JESSICA K. LOMAKIN, Bar No. 284640
jessica.lomakin@bbklaw.com
DUSTIN J. NIRSCHL, Bar No. 326648
dustin.nirschl@bbklaw.com
HENRY ANDRIANO, Bar No. 333970
henry.andriano@bbklaw.com
BEST BEST & KRIEGER LLP
2855 E. Guasti Road
Suite 400
Ontario, California 91761
Telephone: (909) 989-8584
Facsimile: (909) 944-1441

Attorneys for Defendants
CITY OF REDLANDS, ADRIAN LAWSON, TABITHA KEVARI CROCKER, and CHRISTOPHER BOATMAN

EXEMPT FROM FILING FEES PURSUANT TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

COYOTE AVIATION CORPORATION, a Nevada corporation; GIL BROWN, an individual; CAROL BROWN, an individual,

Plaintiffs,

v.

CITY OF REDLANDS, a municipal corporation; ADRIAN LAWSON, an individual; TABITHA KEVARI CROCKER, an individual; CHRISTOPHER BOATMAN, an individual; and DOES 1 through 20, inclusive,

Defendants.

Case No. CIVSB2418252
Judge: Hon. Thomas S. Garza

DEFENDANTS' OPPOSITION TO EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT BE ISSUED

Date: June 26, 2024
Time: 8:30 a.m.
Dept. S27

Action Filed: June 6, 2024
FAC: June 21, 2024
Trial Date: None Set

I. INTRODUCTION

Defendants, City of Redlands ("City"), Mr. Lawson, Ms. Crocker, and Mr. Boatman (together, the "Defendants") hereby oppose Plaintiffs' Ex Parte Application for Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not be Issued ("Ex Parte Application").

Plaintiffs' Ex Parte Application rests on a flawed premise that Plaintiffs are entitled to injunctive relief restraining the City's possession and use of hangar units affixed to its land—despite the fact that a civil court has expressly awarded the City possession of such hangar units. Plaintiffs do not come even remotely close to establishing a threat of immediate and irreparable harm. Plaintiffs merely identify "damage" to the hangar units that can be easily calculated; which occurred in the past; and which, at most, give rise to legal damages. Worse, the interim harm that the City would suffer if the Ex Parte Application were granted, substantially outweighs the harms that Plaintiffs may suffer if the status quo is affirmed. The judgment granting the City possession of the premises and hangar units was entered in July of 2023. Nearly a year later, and in an attempt to disrupt the current status quo, Plaintiffs request relief that would restrain the City's use and possession of the hangar units, and which would effectively supersede the judgment entered by another court after a merits determination and the benefit full briefing. Accordingly, Plaintiffs fail to demonstrate a threat of irreparable harm, exigent circumstances, or that the balance of interim harm supports the Ex Parte Application.

Plaintiffs are not entitled to a temporary restraining order ("TRO") because they cannot carry their burden to show a likelihood of success on the merits. Plaintiff's claims are barred by the doctrine of res judicata because they arise from the same transactions and circumstances previously litigated and decided in prior civil and unlawful detainer actions. Moreover, new legal theories now introduced by the first amended complaint could have been raised in these prior proceedings. Plaintiff's failure to timely plead such theories and facts precludes their introduction and consideration for the first time here. Additionally, plaintiff cannot demonstrate that the defendant breached any specific statutory duty or engaged in conduct extreme enough to sustain claims for negligence or intentional infliction of emotional distress. By filing the instant litigation,

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
2855 E. GUASTI ROAD, SUITE 400
ONTARIO, CALIFORNIA 91761

Plaintiff seeks to upend final judgments entered by two separate civil courts.

For all of these reasons and others set forth below, the Ex Parte Application should be denied in its entirety, or alternatively, no interim relief should be granted and this matter should be set for regularly noticed hearing.

II. RELEVANT BACKGROUND

A. Previous Litigation and Resulting Judgments

On or around February 8, 2022, Plaintiff, Coyote Aviation Corporation ("Coyote Aviation") commenced a civil action against the City alleging causes of action for, among other things, breach of the ground lease between the City and Aviation, promissory estoppel, and reformation of the ground lease. (Complaint filed in CIVSB2203398 attached as Exhibit 1 to the Request for Judicial Notice ["RJN"] and incorporated herein.) The ground lease between the City and Coyote Aviation was at the core of Coyote Aviation's claims. On April 28, 2023, final judgment was entered in favor of the City on all causes of action on. (Judgment dated April 28, 2023 is attached as Exhibit 2 to the RJN and is incorporated herein.)

