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23 **UNITED STATES DISTRICT COURT**
24 **NORTHERN DISTRICT OF CALIFORNIA**
25 **OAKLAND DIVISION**

26 COALITION ON HOMELESSNESS, et al.,

27 Plaintiffs,

28 v.

CITY AND COUNTY OF SAN FRANCISCO,
et al.,

Defendants.

CASE NO. 4:22-cv-05502-DMR

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

Judge: The Hon. Donna M. Ryu

Hearing Date: January 12, 2023

Time: 1:00 p.m.

Place: Courtroom 4 – 3rd Floor
1301 Clay Street
Oakland, CA 94612

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28

1 **I. INTRODUCTION**

2 Plaintiffs' Complaint details an extensive interagency conspiracy to violate Plaintiffs'
3 constitutional rights and the constitutional rights of hundreds of unhoused San Franciscans—
4 whom Defendants subject to criminal enforcement and property destruction for the mere status of
5 being homeless. In their motion to dismiss, Defendants do not challenge a single substantive cause
6 of action in the Complaint or challenge Plaintiffs' right to relief on any of those substantive claims.
7 Nor do Defendants challenge the sufficiency of the factual allegations in the Complaint
8 demonstrating Defendants' conspiracy to violate Plaintiffs' civil rights.

9 Instead, Defendants' limited motion contends that San Francisco's various public agencies
10 are incapable of being sued and, therefore, are not capable of conspiracy as a matter of law.
11 Defendants are wrong. Binding Ninth Circuit precedent and governing California law establish
12 that municipal agencies like the Defendants here are separately suable entities because they
13 exercise decision-making authority over particular aspects of municipal sovereignty. Meanwhile,
14 Defendants provide no authority to challenge the straightforward notion that separate government
15 agencies can conspire with one another—fundamentally misconstruing the intracorporate
16 conspiracy doctrine—which simply does not apply to the allegations in Plaintiffs' Complaint.
17 Government agencies that can be sued can and should be held individually accountable for
18 conspiracies to commit civil rights violations. For these reasons, Plaintiffs respectfully request
19 that Defendants' motion to dismiss be denied.

20 **II. STATEMENT OF RELEVANT ALLEGATIONS**

21 **A. The Departmental Defendants Coordinate Across Discrete Areas of**
22 **Responsibility.**

23 The Complaint alleges at least five different San Francisco public agencies have
24 coordinated to commit civil rights violations against Plaintiffs and other unhoused residents of San
25 Francisco. These public agencies include: (1) the San Francisco Police Department ("SFPD"); (2)
26 the San Francisco Department of Public Works ("DPW"); (3) the San Francisco Department of
27 Homelessness and Supportive Housing ("HSH"); (4) the San Francisco Fire Department
28 ("SFFD"); and (5) the San Francisco Department of Emergency Management ("DEM"). Compl.,

1 Dkt. No. 1, ¶¶ 42-51. Defendants do not contest this coordination.

2 Each of these five public agencies—SFPD, DPW, HSH, SFFD, and DEM (together, the
3 “Departmental Defendants”)—possesses its own discrete responsibilities, with separate
4 department heads who act as each agency’s final decisionmaker. The Complaint explicitly alleges
5 the discrete and distinct roles of each public agency.

6 SFPD handles criminal enforcement: it both threatens to and does cite, fine, and arrest
7 unhoused people who shelter in public even though the City has not provided sufficient or adequate
8 shelter to accommodate them. *See, e.g.*, Compl. ¶ 122. These duties also include dispatching
9 officers to respond to complaints from housed residents and business owners to force unhoused
10 individuals to move from public spaces without even purporting to offer shelter. *Id.* ¶¶ 148-50.

11 DPW, meanwhile, is in charge of “street cleaning,” which consists of work crews seizing
12 and destroying the survival belongings and personal property of unhoused people without
13 providing adequate warning or opportunity to safeguard or collect those belongings. *Id.* ¶¶ 116-
14 21, 140-46. DPW also conducts informal sweeps of unhoused people and their personal property
15 at random and without notice, when DPW dispatches crews to different neighborhoods throughout
16 the day for street cleaning activities. *Id.* ¶ 151.

