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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

Plated Personal Chef Services, LTD., a New York corporation dba Saucy Bird, Petitioner, vs. City of Los Angeles, a Municipal Corporation; The City of Los Angeles City Council; and Does 1 Through 10, inclusive, Respondent.	Case No.: 24STCP02773 *Honorable Stephen I. Goorvitch* *Department 82* **Respondent City of Los Angeles' Opposition to Petitioner's Motion for Preliminary Injunction** [Separately filed Declarations of Mahlowitz and Morales; Request for Judicial Notice; and City Objections to Evidence] *Action Filed: August 28, 2024* Hearing Date: September 25, 2024 Place: Dept. 82 Time: 9:30 a.m

Respondent City of Los Angeles ("City") submits the following memorandum of points and authorities, concurrently filed declarations of Robert M. Mahlowitz and Council District 5, Deputy Chief of Staff Fernando Morales, the City's Request for Judicial Notice, and the City's Objection to Evidence in opposition to Petitioner's motion for preliminary injunction.

Dated: September 18, 2024

Hydee Feldstein Soto, City Attorney
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John W. Heath, Chief Assistant City Attorney

By: _____

Robert M. Mahlowitz, Deputy City Attorney
Attorney for Respondent, City of Los Angeles

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

The preliminary injunction motion by Petitioner Plated Personal Chef Services ("Plated") is the first time a court will decide whether Plated's writ is likely to succeed on the merits. As documented below, the TRO was imposed without such analysis to preserve the status quo. As a result, Plated's TRO will have added $74,000 to the cost of a City response to a declared public emergency, even though Plated has not and cannot demonstrate any possibility that its writ to enforce eminent domain laws could withstand a motion to dismiss.

Eminent domain statute, Code of Civil Procedure Section 1245.245 ("Section 1234.245"), is the sole law the writ seeks to enforce. It does not apply here. Effective January 1, 2007, it required the government to sell property acquired via eminent domain as surplus property if it fails to adopt a resolution of changed public use. It applies prospectively only to property acquired after its effective date. Plated's writ contends the City violated this requirement when, over a year ago, the City approved the use of two parking lots for a new temporary homeless shelter the City is developing in response to a declared state of homelessness emergency. ("Midvale Project"). The City acquired the lots via eminent domain in 1990, as the Petition alleges. According to longstanding cannons of statutory interpretation, State statute, and the Legislature's clear intent stated in no less than seven official records, including the text of the bill that adopted Section 1245.245, the statute applies only to a property acquired after January 1, 2007 – not the Midvale lots. Plated, thus, has not and cannot state any claim for relief.

Plated's motion also fails to show a likelihood of success because Plated did not even argue how Section 1245.245 could be triggered by the City's temporary emergency use of the Midvale lots for shelter purposes, when parking uses are required to return. Nor can Plated demonstrate standing to enforce Section 1245.245.

Because Plated's writ cannot succeed, as a matter of law, the court need not evaluate the harm to the parties. Even so, Plated presents no facts showing business harm, although it could have if its asserted concerns were as significant as they worry. The Midvale lots closed to

parking three weeks before Plated filed its motion. Rather than actual impacts, Plated alleges solely unquantified concern for potential future "irreparable harm." To the extent the lot closures impose adverse business impacts, they would have begun August 19, 2024, when construction began. Plated could have, but did not, document impacts during the three-week period before it filed its PI papers. Moreover, nearly all its purported evidence is irrelevant and lacking in foundation (See City Objections). It would be improper for Plated to attempt to cure its failure to submit facts when it files Reply papers because the City will have had no opportunity to respond and if impacts began, they began before Plated filed this motion.

Finally, Plated does not even address the public's interest in the Midvale project, which protects public health, safety, and welfare and responds to a declared City public emergency. Instead, Plated makes the head-scratching assertion that its injunction would benefit the City because, by not responding to the public emergency, it believes the City will save money. (MP&A, p. 15:26-16:2). Plated provides no basis warranting the extraordinary order its requests blocking the City from addressing a declared emergency.