On or around February 14, 2022, the City commenced an unlawful detainer action to evict Coyote Aviation and its sub-tenants, and to regain possession of real property located at 1551 Sessums Drive, Redlands, California 92374 ("Property") and all constructed hangar units. (Complaint filed in LLTVA2200544 attached as Exhibit 3 to the RJN and incorporated herein.) On July 17, 2023, final judgment awarding the City of possession of the Property and all constructed hangar units was entered in favor of the City ("Possession Judgment"). (Judgment dated July 17, 2023 is attached as Exhibit 4 to the RJN and is incorporated herein.)

B. Appeals and Current Action

Coyote Aviation appealed both actions. These appeals are pending and have been consolidated. (Consolidation Order is attached as Exhibit 5 to the RJN and is incorporated herein.) Coyote Aviation also filed a Writ of Supersedeas. After complete briefing in this writ proceeding, the reviewing court denied a stay of enforcement of the Possession Judgment pending appeal was denied. (Decision dated October 24, 2023 is attached as Exhibit 6 to the RJN and is incorporated herein.) Coyote Aviation then appealed this ruling to the Court of Appeal, where a stay of

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
2855 E. GUASTI ROAD, SUITE 400
ONTARIO, CALIFORNIA 91761

enforcement of the Possession Judgment pending appeal was denied. (Decision dated December 18, 2023 is attached as Exhibit 7 and is incorporated herein.)

Plaintiff has not completed service of its First Amended Complaint on Defendants despite filing the pleading on or around June 21, 2024. The Property and many of the hangar units have been re-leased under new contracts following the entry of the Possession Judgment and subsequent eviction of Coyote Aviation and its sub-tenants. (Declaration of Dustin J. Nirschl, ¶ 3.)

III. ARGUMENT

"As a general matter, the question whether a preliminary injunction should be granted involves two interrelated factors: (1) the likelihood that the plaintiff will prevail on the merits, and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief." (*White v. Davis* (2003) 30 Cal.4th 528, 554.)

A. Plaintiffs Do Not Meet Their Burden by Establishing a Threat of Irreparable Harm, or That the Balance of Harms Favors the Plaintiffs

California Rules of Court ("CRC"), Rule 3.1202 mandates that in order to obtain ex parte relief, an applicant "must make an ***affirmative factual showing*** in a declaration containing competent testimony based on personal knowledge of irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte." "To obtain a preliminary injunction, a plaintiff ordinarily is required to present evidence of the irreparable injury or interim harm that it will suffer if an injunction is not issued pending an adjudication of the merits." (*White*, 30 Cal.4th at 554.) It is the applicant or moving party's burden to "prove actual or threatened injury. (*City of Torrance v. Transitional living Ctrs. for Los Angeles, Inc.* 30 Cal. 3d 516, 526 (Cal. 1982.)

Plaintiffs contend that "there is an imminent and present danger of irreparable harm and immediate danger in that Plaintiffs may lose their personal property…" (Ex Parte Application, 8:10-12.) Plaintiffs also contend that they "urgently seek to enjoin Defendants from continuing to infringe on their personal property" and "Defendants have unlawfully prevented the Plaintiffs from removing their personal property and have taken possessory measures that have damaged the Plaintiffs' property." (*Id.*, 17:1-4.) In Gil Brown's Declaration filed in support of the Ex Parte Application, he acknowledges that the hangar units have recently been appraised. (Gil Brown

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
2855 E. GUASTI ROAD, SUITE 400
ONTARIO, CALIFORNIA 91761

Declaration, ¶¶ 15-16.) He contends that the City removed locks on the hangar units; the City "mount[ed] fire extinguishers" in some of the hangar units; removed Plaintiff, Coyote Aviation's ("Coyote Aviation") signage, and made some changes to existing landscaping on the premises. (Id., ¶¶ 18-21.) He further acknowledges that on or around March 6, 2024, the City announced its intent to re-lease the premises. (Id., Exh. F.) Plaintiffs are mistaken; none of the foregoing purported facts and circumstances evidence a threat of ***future*** irreparable harm.