17 HSH—along with its Homeless Outreach Team (HOT)—is the sole San Francisco agency
18 tasked with managing shelters and shelter bed availability, and HSH is the only public department
19 able to make shelter offers. *Id.* ¶¶ 124-29.

20 SFFD’s EMS-6 team leads on-the-ground, formal homeless encampment removal
21 operations through the Healthy Streets Operation Center (HSOC). *Id.* ¶ 112.

22 Finally, DEM coordinates operations, including identifying various homeless
23 encampments across the City and planning their targeted removal. *See id.* ¶¶ 50, 221.

24 The Complaint specifically alleges that each of the Departmental Defendants is led by a
25 different department head who acts as the final decisionmaker for each respective public agency—
26 particularly with respect to each agency’s homelessness response. *See, e.g., id.* at ¶ 43 (identifying
27 Chief of Police William Scott as SFPD’s final decisionmaker); *id.* at ¶ 45 (identifying Carla Short,
28 DPW’s Director, as the final decisionmaker for DPW); *id.* at ¶ 47 (identifying Outreach Manager

1 Mark Mazza as the final decisionmaker for HSH); *id.* at ¶ 51 (identifying Mary Ellen Carol,
2 DEM’s director, as the final decisionmaker for DEM).

3 Plaintiffs’ Complaint is replete with instances of these discrete public agencies expressly
4 coordinating, planning for, and agreeing with one another to violate Plaintiffs’ civil rights and the
5 rights of San Francisco’s unhoused residents. Every day, the Departmental Defendants host
6 meetings where they each discuss and plan for sweep operations they will carry out in the coming
7 days—despite their knowledge that HSH does not have adequate shelter to offer thousands of
8 unhoused residents. *Id.* ¶ 111, 137. A litany of emails between department heads shows that the
9 Departmental Defendants work together to plan these unconstitutional sweeps and to strategize
10 around a law enforcement-first approach to homelessness. *See id.* ¶¶ 226, 229, 232-34, 237. On
11 the ground, the Departmental Defendants coordinate during these sweeps, with SFPD officers
12 threatening individuals with arrest if they do not pack up quickly enough under DPW’s street
13 cleaning orders; SFFD staffers throwing belongings into DPW trucks; and HOT workers making
14 insufficient shelter offers before knowing what shelter is actually available so that DPW can clear
15 property and SFPD can move to criminal enforcement. *See id.* ¶¶ 113, 121.

16 **B. Mayor Breed and HSOC Director Dodge’s Personal Involvement.**

17 The Complaint alleges that Mayor London Breed and HSOC Director Samuel Dodge have
18 directly and personally participated in the deprivation of Plaintiffs’ civil rights. Director Dodge
19 knowingly orders sweep operations to take place across San Francisco despite being fully aware
20 that HSH does not have enough shelter beds for unhoused residents. *See id.* ¶¶ 54, 55 133 n.118,
21 222. Mayor Breed has also personally used City resources to call for unhoused individuals to be
22 removed from public property when it suited her and in the absence of constitutionally required
23 notice or appropriate offers of shelter, including one incident where Mayor Breed asked that an
24 unhoused individual be removed from a bench near where she was having lunch, and another
25 incident where the Mayor’s gala schedule resulted in the forced displacement of dozens of
26 unhoused people without sufficient shelter. *Id.* ¶ 53 & nn.22-23.

27 **III. LEGAL STANDARD**

28 On a motion to dismiss, the Court takes all allegations of material fact in the complaint as

1 true. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S.
2 544, 555–56 (2007)). Further, all reasonable inferences from the facts alleged are drawn in the
3 Plaintiffs’ favor. *See Barker v. Riverside Cty. Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009).
4 “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as
5 true, to ‘state a claim to relief that is plausible on its face.’” *Lacey v. Maricopa Cty.*, 693 F.3d 896,
6 911 (9th Cir. 2012) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). A claim is plausible
7 on its face when the plaintiff pleads factual content that allows the court to draw the reasonable
8 inference that the defendant is liable for the misconduct alleged. *Iqbal*, 556 U.S. at 663. Unless
9 it would be futile, leave to amend should also be freely granted. Fed. R. Civ. P. 15(a)(2).