II. Facts & Procedural History

A. No court has examined Plated's likelihood of success on the merits and Plated has had ample time to fashion its reply arguments

On September 3, 2024, before making even initial contact with the City Attorney's Office about its new action, upon a Labor Day weekend *ex parte* application, Department 86 granted a TRO, halting ongoing Project construction. Department 86 stated it imposed the TRO solely to preserve the status quo and that it made no findings concerning success on the merits. (Transcript. pp. 4:27-5:8 and 18:16-25 [Exhibit 1].)[1] Plated's injunction motion is the first time a court will consider whether the Petition states a potentially viable claim. At a September 17, 2024, hearing in Department 85 to determine whether to relate this action to one pending there, Plated's counsel argued that the amount of time provided for Plated to file its preliminary injunction reply brief was inadequate. However, on September 6, 2024, after

[1] Unless otherwise noted, all citations to "Exhibit" in this memorandum are to the concurrently filed Declaration of Robert M. Mahlowitz ("RMM Decl.").

Petitioner filed its moving papers here, the City sent Plated's counsel a demurrer letter laying out the same writ deficiencies and supporting law the City presents in this opposition brief. (Exhibit 17). Plated has had since September 6, 2024, to prepare a response.

B. The Midvale shelter is a City response to a declared homelessness emergency

Effective July 5, 2023, the City Council enacted LAMC section 8.33, authorizing the Mayor to declare a Local Housing and/or Homelessness Emergency, stating,

> **The City Council finds and declares that this ordinance is required for <u>the immediate protection of the public peace, health, and safety</u>** for the following reasons: the City of Los Angeles remains in the midst of a historic crisis in people experiencing homelessness and continues to face a critical shortage of affordable housing. Over 40,000 Angelenos are unhoused, many of whom are unsheltered. . . . . **The risks to public health and safety are obvious and impose significant dangers to unhoused individuals and all Angelenos**.

(Ordinance 187922 [Exhibit 2]). As so authorized, on July 7, 2007, the Mayor declared a Local Housing and Homelessness Emergency. (Exhibit 3). On August 4, 2023, the Mayor submitted a public report to the City Council explaining some of the executive directives she has adopted to address the emergency, including,

> [Executive Directive 3] ***was signed to maximize the use of city-owned property for temporary and permanent housing***. In August 2023 the Mayor's Office . . . will both develop ongoing processes to identify lands suitable for housing development and also streamline and make consistent the City's approach to soliciting and selecting teams to develop on its lands,

(Exhibit 4). The City is developing the Midvale Shelter to remedy that homelessness state of emergency. The project approval identifies the July 7, 2023 emergency declaration and states, for example, "The Project is a specific action necessary to prevent or mitigate an emergency – the conditions arising from a sudden and unexpected dramatic rise in the City's already dangerously large homeless population." (BOE Report, p. 12 of 25 [Exhibit 6]; Complete approved project documents [Exhibits 5-8]).

C. The Midvale project is a temporary emergency use of two LADOT parking lots the City purchased via eminent domain in 1990

On October 20, 2023, the City Council approved the emergency Midvale Project to

create a City-funded temporary 33-bed low barrier navigation center atop a platform installed atop two asphalt LADOT surface street parking lots, with almost all pipes and wiring located in the crawl space above the lot surface and below the underside of the project's platform. (Quiñónez Declaration ¶ 3 [Exhibit 8]; LADOT Board Report, pp. 2-3 [Exhibit 9]). At its prior October 18, 2023, public meeting, the LADOT Board of Transportation Commissioners approved the temporary use, requiring the parking uses to be restored when the emergency is remedied. (Exhibit 9 at p. 4). The Project aims to transition people to permanent housing elsewhere where their other needs can be addressed; thus, over time, it will serve many more than 33 people during the current emergency. (See BOE Report, p. 16 of 25 [Exhibit 6]).

As Plated's Petition asserts, the City acquired the Midvale lots via eminent domain in 1990. (Pet. ¶ 27). However, contrary to Plated's argument, the City's ordinance authorizing the acquisition does not identify area businesses as specially benefitted, instead stating only, "the property is to be acquired for public off-street parking facilities." (MP&A p. 4:2-3 [unsupported contention]; Slade Declaration, ¶ 3 & Exh. B [ordinance]). Plated presents no evidence of any binding action by the City of Los Angeles requiring substitute public parking as an element of the Midvale emergency project. Even so, the office of City Council District Five has sought to identify additional public parking concepts, as it continues to do. (Declaration of Fernando Morales, Dep. Chief of Staff, ¶¶ 4 & 5).