First, the City's possession and use of the hangar units does not constitute an irreparable harm. In a preceding unlawful detainer action, a civil court entered the Possession Judgment in favor of the City and against Coyote Aviation and all other tenants. The Possession Judgment fully, finally, and conclusively awarded to the City "***possession*** of the premises…***including all [hangar] units therein***." (RJN, Exh. 4.) Accordingly, the City is legally entitled to possess the Property and hangar units, and the damages claimed by Plaintiffs are merely incidental to the City's possession of the same. The status of the hangar units represents the ***current status quo***. If the Ex Parte Application were granted, the status quo—which has been effective since entry of the Possession Judgment in July of 2023—would be disrupted. Further, if the relief were granted, the Court would effectively unwind the Possession Judgment entered by another court after a merits determination of the relevant legal and factual issues. Therefore, pursuant to the Possession Judgment, Plaintiffs have failed to, and cannot meet their burden to "prove actual or threatened injury." (*See Torrance, supra*, 30 Cal.3d at 526.)

Second, Plaintiffs fail to show a "threat" of future injury or establish that money or legal damages are inadequate. Plaintiffs discuss prior, purported wrongful conduct by the City, but fail to make a showing that the City will cause irreparable harm in the future. The harms discussed by Plaintiffs give rise to, at most, money damages. It is well settled that legal remedy is presumed adequate; injunctive relief, conversely, is only appropriate if monetary damages are inadequate or are difficult to ascertain. (*Thayer Plymouth Center, Inc. v. Chrysler Motors Corp.* (1967) 255 Cal. App. 2d 300, 306.) This is particularly true where ***personal property*** is at issue. (*See Korabek v. Weaver Aircraft Corp.* (1944) 65 Cal.App.2d 32, 40.) Plaintiffs admit that the hangar units have been appraised, that the hangar units have been or will be leased, and the purported damage to the

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
2855 E. GUASTI ROAD, SUITE 400
ONTARIO, CALIFORNIA 91761

hangar units has been documented. Plaintiffs' damages, if any, are easily measured. Indeed, in the commercial context, experts routinely evaluate damages through reference to lease rent rates and appraisals. If anything, the City's willingness to re-lease the hangar units represents ***a reasonable mitigation measure and not a measure of irreparable harm***.

Third, there is no exigency warranting immediate or preliminary injunctive relief, and the burden to the City and other third parties (if the Ex Parte Application were granted) far exceeds the burden to Plaintiffs. As mentioned above, as a result of the Possession Judgment, the status quo is that the City is entitled to use and possess the Property and hangar units. Plaintiffs have not challenged this status quo for nearly a year, and now after hangar units have been re-leased under new contracts, it seeks to restrain the City's use of the hangar units and interfere with these new lease contracts. This interference may, and likely will result in further and additional litigation between the City and its current tenants. On balance, the interim harm to the City will significantly outweigh any harm to Plaintiffs pursuant to the status quo.

Fourth, the City is under no obligation to turn-over the hangar units, and to the extent ownership is at issue, the City likely has a stronger claim to ownership of the hangar units than Coyote Aviation. While the Possession Judgment reserved the issue of "ownership," both judgments were entered in favor of the City and neither judgment granted any relief to Coyote Aviation. The hangar units are affixed to the Property which Plaintiffs do not dispute is owned by the City. As a "general rule…buildings or equipment which are attached to real property in such a manner as to become what is known as fixtures," and these fixtures "may not be removed by a tenant at the expiration or termination of his lease." (*Clark v. Talmadge* (1937) 23 Cal.App.2d 703, 706; When property is a fixture, it becomes "property of the landlord." (*Beverly Hills v. Albright* (1960) 184 Cal.App.2d, 562, 568.) As permanent buildings affixed to the Property, the hangar units are fixtures under a reasonable interpretation under California law. Even if characterized as "trade fixtures," such trade fixtures are converted to fixtures when the tenant fails to remove the fixture at the expiration of the lease or due to a forfeiture. (*Rinaldi v. Goller* (1957) 48 Cal.2d 276, 282 quoting *Whipley v. Dewey* (1857) 8 Cal. 36, 39 ["[i]t is well settled that a tenant cannot remove erections, made by him on the premises, ***after a forfeiture or re-entry for a covenant broken***"],

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
2855 E. GUASTI ROAD, SUITE 400
ONTARIO, CALIFORNIA 91761

emphasis added; *Weisberg v. Loughridge* (1967) 253 Cal.App.2d 416, 41; *Wadman v. Burke* (195) 147 Cal. 351, 354; *Earle v. Kelly* (1913) 21 Cal.App. 480, 484.)

