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9 Attorneys for *Amici Curiae*  
10 CITY OF HUNTINGTON BEACH

11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

13 CITY OF COSTA MESA, AND  
14 KATRINA FOLEY,

15 Plaintiffs,

16 vs.

17 UNITED STATES OF AMERICA,  
18 THE DEPARTMENT OF HEALTH  
19 AND HUMAN SERVICES, THE  
20 UNITED STATES DEPARTMENT OF  
21 DEFENSE, THE UNITED STATES  
22 AIR FORCE, THE CENTERS FOR  
23 DISEASE CONTROL AND  
24 PREVENTION, THE STATE OF  
25 CALIFORNIA, FAIRVIEW  
26 DEVELOPMENTAL CENTER  
(FAIRVIEW), THE CALIFORNIA  
GOVERNOR’S OFFICE OF  
EMERGENCY SERVICES, and THE  
CALIFORNIA DEPARTMENT OF  
GENERAL SERVICES,

27 Defendants.  
28

Case No. 8:20-cv-368 JLS (JDEx)

**NOTICE OF *EX PARTE*  
MOTION AND MOTION OF  
THE CITY OF HUNTINGTON  
BEACH, CALIFORNIA TO FILE  
AN *AMICUS CURIAE* BRIEF IN  
SUPPORT OF PLAINTIFFS  
CITY OF COSTA MESA AND  
KATRINA FOLEY;  
DECLARATION OF JEMMA E.  
DUNN IN SUPPORT OF *EX  
PARTE***

[Proposed Order Granting *Ex Parte*  
Motion to File an *Amicus Curiae*  
Brief filed and served concurrently  
herewith]

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT the City of Huntington Beach (“City”)  
3 respectfully requests that this Court grant its ex parte leave to file an *Amicus Curiae*  
4 Brief in Support of Plaintiffs City of Costa Mesa’s and Katrina Foley’s (“Plaintiffs”)  
5 Application for Temporary Restraining Order and Order to Show Cause re Issuance  
6 of Preliminary Injunction.

7 **I. LEGAL STANDARD**

8 Courts have discretion to permit a non-party to participate as *amicus curiae*.  
9 (See, *Gerritson v. de la Madrid Hurtado*, (1987) 819 F.2d 1511, 1514; *Nat. Res.*  
10 *Def. Council v. Evans*, (2003) 243 F. Supp.2d 1046, 1047). As this Court has noted,  
11 “[d]istrict courts frequently welcome amicus briefs from non-parties concerning  
12 legal issues that have potential ramifications beyond the parties directly involved or  
13 if the amicus has ‘unique information or perspective that can help the court beyond  
14 the help that the lawyers for the parties are able to provide.’” (*Sonoma Falls Dev.,*  
15 *LLC v. Nevada Gold & Casinos, Inc.*, (2003) 272 F. Supp.2d 919, 925, quoting  
16 *Cobell v. Norton*, (2003) 246 F. Supp.2d 59, 62.)

17 **II. IDENTITY AND INTEREST OF AMICUS CURIAE**

18 The City of Huntington Beach borders the City of Costa Mesa in the heart of  
19 Orange County, one of the most densely populated counties in the country. As  
20 noted in the City of Costa Mesa’s original moving papers, Defendants’ plan to  
21 relocate individuals infected with or exposed to the highly contagious COVID-19  
22 novel coronavirus (“coronavirus”) to Costa Mesa presents a significant risk of  
23 disease and potentially even death, which extend beyond the city limits of Costa  
24 Mesa.

25 The City of Huntington Beach is a popular tourist destination and one of two  
26 beach cities that border the City of Costa Mesa. The two cities share major  
27 thoroughfares, roadways and attractions that are seamlessly traveled by shared  
28 commuters, residents, and visitors. Huntington Beach has substantial concerns that

1 Defendants' hasty attempt to relocate into Costa Mesa, only a few miles from the  
2 borders of Huntington Beach without proper evaluations, preparations, and  
3 consultation with local officials will result in an unnecessary risk of the spread of  
4 infection to residents of Huntington Beach.

5 Defendants cannot deny that, no matter the site(s) chosen to temporarily  
6 relocate Coronavirus patients, close cooperation and coordination between federal,  
7 state, and local governments will be necessary to ensure public safety. Defendants'  
8 intention to relocate individuals infected with a highly communicable disease that is  
9 rapidly spreading world-wide, without sufficient testing measures and treatment  
10 options, cannot withstand scrutiny under the due process clause or the  
11 Administrative Procedure Act, in particular because of this failure to consult with  
12 local governments that will be substantially affected by the decision. At the very  
13 least, local first responders and health authorities should be included and consulted  
14 on the location, planning, preparation, education and facilitation of the relocation  
15 process. To exclude entirely the local authorities who have the best knowledge of  
16 the local needs, local resources, and local obstacles is simply too dangerous.