D. Plated delayed asserting its claims for more than a year and waited to act until three weeks after it saw construction was underway

Plated's moving papers allege the Midvale Project was first presented for public discussion on July 24, 2023, and that "[t]hroughout the process, the Project faced significant public opposition . . ." (MP&A, p. 5:1-17). Plated submits declarations confirming it knew construction began August 19, 2024, after notice on August 16, 2024. (Declaration of Plated principal Brian Collesano ["Collesano Decl."], ¶¶ 10; Tom Waters Decl., ¶ 10). Moreover, Plated's business is located directly across from the Midvale Shelter site, within 100 feet. (Collesano Decl., ¶ 1 and Exh. A; Pet. ¶ 4). Plated could not miss the construction fencing. As of September 1, 2024, four days prior to the TRO injunction, photos show that portions of the

Midvale lot had been dug up. (Exhibit 10 and RMM Decl. ¶ 9). Despite the significant public interest described by Plated, the October 2023 project approval, and Plated's knowledge that construction began August 19, 2024, Plated waited until August 28, 2024, to file suit and until September 3, 2024, to appear *ex parte* demanding a TRO to set aside the emergency project, reverse all construction, and early restoration of parking -- all to benefit Plated's business.

E. Plated seeks to block a City emergency response, and its TRO has added $74,783 in delay costs, with those costs piling up each day thereafter

By waiting until project construction was underway to seek its TRO, Plated ensured the taxpayers are burdened with unnecessary project demobilization costs that a timely Plated claim could have avoided. If Section 1245.245 applied, Plated asserts the City violated it when it approved the Project in October 2023 without adopting a changed use resolution. Due to Plated's delay, through the September 25th date of the PI hearing, its TRO will have added $74,783 to the City's emergency response cost. (Contractor itemization [Exhibit 11]; RMM Decl., ¶ 10). If a further PI is granted staying the work, costs will increase by $1,990.69 per day and will total $3,740.69 per day after the first week of October because the dwelling unit fabricator will need to rent warehouse space to store the units already built. (*Id.*) Plated, however, demands more. It sat back, and now asks the court to order the City to restore parking on the lots to support Plated's business needs. (PI Motion, p. 2:5; Proposed PI Order, p. 2). This would waste the nearly $4,597,393 construction and design budget because, a year after project approval, the off-site fabrication work is complete, awaiting only a few weeks more construction. (See Project Budget [Exhibit 7]; Construction status [Exhibit 11].)

F. Despite three weeks without parking, Plated submits no evidence of actual harm, submitting only unquantified "concern" about "irreparable harm"

Although public parking has nothing to do with the eminent domain requirements Plated seeks to enforce and, as explained below, its writ cannot result in an order restoring parking, Plated demands the court set aside the City's emergency project, replace removed sections of the lots, and make it available to support Plated's business. (PI Motion, p. 2:5; Proposed PI Order, p. 2). As already noted, the lots closed to parking August 19, 2024, however, Plated's

moving papers present no evidence of actual harm to support the extraordinary relief it demands, blocking a City emergency response. Plated's principal, Brian Collesano, signed his declaration in support of Petitioner's motion on September 6, 2023, three weeks after the lots closed, but did not include any facts about actual impacts to Plated's business. Instead, he recites speculative concern that Plated will suffer unquantified "irreparable harm," not backed by a showing of any actual impact that lot closure actually has caused. (Collesano Decl., ¶¶ 13 & 14). The 13 nearly identical form declarations Plated submits concerning other businesses include no facts showing actual business impacts to any business. Most are also inadmissible for numerous reasons. (See City Objections to Evidence, Nos. V to XVI). Further, as detailed below in Argument Section F, Plated's moving papers fail to support its arguments of law with clear or relevant legal citations. Plated presents no evidence of actual harm and thus offers little that could outweigh the public interest in the City's emergency response.

III. Injunction Law Applicable to this Motion

The general standard governing a preliminary injunction motion is well known. "[T]rial courts should evaluate two interrelated factors when deciding whether or not to issue a preliminary injunction. The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued." (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69–70, citations omitted.) The following additional legal requirements also govern Plated's motion.