10 **IV. ARGUMENT**

11 Nowhere in Defendants’ motion do they challenge the sufficiency of Plaintiffs’ detailed
12 allegations regarding the separate role each Departmental Defendant plays in San Francisco’s
13 unlawful response to homelessness—nor do Defendants challenge the obvious coordination and
14 collusion between and among the Departmental Defendants and the heads of each respective
15 agency. Instead, Defendants’ motion rests on the mistaken assertion that the Departmental
16 Defendants can never be separately sued and therefore can never conspire with one another. *See*
17 *Mot.*, Dkt. No. 41, at 4, 8. Defendants’ arguments are precluded by binding Ninth Circuit
18 precedent and the governing law in California.

19 **A. The Departmental Defendants Can Be Sued in Federal Court**

20 The Ninth Circuit has determined that municipal agencies are separately suable in
21 California because they are discrete public entities. *See, e.g., Streit v. Los Angeles*, 236 F.3d 552,
22 565-66 (9th Cir. 2001); *Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 624 n.2 (9th
23 Cir. 1998). This precedent is binding “in the absence of any *subsequent* indication from the
24 California courts that [its] interpretation was incorrect.” *Streit*, 236 F.3d at 566 (citing *Owen ex*
25 *rel. Owen v. United States*, 713 F.2d 1461, 1464 (9th Cir. 1983); *Jones–Hamilton v. Beazer*
26 *Materials & Servs.*, 973 F.2d 688, 696 n. 4 (9th Cir.1992); *see also In re Watts*, 298 F.3d 1077,
27 1082-83 (9th Cir. 2002). Because Defendants present no more recent California case that
28 contradicts the Ninth Circuit’s holdings, this Court is bound to allow suit to continue against the

1 Departmental Defendants.

- 2 1. The Ninth Circuit conclusively decided that municipal agencies are “public
3 entities” capable of being sued separately from the municipality itself.

4 Defendants admit that the Ninth Circuit has conclusively decided this question. Mot., at 2
5 n.1, 8 n.5. Most recently, in *Streit v. County of Los Angeles*, the Ninth Circuit held that “municipal
6 police departments are ‘public entities’ under California law, and hence, can be sued in federal
7 court for alleged civil rights violations.” 236 F.3d at 565 (citation omitted). The Ninth Circuit
8 had already reached the same conclusion on two other occasions. *See Karim-Panahi*, 839 F.2d at
9 624 n.2 (“Municipal police departments are ‘public entities’ under California law and, hence, can
10 be sued in federal court for alleged civil rights violations”); *Shaw v. California Dep’t of Alcoholic*
11 *Beverage Control*, 788 F.2d 600, 605 (9th Cir. 1986) (“[W]e conclude that the courts of California
12 would hold that the Police Department is a public entity under section 811.2. Thus, under Fed. R.
13 Civ. P. 17(b) the Police Department may be sued in Federal court.”).

14 Federal courts both in the Northern District and across California have applied the Ninth
15 Circuit’s clear holdings to permit suits against both a municipality and its constituent public
16 agencies simultaneously. *See, e.g., Kei Wei Lei v. City of Oakland*, No. 18-cv-03061, 2018 WL
17 7247172, at *2 (N.D. Cal. Nov. 5, 2018); *Estate of Osuna v. Cty. of Stanislaus*, 392 F. Supp.3d
18 1162, 1170-71 (E.D. Cal. June 25, 2019); *Cantu v. Kings County*, No. 20-cv-00538, 2021 WL
19 859428, at *9-10 (E.D. Cal. Mar. 8, 2021); *Tennyson v. Cty. of Sacramento*, No. 19-cv-00429,
20 2020 WL 4059568, at *6 (E.D. Cal. July 20, 2020); *Hurth v. Cty. of Los Angeles*, No. 09-cv-05423,
21 2009 WL 10696491, at *2-4 (C.D. Cal. Oct. 28, 2009).

