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12 CITY OF LOS ANGELES

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 LA ALLIANCE FOR HUMAN RIGHTS,
16 et al.,

17 Plaintiffs,

18 v.

19 CITY OF LOS ANGELES, a Municipal
20 entity, et al.,

21 Defendants.

Case No. 2:20-cv-02291 DOC (KES)

Hon. David O. Carter
United States District Judge

**DEFENDANT CITY OF LOS
ANGELES' RESPONSE TO
OCTOBER 25, 2024 EVIDENTIARY
HEARING [[DKT. 795](#)],
PLAINTIFFS' WITNESS LIST
[\[DKT. 800\]](#), AND PLAINTIFFS'
REQUEST FOR CLARIFICATION
[\[DKT. 803\]](#)**

Date: October 25, 2024

Time: 1:00 p.m.

Location: First Street Courthouse
Courtroom 1

1 **TO THE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 Defendant City of Los Angeles (“City”) hereby responds and objects to the
4 evidentiary hearing concerning the City’s proposed bed plan scheduled for Friday,
5 October 25, 2024 at 1:00 p.m. [[Dkt. 795](#)], to Plaintiffs’ Witness List [[Dkt. 800](#)], and to
6 Plaintiffs’ Request for Clarification [[Dkt. 803](#)] on the following grounds:

7 Plaintiffs have not alleged – much less with any credible evidence – that the City
8 has breached its agreement, or that there is even any material dispute about the terms of
9 the agreement. In the absence of any alleged breach of any agreement, rushing to
10 proceed with an evidentiary hearing is premature and unnecessary.

11 Particularly in light of the lack of evidentiary basis for such a hearing, proceeding
12 with the hearing is also an unnecessary burden on the parties, witnesses, and the Court.
13 *See, e.g., Roberts v. Marshall*, [627 F.3d 768, 773](#) (9th Cir. 2010) (“District courts have
14 limited resources (especially time), and to require them to conduct further evidentiary
15 hearings when there is already sufficient evidence in the record to make the relevant
16 determination is needlessly wasteful.”). Proceeding on such short notice further raises
17 due process concerns due to the lack of adequate and reasonable time for the parties to
18 prepare for this hearing. *See, e.g., Application of Gault*, [387 U.S. 1, 33](#) (1967) (“Notice,
19 to comply with due process requirements, must be given sufficiently in advance of
20 scheduled court proceedings so that reasonable opportunity to prepare will be
21 afforded...”).

22 With respect to the witness list filed by Plaintiffs, the City maintains its already-
23 asserted objection to Plaintiffs’ attempt to call high-ranking “apex” witnesses, including
24 the Mayor and any Council Member, who lack unique, first-hand knowledge of relevant
25 facts, nor have Plaintiffs attempted – much less exhausted – other less burdensome and
26 intrusive ways of obtaining the information they seek. *See, e.g., Pinn, Inc. v. Apple Inc.*,
27 Case No. SA 19-CV-01805-DOC-JDE, [2021WL4775969](#), at *3 (C.D. Cal. Sept. 10,
28 2021) (“the ‘apex doctrine’ is usually applied to depositions but can also be applied to

1 protect a senior executive from being compelled to appear at trial.”) (citing *Reddy v.*
2 *Nuance Commc’ns, Inc.*, No. 5:11-CV-05632-PSG, [2015 WL 4648008](#), at *4 & n.38
3 (N.D. Cal. Aug. 5, 2015)). Plaintiffs cannot meet their burden to show the necessary,
4 extraordinary circumstances to justify compelling testimony from these apex witnesses.
5 *See, Dunsmore v. San Diego County Sheriff’s Dep’t*, [2024WL2869984](#), at *1 (2024).¹

6 In addition, the deliberative process privilege protects from disclosure “the
7 decision making processes of government agencies” with the goal of protecting candid
8 discussions between officials, and the underlying mental processes that go into the
9 policymaking. To the extent Plaintiffs are seeking to probe beyond public statements or
10 a written resolution – which speaks for itself – into the thought processes or motives
11 behind the Mayor’s or a Councilmember’s decision-making in their capacity as
12 policymakers, Plaintiffs would not be entitled to discover such information, even if they
13 could establish the relevance of such mental processes. *See, e.g., William Jefferson &*
14 *Co., Inc. v. Bd. of Assessment and Appeals No. 3 for Orange County*, [482 Fed. Appx.](#)
15 [273, 274](#) (9th Cir. 2012) (no abuse of discretion in granting protective order on basis of
16 privileges, including deliberative process privilege); *Bd. of Supervisors v. Superior*
17 *Court*, [32 Cal. App. 4th 1616, 1625-26](#) (1995) (citing *County of Los Angeles v. Superior*
18 *Court*, [13 Cal.3d 721, 1626-27](#) (1975)) (holding that trial court improperly permitted
19 discovery aimed at determining when and why County Board of Supervisors made a
20 particular decision); *County of Los Angeles v. Superior Court*, [13 Cal. 3d 721, 727](#) (1975
21 (“the authorities, both in California and more generally, make clear that the rule barring
22 judicial probing of lawmakers’ motivations applies to local legislators as well as to
23 members of the state Legislature or of Congress.”).

24 Should the Court be inclined to overrule the City’s objections, the City
25 respectfully requests the opportunity to brief the issues more fully prior to any ruling
26 consistent with due process considerations. Indeed, Plaintiffs’ Request for Clarification

27 _____
28 ¹ Counsel for the City further advised Plaintiffs’ counsel that the Mayor was not
available to attend the evidentiary hearing on Friday afternoon.

1 [\[Dkt. 803\]](#) was filed less than 24 hours before the evidentiary hearing is scheduled to
2 proceed, and the City has not been afforded ample opportunity to address Plaintiffs'
3 arguments or cited case authorities.

4 DATED: October 24, 2024 HYDEE FELDSTEIN SOTO, City Attorney
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9 By: /s/
10 Arlene N. Hoang, Deputy City Attorney
11 Counsel for Defendant City of Los Angeles

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