A. Where there is no possibility of success on the merits, harm to the moving party need not be not considered.

"A preliminary injunction may not issue without some showing of potential entitlement to such relief." (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 447). "Where there is indeed no likelihood that the plaintiff will prevail, an injunction favoring the plaintiff serves no valid purpose and can only cause needless harm." (*American Academy of Pediatrics v. Van de Kamp* (1989) 214 Cal.App.3d 831, 838). The only statute asserted by Plated's Petition does not apply, and Plated lacks standing to assert it. (See Argument §§ A & C).

Because no possibility exists that Plated could prevail, its injunction must be denied no matter the unsupported harm about which Plated is concerned.

B. Plated must show its eminent domain writ can remedy its asserted loss of parking

Courts will only issue a preliminary injunction where the lawsuit at issue could address the harms the injunction seeks to prevent. The appellate court has explained, "Of course, '[t]he scope of available preliminary relief is necessarily limited by the scope of the relief likely to be obtained at trial on the merits." (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1463). For example, in *City of San Jose v. MediMarts, Inc.* (2016) 1 Cal.App.5th 842, 854, the appellate court upheld the denial of a preliminary injunction to allow the plaintiff's cannabis store to operate where, despite other constitutional claims, the plaintiff's action could not result in an order for operation because no grounds existed to set aside the required business tax ordinance preventing operation. Thus, the lawsuit there could not result in the relief requested via the motion for injunctive relief. Here, even if the law applied (which it does not), violation of Section 1245.245 would result in an order to comply, which the City could satisfy by adopting a resolution of temporary changed use or by selling the Midvale lots. A court will not be able to order the City to exercise its discretion about how to comply, such as ordering parking restored. (See Argument § D).

C. As a general rule, the City's work to perform its public duties should not be enjoined, here efforts to abate a declared state of emergency

"It is well established that when injunctive relief is sought, consideration of public policy is not only permissible but mandatory." (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1471; also, *Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1472–1473.) "There is a general rule against enjoining public officers or agencies from performing their duties." (*Tahoe Keys*, *supra*, 23 Cal.App.4th at p. 1471). Here, the Midvale Project furthers the City's significant public duty to remedy a declared state of emergency, a response Plated seeks to prevent. The City's ability to protect the public health, safety, and welfare should not be enjoined. (See Argument § E).

D. Plated does not demonstrate harm supporting the relief it seeks because its contentions are not supported by admissible evidence

"A complaint for an injunction which alleges only general conclusions, not warranted by any pleading of facts, does not state a cause of action to enjoin the acts complained of." (*E.H. Renzel Co. v. Warehousemen's Union* (1940) 16 Cal.2d 369, 373, quoted also by *Leach v. City of San Marcos* (1989) 213 Cal.App.3d 648, 661). "[T]he drastic remedy of an injunction pendente lite may not be permitted except upon a sufficient factual showing, by someone having knowledge thereof, made under oath or by declaration under penalty of perjury." (*Fleishman v. Superior Court* (2002) 102 Cal.App.4th 350, 355–356). Here, much of Plated's MP&A is not supported by any citation to evidence and where citations exist, the documents cited do not provide admissible support. (See Argument § F; City Objections).

E. Plated's year-long delay in seeking relief warrants against an injunction.

Plaintiff's delay in seeking a preliminary injunction should be weighed when considering its claim of irreparable harm. (*O'Connell, supra,* 141 Cal.App.4th at p. 1481, citing *Dolske v. Gormley* (1962) 58 Cal.2d 513, 520–521. ["The urgency with which the trial court was forced to decide plaintiffs' motion may have been, to some extent, of plaintiffs' own making—a fact that the trial court, as a court of equity, should have taken into account in determining what weight to give plaintiffs' claim of imminent irreparable injury."]) Here, Plated took no action for a year after the City approved the Midvale Project, an action Plated's Petition asserts violated the State's eminent domain law.

IV. Argument

A. Plated cannot prevail on the merits because the eminent domain statute it seeks to enforce does not apply to the Midvale Shelter property acquired in 1990

Plated's petition asserts solely eminent domain law Section 1245.245. "To ensure that public entities do not use their eminent domain power to acquire a property and then hold or "bank" that property indefinitely without ever putting it to its intended public use, our Legislature in 2006 enacted section 1245.245." (*Rutgard v. City of Los Angeles* (2020) 52 Cal.App.5th 815, 825). As of its January 1, 2007, effective date, Section 1245.245 requires a

public agency to adopt a resolution of public use before acquiring property via eminent domain or when changing use of property after acquiring it by eminent domain. The statute is silent on its face as to whether it applies retroactively to property acquired before its effective date.