22 The Northern District of California has also expressly found that the Ninth Circuit’s
23 holdings are not limited to police departments—but rather extend to other discrete public agencies
24 operating within a municipality as well. In *Leon v. Hayward Building Department*, for example,
25 the Court held that it was “bound” by *Streit* to conclude that the Hayward Building Department
26 was a “public entity” under California law that could be sued under Section 1983. No. 17-cv-
27 02720, 2017 WL 3232486, at *3 (N.D. Cal. July 31, 2017). Defendants readily admit to this
28 authority. Mot. at 5 n.2.

1 In response, Defendants cite two out-of-district cases to suggest that *Streit*'s holding should
 2 be limited—without further explanation. *See id.* at 5:12-25. But neither case is applicable to the
 3 facts at hand. *Payne v. County of Calaveras* stands for the unremarkable position that jail facilities
 4 themselves are not suable entities, and that the proper agency for suit is “the governmental agency
 5 that runs the jail.” *See* No. 17-cv-00906, 2018 WL 6593347, at *2 (E.D. Cal. Dec. 14, 2018)
 6 (citation omitted). Meanwhile, *Singleton v. County of Riverside* summarily decided that Riverside
 7 County’s Department of Public Social Services was not a separately suable entity based on one
 8 district court case that predated the Ninth Circuit’s holdings in *Streit* and *Karim-Panahi*. *See* No.
 9 21-cv-02164, 2022 WL 1266656, at *5 (C.D. Cal. Apr. 28, 2022) (quoting *Vance v. Cnty. of Santa*
 10 *Clara*, 928 F. Supp. 994, 996 (N.D. Cal. 1996)).¹ Neither case offers any analysis suggesting that
 11 the Ninth Circuit’s clear holdings—that discrete public entities can be sued under California law
 12 alongside their overarching municipalities—should be limited just to police departments.

13 2. No more recent California law contradicts the Ninth Circuit, and California
 14 precedents also establish that the Departmental Defendants are “public
entities” capable of suit.

15 The Ninth Circuit has made clear that its binding rulings on California law may not be
 16 disturbed unless there has been a change in the California law *after* the Ninth Circuit’s decisions.
 17 *Streit*, 236 F.3d at 566 (“in the absence of any *subsequent* indication from the California courts
 18 that [its] interpretation was incorrect” (emphasis in original) (quoting *Owen*, 713 F.2d at 1464)).
 19 Indeed, in *Streit* the Ninth Circuit conclusively rejected defendants’ attempts to relitigate the
 20 definition of “public entity” based on California authorities that predated the Ninth Circuit’s
 21 binding decisions. 236 F.3d at 566 (“LASD also argues that *Shaw* was subsequently undermined
 22 by a change in the California Evidence Code However, our decision in *Karim–Panahi*, a
 23 progeny of *Shaw*, was rendered after the Evidence Code section to which the LASD points
 24 Therefore, even if the LASD’s argument were availing, *Karim–Panahi* would nevertheless control
 25 our decision”).

26
 27 ¹ Indeed, courts in the Northern District have recognized that the prior holding in *Vance* was
 28 overruled by *Streit*. *See, e.g., Lilly v. Cnty. of Humboldt*, No. 19-cv-07941, 2021 WL 2750623, at
 *4-5 (N.D. Cal. June 14, 2021) (citing *Streit*, rejecting the finding in *Vance* that municipal
 departments are not amenable to suit).

1 Here, Defendants attempt the same. They cite California statutes and case law from prior
2 to 2001—but these authorities *predate* the Ninth Circuit’s decision in *Streit* and therefore cannot
3 challenge the Ninth Circuit’s later holding. *See* Mot. at 6:1-8, 6:17-28, 7:1-10. Defendants cite
4 only three more recent California authorities that purportedly address the “public entities” question
5 in a new light. *Id.* at 6:8-16. But none of these cases even discusses the issue of whether municipal
6 agencies can be considered public entities.