17 The determination of Plaintiffs' request directly, impacts Huntington Beach,  
18 which has an interest in this case and as such, the City of Huntington Beach  
19 respectfully requests that this Court grant it leave to file the accompanying *Amicus*  
20 *Curiae* Brief.

21 **III. MEET AND CONFER TIMELINES**

22 The City Attorney for the City of Huntington Beach has conferred with the  
23 parties concerning the filing of this motion. Counsel for Plaintiffs have consented to  
24 this motion. As set forth in the Declaration of Jemma E. Dunn submitted herewith,  
25 notice of this Application was provided on February 27, 2020, via email to counsel  
26 for Defendants notifying them of the City of Huntington Beach's intent to file this  
27 ex parte application. As of the date of this filing, the City of Huntington Beach has  
28 not received a response from Defendants.

1 No party's counsel authored any part of this brief or contributed money  
2 intended to fund preparing or submitting this brief. Nor did any party contribute  
3 money intended to fund preparing or submitting this brief.

4 The motion is timely and appropriately filed as an ex parte application as the  
5 hearing to which this Application is relevant is scheduled for 2:00 pm on Monday,  
6 March 2, 2020.

7

8 DATED: February 28, 2020 MICHAEL E. GATES, City Attorney

9

10 By:           /s/ Michael E. Gates            
11 Michael E. Gates, City Attorney,  
12 Attorney for *Amici Curiae*,  
13 CITY OF HUNTINGTON BEACH

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**From:** [Dunn, Jemma](#)  
**To:** [Kelemen, Chris](#)  
**Subject:** Fwd: City of Costa Mesa v. United States of America, et al. - Ex Parte Application to File Amicus Brief Notice  
**Date:** Friday, February 28, 2020 10:15:40 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)

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Begin forwarded message:

**From:** Nahal Kazemi <[nkazemi@kelleranderle.com](mailto:nkazemi@kelleranderle.com)>  
**Date:** February 27, 2020 at 7:21:24 PM PST  
**To:** "Dunn, Jemma" <[jemma.dunn@surfcity-hb.org](mailto:jemma.dunn@surfcity-hb.org)>, "Jennifer L. Keller" <[jkeller@kelleranderle.com](mailto:jkeller@kelleranderle.com)>, "Daniel.Beck@usdoj.gov" <[Daniel.Beck@usdoj.gov](mailto:Daniel.Beck@usdoj.gov)>, "Xavier.Becerra@doj.ca.gov" <[Xavier.Becerra@doj.ca.gov](mailto:Xavier.Becerra@doj.ca.gov)>, "Susan.Slager@doj.ca.gov" <[Susan.Slager@doj.ca.gov](mailto:Susan.Slager@doj.ca.gov)>, "Ted.Lindstrom@doj.ca.gov" <[Ted.Lindstrom@doj.ca.gov](mailto:Ted.Lindstrom@doj.ca.gov)>  
**Cc:** "Gates, Michael" <[Michael.Gates@surfcity-hb.org](mailto:Michael.Gates@surfcity-hb.org)>, "Williams, Brian" <[Brian.Williams@surfcity-hb.org](mailto:Brian.Williams@surfcity-hb.org)>  
**Subject:** RE: City of Costa Mesa v. United States of America, et al. - Ex Parte Application to File Amicus Brief Notice

Plaintiffs are supportive of Huntington Beach's decision to file an *ex parte*.

Thank you,

**Nahal Kazemi**  
Senior Counsel



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**From:** Dunn, Jemma <[jemma.dunn@surfcity-hb.org](mailto:jemma.dunn@surfcity-hb.org)>  
**Sent:** Thursday, February 27, 2020 7:17 PM  
**To:** Jennifer L. Keller <[jkeller@kelleranderle.com](mailto:jkeller@kelleranderle.com)>; Nahal Kazemi <[nkazemi@kelleranderle.com](mailto:nkazemi@kelleranderle.com)>; Daniel.Beck@usdoj.gov; Xavier.Becerra@doj.ca.gov; Susan.Slager@doj.ca.gov; Ted.Lindstrom@doj.ca.gov  
**Cc:** Gates, Michael <[Michael.Gates@surfcity-hb.org](mailto:Michael.Gates@surfcity-hb.org)>; Williams, Brian <[Brian.Williams@surfcity-hb.org](mailto:Brian.Williams@surfcity-hb.org)>  
**Subject:** City of Costa Mesa v. United States of America, et al. - Ex Parte Application to File Amicus Brief Notice

**EXHIBIT A**

Counsel,

Please allow this email to serve as formal notice that the City of Huntington Beach intends to file an Ex Parte Application for an order to file an amicus brief in support of Plaintiffs' Application for TRO and Preliminary Injunction. We will file the ex parte notice and proposed brief tomorrow morning for consideration at the hearing scheduled for Monday, March 2. Please let us know if you intend to oppose the City of Huntington Beach's ex parte. Thank you.

**Jemma E. Dunn**

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