However, in Section 4 of Senate Bill 1650, the Act that adopted Section 1245.245 and provisions of two other eminent domain statutes, the Legislature expressly stated, "**This act shall apply prospectively and shall apply to property acquired after January 1, 2007.**" (Exhibit 12). Five legislative reports and analyses of S.B. 1650 all state, "**The terms of the bill shall apply prospectively to property acquired after January 1, 2007**." (Exhibit 13). Likewise, Concerning Senate Bill 1650, the Legislative Counsel's Digest states, "**The bill would apply prospectively, as specified**." (Exhibit 14). The two statues added by S.B. 1650 and the amended provisions of the 3rd only apply to a property acquired after January 1, 2007.

Pursuant to state statute, California supreme court case law, and federal law, none addressed by Plated's motion, "[A] statute may be applied retroactively only if it contains express language of retroactivity or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application." *(Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1206–1208). Likewise, Code of Civil Procedure section 3 provides, "No part of [the Code of Civil Procedure] is retroactive, unless expressly so declared." The Supreme Court explained this longstanding presumption as follows:

> In resolving the statutory interpretation question, we are guided by familiar legal principles. In the recent decision of *United States v. Security Industrial Bank* (1982) 459 U.S. 70, 79–80, 103 S.Ct. 407, 412–413, 74 L.Ed.2d 235 Justice (now Chief Justice) Rehnquist succinctly captured the well-established legal precepts governing the interpretation of a statute to determine whether it applies retroactively or prospectively, explaining: "The principle that statutes operate only prospectively, while judicial decisions operate retrospectively, is familiar to every law student. [Citations.] This court has often pointed out: '[T]he first rule of construction is that legislation must be considered as addressed to the future, not to the past.... ***The rule has been expressed in varying degrees of strength but always of one import, that a retrospective operation will not be given to a statute which interferes with antecedent rights ... unless such be "the unequivocal and inflexible import of the terms, and the manifest intention of the legislature."*** '[Citation.]" (Emphasis [in original].)
>
> . . . "[I]t is an established canon of interpretation that statutes are not to be given

> a retrospective operation unless it is clearly made to appear that such was the legislative intent." [citation] This rule has been repeated and followed in innumerable decisions. ([citations].)
>
> Indeed, Civil Code section 3, one of the general statutory provisions governing the interpretation of all the provisions of the Civil Code—including the provision at issue in this case—represents a specific legislative codification of this general legal principle, declaring that "[n]o part of [this Code] is retroactive, unless expressly so declared." [bracketed text in original]. Like similar provisions found in many other codes (***see, e.g., Code Civ. Proc., § 3***; Lab.Code, § 4), ***section 3 reflects the common understanding that legislative provisions are presumed to operate prospectively, and that they should be so interpreted "unless express language or clear and unavoidable implication negatives the presumption."*** [citation omitted.]

(Evangelatos, *supra*, 44 Cal.3d at p. 1206–1208) (emphasis added).

Here, because Section 1245.245 is silent as to retroactive application, it applies prospectively unless Plated identifies clear evidence of legislative intent to the contrary. Plated offers none.

Nor does Plated cite any legal authority suggesting Section 1245.245 could apply retroactively. Plated cites only two cases anywhere in its moving papers (with no pinpoint references at any point as to any cited authority) concerning its Section 1245.245 contentions.[2] Those cases offer nothing relevant concerning the issue of retroactive or prospective application. Instead, they show that an uncodified "plus section" of a bill, such as S.B. 1650 § 4, is evidence of legislative intent a court may consider. In *People v. Canty* (2004) 32 Cal.4th 1266, 280, cited by Plated, the court relied on the uncodified portions of a statute adopted via an initiative to demonstrate the electorate's intent. In *People v. Allen* (1999) 21 Cal.4th 846, 860, the only other case Plated cites, the Court declined to apply the legislative intent shown in an uncodified section of the act there at issue to contradict the plain meaning of the statute's language. The *Allen* Court did not hold that the "plus section" of a bill does not demonstrate

[2] At MP&A pp. 9:15-16 and 10:12-11:2, Plated cites *People v. Allen* (1999) 21 Cal.4th 846 and *People v. Canty* (2004) *[sic]* 34 Cal.4th 1266. The *Canty* citation should be to vol. 32 of the 4th series of California Reports, not vol. 34 as incorrectly stated throughout Plated's papers. (See, *e.g.*, p. 10:15).