7 *Lawson* and *Hagman* merely conclude that private corporations are not “public” entities at
8 all but private actors without government sovereignty. *Lawson v. Superior Court*, 180 Cal. App.
9 4th 1372, 1397 (2010) (contractor working with governmental is “not a ‘public entity’ and thus is
10 not entitled to claim [] immunity[.]”); *Hagman v. Meher Mount Corp.*, 215 Cal. App. 4th 82, 88
11 (2013) (a “public benefit corporation” cannot be considered a “public entity” because it “lack[s]
12 any element of sovereignty.”). Defendants offer no explanation why these cases regarding private
13 entities have any bearing on whether municipal government agencies are public entities capable
14 of suit.

15 Defendants also find little support in *Lejins v. City of Long Beach*, which does not consider
16 whatsoever the definition of a “public entity” and merely states, without any analysis or
17 explanation, that the Long Beach Water Department is “not a legal entity separate from the City.”
18 72 Cal. App. 5th 303, 309 (2021). *Lejins* provides no guidance on the scope of the term “public
19 entity,” cites no supporting authority whatsoever, and on this basis cannot be understood to
20 undermine or contradict *Streit*. Because there has been no “subsequent indication from the
21 California courts that [its] interpretation was incorrect,” the Ninth precedent reaffirmed in *Streit* is
22 still binding. *See Jones–Hamilton*, 973 F.2d at 696 n. 4 (citation omitted).

23 Regardless, the key pre-*Streit* California precedent Defendants rely on demonstrates
24 precisely why the Departmental Defendants are appropriate public entities to sue based on the
25 allegations in Plaintiffs’ Complaint. *See* Mot. at 6:3-6. In *Laidlaw Environmental Services., Inc.*
26 *Local Assessment Committee v. County of Kern*, the California Court of Appeal articulated a test
27 for whether a municipal agency is “independent” and therefore a “public entity” capable of suit.
28 44 Cal. App. 4th 346, 352-53, 353 n.3 (1996). The Court in *Laidlaw* determined that there are two

1 “essential characteristics of an independent public office”: (1) the office must “not be transient,
 2 occasional, or incidental, but is in itself an entity in which incumbents succeed one another” and
 3 (2) the office must have the “authority to exercise some portion of the sovereign function of
 4 government, whether legislative, executive, or judicial.” *Id.* at 352. The Court found that a
 5 temporary local assessment committee was not an independent “public entity” because it had no
 6 decision-making powers, its function and duties were purely advisory, and it lacked “permanence
 7 and continuity” as an *ad hoc* committee that was set to expire. *Id.* at 353.

8 As alleged in Plaintiffs’ Complaint, the Departmental Defendants satisfy the factors
 9 articulated in *Laidlaw*. Each of the Departmental Defendants possesses some sovereign powers to
 10 carry out executive functions under the leadership of an independent agency head—including
 11 independent zones of authority over criminal and police enforcement, management of the public
 12 works and maintenance of public streets, and management of shelters. *See* Statement of Relevant
 13 Allegations, *supra*; *see also, e.g.*, Compl. ¶¶ 43, 45, 47, 51 (identifying separate agency final
 14 decisionmakers presiding over independent agency zones of responsibility); San Francisco Charter
 15 § 4.126 (“The administration and management of each department within the executive branch
 16 shall be the *responsibility of the department head.*” (emphasis added)).² Similarly, the
 17 Departmental Defendants are permanent City agencies that are not merely “transient” or
 18 “incidental.” *Laidlaw*, 44 Cal. App. 4th at 353. Thus, to whatever extent *Laidlaw* speaks to this
 19 case, it weighs *in favor* of holding that the Departmental Defendants are independent public entities
 20 that can be sued.³

21 _____
 22 ² Defendants’ invocation of other provisions in the San Francisco Charter likewise undermines
 23 their position—as those authorities specifically identify discrete zones of responsibility delegated
 24 to various agency departments separate and apart from the Mayor’s Office. *See* Mot. at 4:23-4:28;
see also S.F. Charter §§ 4.100; 4.127 (Police Department); 4.128 (Fire Department); 4.140 (Public
 Works).