Here, both civil courts that entered judgments in favor of the City held the ground lease to expired because Coyote Aviation failed to timely exercise an option to extend the lease. By operation of law, the City has a stronger ownership claim than Plaintiffs. Assuming *arguendo* that Plaintiffs contend that the lease, by its express terms, granted Plaintiffs a right to remove the hangar units, Plaintiffs are mistaken. The lease imposes, at most, an obligation to remove improvements, not a right to remove improvements years after the lease expired.

Fifth, the prohibitions and restraints requested by Plaintiffs in Ex Parte Application are not reasonable and far exceed the purported threats identified by Plaintiffs. For instance, there is no threat of transfer of title because as Plaintiffs acknowledge, the City has re-leased many of the hangar units. Likewise, the City's "profit" from any leasing activities is not a threat to the hangar units and causes no threat of "irreparable harm" to Plaintiffs. As mentioned above, if anything, the re-lease of the Property and hangar units represents a reasonable mitigation measure.

B. Plaintiffs Are Not Entitled to a TRO or Any Injunctive Relief Because They Are Not Likely to Succeed on the Merits

A TRO is improper in this case because Plaintiffs are not likely to prevail on the merits. Each claim asserted by the plaintiff relate to the same transaction and circumstances at issue in the preceding civil litigation and in the preceding unlawful detainer action such that they are barred by the doctrine of res judicata. To the extent that Plaintiff now asserts additional causes of action, they are also unlikely to succeed on the merits because Plaintiffs had ample opportunity to raise them in the prior actions but are just now bringing them before the court. Plaintiffs' failure to timely raise legal theories when they could have constitutes a waiver that precludes the likelihood of their success on the merits.

1. Coyote Aviation's Claims Are Barred Under the Doctrine of Res Judicata

Res judicata, or claim preclusion, prevents re-litigation of the same cause of action in a second suit between the same parties or parties in privity with them." (*Mycogen Corp v. Monsanto Co.* (2002) 28 Ca1.4th 888, 896.) "To determine whether claim preclusion bars another action or

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
2855 E. GUASTI ROAD, SUITE 400
ONTARIO, CALIFORNIA 91761

proceeding, courts look to whether the two proceedings involve the same cause of action." (*Alpha Mechanical v. Travelers* (2005) 133 Cal.App.4th 1319, 1326- 1327.) Res judicata bars "not only the reopening of the original controversy, but also subsequent litigation of all issues which were or could have been raised in the original suit." (*Gates v. Superior Court* (1986) 178 Cal.App.3d 301, 311 (emphasis added).)

The parties, facts, and legal theories identified in this matter were the subject of previous litigation and were decided upon in the predecessor matter. This includes both the predecessor civil matter *Coyote Aviation Corporation v. City of Redlands*, San Bernardino Superior Court Case Number CIVSB2203398 ("Predecessor Civil Matter") and *City of Redlands v. Coyote Aviation*, San Bernardino Superior Court Case Number LLTVA2200544 ("Predecessor UD Matter"). The predecessor civil and UD matters were litigated in the City's favor. In the Predecessor Civil Matter, the City's demurrer to the first amended complaint came on for argument on February 2, 2023. Judge Keh sustained the City's demurrer to the First Amended Complaint in that action "in the entirety" and determined the City to be the prevailing party. Coyote Aviation's arguments in both this matter and in the Predecessor Civil Matter rest on core common facts regarding the lease agreement entered between the City and Coyote Aviation on September 5, 2000 for the lease and construction of Redlands Municipal Airport. Similarly, this matter and the Predecessor UD Matter concerned the issue of possession of the real property on which the presently disputed Property and hangar units are situated.

In light of the foregoing, Coyote Aviation is unlikely to succeed on the merits with respect to the causes of action it asserts in this action. To the extent such claims were previously litigated, Coyote Aviation is barred from attempting to re-litigate such claims. To the extent Coyote Aviation asserts new claims that could have been raised in the predecessor cases, those claims are also barred.