Further, Plated's citation to "58 Cal. Jur 3d § 88" does not indicate which section 58 of the 100+ volumes of California Jurisprudence it quotes, and its unsupported contentions are irrelevant to when a statute silent on the subject may be interpreted to apply retroactively. (MP&A, pp. 9:19-10:2).

legislative intent or that it may not be considered – as that is not the law.

Contrary to Plated's arguments but consistent with the cases Plated cites, the Supreme Court has held it proper to consider the uncodified sections of an act as evidence of legislative intent, explaining,

> ***An uncodified section is part of the statutory law***. (*See County of Los Angeles v. Payne* (1937) 8 Cal.2d 563, 574, 66 P.2d 658 ["The codes of this state ... have no higher sanctity than any other statute regularly passed by the [L]egislature"].) "In considering the purpose of legislation, statements of the intent of the enacting body contained in a preamble, while not conclusive, are entitled to consideration. [Citations.] Although such statements in an uncodified section do not confer power, determine rights, or enlarge the scope of a measure, they properly may be utilized as an aid in construing a statute. [Citations.]" (*People v. Canty* (2004) 32 Cal.4th 1266, 1280 [omitted parallel cites])"

(Carter v. California Dept. of Vet. Affairs (2006) 38 Cal.4th 914, 925) (emphasis added). Courts also consult legislative reports and the Legislative Counsel Digest to identify legislative intent. (*Altaville Drug Store, Inc. v. Employment Dev. Dept.* (1988) 44 Cal.3d 231, 238 [Legislative reports]; *Carlton Browne & Co. v. Superior Court* (1989) 210 Cal.App.3d 35, 41 [Legislative Counsel Digest]). Here, because Section 1245.245 does not state it applies retroactively, it presumptively applies prospectively, and rather than rebut that presumption, all available evidence of legislative intent is that it was adopted to govern only a property acquired after January 1, 2007 – well after the City acquired the Midvale lots in 1990.

In a last effort to negate this, Petitioner incorrectly argues that a 2007 grammatical cleanup of Section 1245.245 somehow erased the Legislature's intent and cannons of statutory interpretation such that the law began to apply retroactively the year after it was adopted. (MP&A, p. 15:6-7). Not so. The 2007 amendment added no statutory language of retroactive application, and no legislative history exists showing that it was intended by the legislature. Instead, in 2007, as it does regularly, the Office of Legislative Council made grammatical and non-substantive clean-up amendments to all the State's codes, including Section 1245.245, in omnibus Assembly Bill 299, a bill that comprises 268 letter-sized pages when printed. ("Maintenance of Codes," 2007 Cal. Legis. Serv. Ch. 130 (A.B. 299) (WEST) ["This bill

would make technical, nonsubstantive changes in various provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature."] (Exhibit 15 [A.B. 299 & Digest]; Exhibit 16 [changes compared]). Even after the 2007 amendments, Section 1245.245 remains silent concerning whether it applies retroactively or prospectively. As documented above, where a statute is silent in this regard, it is strongly presumed to apply prospectively. Petitioner presents no evidence that the Legislature intended to alter that strong presumption as part of its 2007 technical amendments because none exists.

Plated's petition cannot state a claim for relief; thus, it cannot prevail on the merits, and its preliminary injunction should be denied on this basis alone. (See, *American Academy of Pediatrics*, *supra*, 214 Cal.App.3d at p. 838). The Court is not required to consider Plated's parking concerns because imposing a preliminary injunction would only cause needless harm to the taxpayers and public while Plated cannot achieve any relief. (*Id*.)