25 ³ Even though the Departmental Defendants meet *Laidlaw*’s “independence” test, independence is
 26 not a prerequisite for a municipal agency to be sued. For instance, the Ninth Circuit has recognized
 27 that a police department is a public entity simply because it “traditionally has been regarded as an
 28 ‘agency’ of the city and is obviously ‘public.’” *Shaw*, 788 F.2d at 604 (citation omitted). And the
 Ninth Circuit has rejected arguments that a city charter’s corporate structure and reporting chains
 are determinative of the question. *See id.* (“the terms of the charter are irrelevant”). Indeed, the
 “corporate structure” of a municipality and its departments or agencies has no bearing on whether

1 3. The statutory definition of “public entities” under California law plainly
 2 encompasses the Departmental Defendants

3 Even if the Court were disinclined to apply Ninth Circuit or California Court of Appeal
 4 precedent, the statutory text of California Government Code § 811.2 unambiguously establishes
 5 on its face that the Departmental Defendants are “public entities” that may be sued in federal court.
 6 *See* Cal. Gov. Code § 945. The Government Code defines a “public entity” to include “a county,
 7 city, district public authority, public agency, and any other political subdivision or public
 8 corporation in the State.” Cal. Gov. Code § 811.2.⁴ The Departmental Defendants are also all
 9 “public agencies” under the Government Code, which include “a district, public authority, public
 10 agency, and *any other political subdivision . . . in the state.*” Cal. Gov. Code § 53050 (emphasis
 11 added). Thus, the plain language of the California Government Code demonstrates that
 12 Defendants’ motion to dismiss the Departmental Defendants should be denied.

13 Defendants do not address the plain language of these California statutes. In fact, the
 14 California Law Revision Commission’s comment to Section 811.2 that Defendants rely on
 15 expressly identifies that a public entity is meant to include “*every kind of independent political or*
 16 *governmental entity in the State*” (emphasis added). *See* Mot. at 4:17-21. Defendants’ narrow
 17 interpretation of the relevant statutes would entirely eliminate a plaintiff’s ability to bring suit
 18 against any municipal agencies across California. That interpretation would undermine the stated
 19 purpose of these statutes, which is to “eliminate any doubt that might otherwise exist as to whether
 20 a tort action might be defeated on the technical ground that a particular local public entity is not
 21 subject to suit.” *See* Cal. Gov. Code § 945, Law Rev. Comm. Comment. Thus, the governing
 22 statutes themselves do not provide a basis to dismiss the Departmental Defendants.⁵

23 _____ municipal departments can be sued. *Kei Wei Lei*, 2018 WL 7247172, at *2 (rejecting the argument
 24 that the “Police Department is a department within the corporate structure of the City and has no
 25 legal identity separate and apart from the City itself”); *see also Linder v. City of Emeryville*, No.
 13-cv-01934, 2013 WL 4033910, at *3 (N.D. Cal. Aug. 6, 2013) (same).

26 ⁴ The definition of a “public entity” in Section 811.2 also includes both a “city” and a “public
 27 agency,” indicating that both the City and the Departmental Defendants may be sued under
 28 California law—consistent with the Ninth Circuit case law. *See supra*.

⁵ Defendants argue that the Ninth Circuit’s interpretation of Section 811.2 is flawed because it
 imported the definition of “public entity” from Evidence Code Section 200. But the Ninth Circuit

1 **B. The Intracorporate Conspiracy Doctrine Does Not Apply to Plaintiffs’**
 2 **Conspiracy Cause of Action**

3 Defendants do not challenge the basic notion that all separately suable public agencies are
 4 capable of conspiring with one another under Section 1983. *See* Mot. at 9-11; *see also, e.g.,*
 5 *Thompson v. New York*, 487 F. Supp. 212, 228 (N.D.N.Y. 1979) (“Municipalities, their agencies,
 6 and employees” are all persons capable of conspiracy for purpose of federal civil rights statutes);
 7 *Harris v. Goins*, 156 F. Supp. 3d 857, 867 (E.D. Ky. 2015) (“entities can participate in civil
 8 conspiracies under § 1983, and [] this type of conspiracy claim does not rely on a *respondeat*
 9 *superior* theory” (citing *Memphis, Tenn. Area Local, Am. Postal Workers Union v. City of*
 10 *Memphis*, 361 F.3d 898, 904 (6th Cir. 2004)); *Monell v. Dep’t of Soc. Servs. of N.Y.*, 436 U.S. 658,
 11 690 (1978) (“Congress *did* intend municipalities and other local government units to be included
 12 among those persons to whom § 1983 applies”).