2. Plaintiffs Are Unlikely to Prevail on the Claims Asserted for the First Time in This Action

To start, an unfair competition law ("UCL") claim cannot be maintained against a public entity. "Public entities…are not 'persons' who are subject to suit under the UCL." (*People for*

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
2855 E. GUASTI ROAD, SUITE 400
ONTARIO, CALIFORNIA 91761

Ethical Treatment for Animals, Inc. v. Cal Milk Producers Advisory Bd. (2005), 125 Cal.App.4th 871.)

Further, the addition of new defendants, who are merely City officials, does nothing to create new, viable liability theories. The City officials were not party to the ground lease between the City and Coyote Aviation, and unlike the City, have not been granted possession of the Property or the hangar units. The naming of these defendants does not alter the core issues that were previously adjudicated. Indeed, a "public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person" and a "public employee is immune from liability for an injury caused by executing or enforcing laws…" (Government Code, §§ 815 and 820.4.) Thus, even if the allegations in the operative complaint were true, Plaintiff cannot meet their burden demonstrating that the employees now named to his action are liable under any legal theory.

Plaintiffs are also unlikely to succeed on the merits with respect to their claims for negligence and intentional infliction of emotional distress ("IIED") because "direct tort liability of public entities must be based on a specific statute declaring them to be liable, or at least creating some specific duty of care, ***and not on the general tort provisions of Civil Code section 1714***. Otherwise, the general rule of immunity for public entities would be largely eroded by the routine application of general tort principles." (Eastburn v. Regional Fire Protection Authority (2003) 31 Cal.4th 1175, 1183.) [emphasis added.]

The mere possession of property and the refusal of City or its employees to issue permits does not create a special relationship under Civil Code section 1714(a). Furthermore, Plaintiffs fail to establish that the City's actions constituted a breach of any specific statutory duty. Plaintiffs' IIED claim also falls short because the conduct alleged does not rise to the level of extreme and outrageous behavior required to sustain such a cause of action. The City's administrative property management actions and permit issuance procedures, even if unfavorable to Plaintiffs, do not meet the high threshold required to prove extreme and outrageous conduct. Since Plaintiffs are also unlikely to succeed on the merits with respect to negligence and IIED claims, their Ex Parte Application for a temporary restraining order and injunctive relief is unwarranted.

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
2855 E. GUASTI ROAD, SUITE 400
ONTARIO, CALIFORNIA 91761

C. To Avoid the Possibility of Interference or Rulings That Are Inconsistent, the Ex Parte Application Should Not Be Granted

Coyote Aviation has appealed the two judgments entered in favor of the City. In each appeal, and also in a writ of supersedeas proceeding, Coyote Aviation has requested a stay pending appeal. ***After voluminous briefing, the reviewing courts have denied all of these requests***. As detailed above, the appeals concern claims and issues that substantially overlap this action, and if the decisions by the lower courts are upheld, likely give rise to a complete defense to all claims in this action. If this Court were to grant the Ex Parte Application, it risks entering relief inconsistent with or interfering with the appeals.

IV. CONCLUSION

Therefore, the Ex Parte Application should be denied in its entirety, or in the alternative set for hearing on regular motion notice to allow for comprehensive briefing.

Dated: June 25, 2024

BEST BEST & KRIEGER LLP

By: _____

JESSICA K. LOMAKIN
DUSTIN J. NIRSCHL
HENRY ANDRIANO
Attorneys for Defendants
CITY OF REDLANDS, ADRIAN LAWSON, TABITHA KEVARI CROCKER, and CHRISTOPHER BOATMAN

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
2855 E. GUASTI ROAD, SUITE 400
ONTARIO, CALIFORNIA 91761

PROOF OF SERVICE

I, Linda Tapia, declare:

I am a citizen of the United States and employed in San Bernardino County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 2855 E. Guasti Road, Suite 400, Ontario CA 91761. On June 25, 2024, I served a copy of the within document(s):

DEFENDANTS' OPPOSITION TO EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT BE ISSUED

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☒ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Rod Pacheco
David Sire
Nataly Rahmo
PACHECO & NEACH, PC
Two Park Plaza, Suite 1000
Irvine, CA 92614
(714) 462-1700
rpacheco@pncounsel.com
dsire@pncounsel.com
nrahmo@pncounsel.com

Attorneys for Plaintiffs, Coyote Aviation Corporation; Gil Brown and Carol Brown

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 25, 2024, at Ontario, California.

/s/ Linda Tapia

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
2855 E. GUASTI ROAD, SUITE 400
ONTARIO, CALIFORNIA 91761