B. Plated does not argue or show temporary emergency use of the Midvale lots triggers the requirements of Section 1245.245

As the appellate court has held, the legislature adopted Section 1245.245 to prevent the government from using its eminent domain powers to "land bank" property but not put the land to a timely proper public use. (*Rutgard*, *supra*, 52 Cal.App.5th at p. 825). Thus, Section 1245.245 requires the government to use property acquired by eminent domain for the purposes stated in its original resolution of necessity or, within ten years, adopt a resolution for a different public use. (Section 1245.235 (a)). It also fosters this purpose by requiring a resolution of changed public use if the government changes the acquired property's use after first using it as stated in the resolution of necessity. (*Id*.) Here, Plated made no argument whatsoever that the City's temporary emergency use of the Midvale parcels is a change of use that triggers Section 1245.245. The Midvale lots will continue to be used for parking once the emergency ends. (LADOT Board Report, p. 4 [Exhibit 9].) Plated makes no argument about what type of changed use triggers Section 1245.245. For example, does Plated contend that closing the lots every Thursday from 2 to 8 p.m. to host a farmers market would trigger Section 1245.245? If not, what level of temporary changed use does? Is the requirement applicable

during a declared local emergency? Plated does not present an argument that the City's Midvale Project triggered Section 1245.245; thus, it has not shown its Petition could succeed.

C. Plated lacks standing to assert eminent domain statute Section 1245.245

To demonstrate standing to enforce Section 1245.245, Plated must either demonstrate a beneficial interest in this eminent domain law or that Plated qualifies for the public interest exception to this requirement. (See, *e.g., SJJC Aviation Services, LLC v. City of San Jose* (2017) 12 Cal.App.5th 1043, 1053). "A petitioner has no beneficial interest within the meaning of the statute if he or she 'will gain no direct benefit from [the writ's] issuance and suffer no direct detriment if it is denied.'{citation omitted}" (*Id*. [bracketed text in original]).

Section 1245.245 requires notice of a resolution of changed use be provided to the original property owner and authorizes that prior owner to contest the government's actions in court. (CCP §§ 1245.425 (c) & (d) & 1245.255). If the agency is found to have failed to comply with Section 1245.245, the property must be sold to the original owner or as surplus property. (CCP § 1245.245 (b) & (f); *Rutgard, supra,* 52 Cal.App.5th at p. 836). The Petition does not allege Plated was the prior owner of the Midvale Lots; thus, the statute does not authorize it to act. Moreover, Plated holds no interest in the City's compliance with the statute because it does not benefit and is not harmed whether the City complies with Section 1245.245 or not. Plated holds no beneficial interest.

In fact, Plated holds no property right whatsoever to public parking. Courts have consistently rejected inverse condemnation claims by businesses for damages due to loss of public parking. (*Brumer v. Los Angeles County Metropolitan Transportation Authority* (1995) 36 Cal.App.4th 1738, 1749 ["the deprivation of parking rights on abutting streets similarly constitutes a noncompensable exercise of the city's police power."]; *People ex rel. Dept. of Public Works v. Presley* (1966) 239 Cal.App.2d 309, 314–316 [abutting owner had no right to street parking which is a public privilege as allowed by the city].

Neither can Plated meet the public interest exception. Where personal objectives drive a claim rather than broader public concerns, a court may find standing lacking. (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 170). Additionally, "the

policy underlying the exception may be outweighed by competing considerations of a more urgent nature." (*Id*.) Here, Plated has loudly articulated its personal and business interest in invoking Section 1245.245, hoping the City will respond by abandoning its emergency response and, instead, provide parking to support Plated's business. The Petition nowhere asserts that Plated seeks to vindicate any public interest in Section 1245.245. In contrast, the public interest in using the lots to protect public health, safety, and welfare to remedy a declared public emergency trumps Plated's business interests. No standing is shown.

D. Plated is not entitled to injunctive relief because its unsupported business concerns cannot be remedied by enforcement of Section 1245.245

As demonstrated above, because Plated's Petition stands no chance of success, a balancing of hardships is not required to deny Plated's motion. Analysis for harms, however, also supports denial. First, as already noted, even though parking closed three weeks before Plated filed its motion, Plated offers no evidence of actual harm due to closed parking, only its concerns. Plated has not supported its request for injunction absent sworn evidence documenting impacts, (See, *Fleishman, supra,* 102 Cal.App.4th at pp. 355–356).