13 Here, Plaintiffs clearly allege that the Departmental Defendants operate as discrete public
 14 entities and have continuously conspired with one another to violate Plaintiffs’ constitutional
 15 rights. Therefore, the Departmental Defendants can be held liable for civil rights conspiracy. *See*
 16 *supra*, Statement of Relevant Allegations; *cf. Rabkin v. Dean*, 856 F. Supp. 543, 552 (N.D. Cal.
 17 1994) (conspiracy does not apply to “a single act by a single governmental body acting exclusively
 18 through its own officers”), cited in Mot. at 11:10-12. Again, Defendants do not challenge that
 19 separately suable entities can conspire—and therefore their motion must fail. *See* Mot. at 9-11.⁶

20 But even if the Departmental Defendants were not separately suable entities and were
 21 viewed as just one single legal entity, the intracorporate conspiracy doctrine should *still* not apply
 22 to this case. First, the Ninth Circuit has reserved the question of whether the intracorporate

23 _____
 24 addressed this distinction and still held there was no meaningful difference between the two
 25 provisions. *See Shaw*, 788 F.2d at 604 (“The wording of the two sections is nearly identical, except
 26 for the inclusion in section 200 of foreign entities, and the California courts have treated the two
 27 sections as including the same domestic entities” (internal quotations and citations omitted)). At
 28 any rate, the Ninth Circuit has decided the matter.

⁶ Courts have permitted claims to proceed against both the municipality and its subordinate entity
 even where the allegations against each are similar and the ultimate relief the Court will grant may
 be co-extensive across the defendants. *See, e.g., Cantu*, 2021 WL 859428, at *9-10 (rejecting the
 argument that “[s]ince the same claims are alleged against both entities, Defendants assert there is
 no practical reason for both entities to remain as separate defendants”).

1 conspiracy doctrine even applies to civil rights cases in the first place. *See Armstrong v. Reynolds*,
 2 22 F.4th 1058, 1085 n.8 (9th Cir. 2022) (quoting *Portman v. Cnty. of Santa Clara*, 995 F.2d 898,
 3 910 (9th Cir. 1993)). Meanwhile, several other circuits have declined to apply the doctrine in the
 4 civil rights context. *See, e.g., Brever v. Rockwell Int’l Corp.*, 40 F.3d 1119, 1127 (10th Cir. 1994);
 5 *Stathos v. Bowden*, 728 F.2d 15, 20-21 (1st Cir. 1984). Defendants admit to this authority. Mot.
 6 at 9:5-8, 9:14-18.

7 Indeed, Defendants themselves cite more California federal court cases that *disapprove* of
 8 applying the intracorporate conspiracy doctrine in civil rights cases than approve of it. *Compare*
 9 Mot. at 11 n.6 (citing eleven California cases that have rejected application of the intracorporate
 10 conspiracy doctrine in civil rights cases), *with* Mot. at 9:19-11:12 (citing eight California cases
 11 that purportedly apply the intracorporate conspiracy doctrine).⁷

12 The Northern District of California, meanwhile, has repeatedly taken the view that the
 13 doctrine should not apply in civil rights conspiracies. *See Bey v. Oakland*, No. 14-cv-01626, 2015
 14 WL 8752762, at *14 (N.D. Cal. Dec. 15, 2015) (“The Court . . . concludes that a [federal civil
 15 rights] claim is not necessarily barred by the intracorporate conspiracy doctrine”); *Brown v.*
 16 *Alexander*, No. 13-cv-01451, 2013 WL 6578774, at *14 (N.D. Cal. Dec. 13, 2013) (declining to
 17 extend the intracorporate conspiracy doctrine); *Rashdan v. Geissberger*, No. 10-cv-00634, 2011
 18 WL 197957, at *7 (N.D. Cal. Jan. 14, 2011) (“[R]egardless of whether the defendants were acting
 19 as individuals or in the course and scope of their employment, their agreement to deprive another
 20 of his or her equal protection rights” is subject to a conspiracy claim.); *Rivers v. Marin*, No. 09-
 21 cv-01614, 2010 WL 145094, at *9 (N.D. Cal. Jan. 8, 2010) (holding intracorporate conspiracy
 22 doctrine does not bar liability in discrimination claims); *O.H. v. Oakland Unified Sch. Dist.*, No.
 23 99-cv-05123, 2000 WL 33376299, at *8 (N.D. Cal. April 17, 2000) (“[T]he intra-corporate
 24 conspiracy doctrine . . . was developed in response to the specific policy goals underlying the

