denial of equal justice is still within the prohibition of the Constitution." *Id.* at
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1 373-74. The Court explained that the laws affecting the Chinese laundry
2 businesses fell into this class, because the government was exercising its discretion
3 by treating the Chinese businesses differently than other similarly-situated
4 businesses not operated by Chinese people. *See also U.S. v. Armstrong*, 517 U.S.
5 456, 464 ("A defendant may demonstrate that the administration of a criminal law
6 is directed so exclusively against a particular class of persons with a mind so
7 unequal and oppressive that the system of prosecution amounts to a practical denial
8 of equal protection of the law.").

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12 Plaintiffs here also submitted evidence (including the declaration of
13 Investigator Szendrey filed with this brief) demonstrating that government officials
14 appear to be failing to provide and withholding emergency services based on
15 race. In the case of *Comm. Concerning Cmty. Improvement v. City of Modesto*,
16 2004 U.S. Dist. LEXIS 31022 (E.D. Cal. Dec. 28, 2004), No. CV-F-04-6121
17 REC/DLB, the U.S. District Court for the Eastern District of California held that
18 equal protection claims could go forward where the plaintiffs alleged that the
19 defendant government officials had discriminated in the provision of municipal
20 service based on race. The complaint in that case alleged that predominantly white
21 unincorporated areas received better services and protections from the city than
22 Latino unincorporated areas.
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1 The Court also concluded that the plaintiffs had a private right of action to
2 enforce a violation of California Government Code section 11135, which provides,
3 in relevant part: “No person in the State of California shall, on the basis of ... race
4 [or] national origin ... be unlawfully denied full and equal access to the benefits of,
5 or be unlawfully subjected to discrimination under, any program or activity that is
6 conducted, operated, or administered by the state or by any state agency, is funded
7 directly by the state, or receives any financial assistance from the state.”
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10 Similarly, in *Pitts v. County of Kern*, 17 Cal. 4th 340 (1998), the California
11 Supreme Court held that, where the complaint alleged that Sonoma County
12 Sheriff’s deputies had engaged in a racially-biased policy, practice and custom of
13 relying on the impermissible factors such as race, color and/or ethnicity to stop,
14 detain, question and/or search persons who are or appear to be Latino, the plaintiffs
15 had alleged sufficient facts to withstand county defendants’ motion to dismiss.
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18 Similarly, here, Plaintiffs are claiming that they are receiving worse services
19 and protections from the government by being denied access to water for
20 emergency purposes and daily living purposes, while other similarly situated
21 people are not denied such access. In addition, it appears that Plaintiffs and their
22 Hmong community have been denied emergency firefighting services, as they were
23 ordered out of their community while attempting to fight fires and the government
24 firefighters did not take active steps to extinguish the fires in their
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1 community. The Defendants' actions in treating Plaintiffs differently than other
2 similarly-situated individuals of other races likely violate both the equal protection
3 clause of the Fourteenth Amendment and California Government Code section
4 11135.
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6 **IV. Conclusion**

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8 Plaintiffs respectfully submit that, via the additional declarations they have
9 filed, and the amended complaint they intend to file, they will have corrected the
10 defects raised by the Court in its June 15, 2021 order, and that the Court should
11 thus grant this renewed application for a temporary restraining order and the
12 pending motion for a preliminary injunction. Plaintiffs have now conclusively
13 demonstrated that they, themselves, and the proposed new plaintiffs, will be
14 deprived of the water they need for many basic needs if injunctive relief is not
15 granted to stop the enforcement of Siskiyou County's water laws.
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20 Plaintiffs have also conclusively demonstrated that it would not be practical
21 for several thousand people within the Mount Shasta subdivision and the property
22 owners supplying them water to obtain all the permits required to provide water
23 sufficient to meet the daily needs of the residents and their animals and vegetable
24 crops. In addition, Plaintiffs have shown that it would not be practical to obtain all
25 their water in loads of under 100 gallons each, as it would be impossible for
26 Sheriffs making traffic stops to determine before the detention whether or not any
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1 given vehicle is carrying more than or less than 100 gallons, and in any event,
2 transporting water in such small quantities would require thousands of trips per day
3 into the subdivision (using the water usage estimates from the studies cited in
4 Plaintiffs' initial filing in this case), on narrow dirt roads, which is not feasible.
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6 Even if a temporary restraining order and injunctive relief would not have
7 been appropriate as of June 15, 2021, they would be appropriate now, due to the
8 emergency fire situation, and the Hmong community's urgent need to help fight
9 fires in their community and access water for their basic needs during the
10 emergency. In addition, as relations between the Hmong Community and Sheriff's
11 Department have worsened during the emergency, and a Hmong man has been shot
12 and killed by the Sheriff's Department, injunctive relief here would be likely to
13 ease the tensions between community members and Sheriffs, which would be in
14 the public interest.
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21 Respectfully submitted,

22 MARGOLIN & LAWRENCE

23 Dated: July 14, 2021

24 Signed: ____/s/_____
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26 Allison B. Margolin

27 Attorneys for Plaintiffs
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