Moreover, no court could order parking restored as a remedy. A court may not direct the City's exercise of discretion. (*E.g*., *Michael Leslie Productions, Inc. v. City of Los Angeles* (2012) 207 Cal.App.4th 1011, 1026.) If a court finds Section 1245.245 applies and finds a temporary emergency use requires a resolution of changed use, a court would order the City to comply with Section 1245.245. The City could comply with that order by adopting a resolution, by selling the lots as surplus property, by restoring parking, or in some other way a court then determines satisfies its order. Plated's requested order directing the City to restore parking, however, cannot issue as that would invade the City's discretion. Where the litigation cannot result in the relief requested, an injunction preventing the harm alleged cannot issue. (See, *O'Connell*, *supra*, 141 Cal.App.4th at p. 1463).

E. Interference with the City's emergency response efforts and increased costs to the taxpayers outweigh Plated's unsupported claimed parking impacts, which are irrelevant to its eminent domain lawsuit

The order Plated demands will block or interfere with the City's response to the declared state of homelessness emergency and prevent hundreds of persons each year from accessing temporary housing at the 33-bed Midvale facility and from getting support there to move to permanent housing. Already, Plated's TRO has slowed the project and increased the cost to the taxpayers by $74,000. Its request to restore parking proposes to waste nearly $4 million in construction and design expenditures incurred while Plated delayed. Plated has not presented law or facts sufficient to outweigh these significant public interests. (See, *Tahoe Keys*, *supra*, 23 Cal.App.4th at p. 1471).

F. Plated does not provide support for its moving papers

Plated also fails to support large portions of its moving papers, thus providing no basis to grant its motion. (See, *Leach*, *supra*, 213 Cal.App.3d at p. 661). In almost all respects, Plated's statement of facts is not supported by citation to evidence. (*E.g*., Plated MP&A, pp. 3:22-23, 4:23-5:12 & 7:6-11). Plated, thus, waives these fact contentions. (*Alki Partners, LP v. DB Fund Services, LLC* (2016) 4 Cal.App.5th 574, 590; *Smith, Smith & Kring v. Superior Court (Oliver)* (1997) 60 Cal.App.4th 573, 577–578 [Asserted facts must be "supported by admissible evidence and preferably . . . followed by an appropriate reference to the evidence accompanying the motion or opposition. . . The only evidence the trial court should have considered and which we may consider here is that contained in the declarations filed in support of and in opposition to the motion."]). Also, its purported evidence is mostly inadmissible. (See City's objections to 16 of 17 declarations).

G. Plated must post security if any injunction issues

If the Court grants Plated an injunction preventing continued construction, the City requests the Court order Plated to post a bond as required by CCP section 529, of at least $400,000 to secure the City against the daily increase in project costs until a City demurrer may be decided or trial had. If the City is ordered to restore parking, the undertaking ordered should be no less than $2 million.

V. Conclusion

For the reasons stated above, the City requests the Court deny Petitioner's motion.

Dated: September 18, 2024

Hydee Feldstein Soto, City Attorney
Valerie L. Flores, Chief Deputy City Attorney
John W. Heath, Chief Assistant City Attorney

By: _____

Robert M. Mahlowitz, Deputy City Attorney
Attorney for Respondent, City of Los Angeles

PROOF OF SERVICE

I, the undersigned, say: I am over the age of 18 years and not a party to the within action or proceeding. My business address is 200 North Main Street, 701 City Hall East, Los Angeles, California 90012.

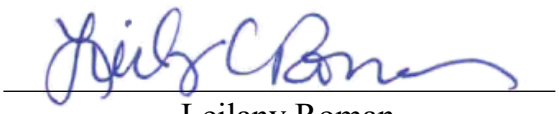
On September 18, 2024, I served the foregoing documents described as: **Respondent City of Los Angeles' Opposition to Petitioner's Motion for Preliminary Injunction** on all interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

[ ] **BY MAIL** – I placed a copy thereof enclosed in a sealed envelope addressed to each addressee stated above. I deposited such envelope for collection, processing and mailing by United States mail by my office in the ordinary course of business. I am readily familiar with the business practice of my office for collection, processing, and mailing of correspondence by the United States mail. Under that practice, it is collected and deposited with first class postage thereon fully prepaid with the United States Postal Service on that same day, at Los Angeles, California. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing in affidavit; and/or

[X] **BY ELECTRONIC MAIL** – I electronically transmitted the document listed above to the email address stated above which has been confirmed for each addressee stated above. My electronic service address is leilany.roman@lacity.org.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 18, 2024, at Los Angeles, California.



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