25 _____
 26 ⁷ More recent California authorities also explicitly reject Defendants’ District of Arizona and
 27 earlier California authorities. *See, e.g., Williams v. Conkle*, No. 17-cv-04884, 2018 WL 6016123,
 28 at *6 (C.D. Cal. Sept. 20, 2018) (“district court cases cited by defendants, however, also are
 inapposite”) (citing with disapproval cases on which Defendants rely, including *Donahoe v.*
Arpaio, 869 F. Supp. 2d 1020, 1074-75 (D. Ariz. 2012) and *Avalos v. Baca*, 517 F. Supp. 2d 1156,
 1170 (C.D. Cal. 2007)).

1 federal anti-trust laws . . . [that] do not exist in the civil rights context.”); *Washington v. Duty Free*
2 *Shoppers*, 696 F. Supp. 1323, 1327 (N.D. Cal. 1988) (“[A]greements to discriminate between a
3 business and its employees threaten exactly the group danger at which conspiracy liability is aimed
4 by the enactment of §§ 1985(3) and 1986. Thus, the view of a business as a single legal actor
5 becomes a fiction without a purpose.”); *Rebel Van Lines v. Compton*, 663 F. Supp. 786, 792 (C.D.
6 Cal. 1987) (finding that the intracorporate conspiracy doctrine “cannot apply to conspiracies within
7 governmental entities such as those in this case”).

8 Furthermore, courts that have applied the intracorporate conspiracy doctrine to civil rights
9 cases have recognized exceptions that allow for conspiracy claims where, as here, the defendants’
10 coordinated conduct includes persistent, repeated unlawful action over a significant period of time.
11 *See, e.g., Dickerson v. Alachua Cnty. Comm’n*, 200 F.3d 761, 768-70 (11th Cir. 2000) (noting that
12 some courts apply an exception to intracorporate conspiracy doctrine where defendants “engage
13 in a series of discriminatory acts as opposed to a single action”); *Hartman v. Board of Trustees*, 4
14 F.3d 465, 469-71 (7th Cir. 1993) (noting that numerous acts undertaken by several corporate
15 agents” or “some broader discriminatory pattern” that “permeated the ranks of the organization’s
16 employees” is sufficient to overcome the intracorporate conspiracy doctrine); *Stathos*, 728 F.2d at
17 20-21 (declining to apply the intracorporate conspiracy doctrine to a federal civil rights claim in
18 which defendants’ conduct “involved a series of acts over time going well beyond simple
19 ratification of a managerial decision by directors”); *Buschi v. Kirven*, 775 F.2d 1240, 1252 (4th
20 Cir. 1985) (in the context of a federal civil rights claim, explaining exceptions to the intracorporate
21 conspiracy doctrine where corporate agents’ actions are motivated by “an independent personal
22 stake in achieving the corporation’s illegal objective” or are unauthorized). California courts have
23 also applied these exceptions when government defendants engage in a series of unlawful actions.
24 *See, e.g., Webb v. Cnty. of El Dorado*, No. 15-cv-01189, 2016 WL 4001922, at *6-8 (E.D. Cal.
25 July 25, 2016).

26 Here, Plaintiffs’ Complaint plainly alleges that the Departmental Defendants are engaged
27 in a daily, concerted effort to target unhoused people for unconstitutional criminal enforcement
28 and property destruction—which has been ongoing for years. *See, e.g., Compl.* ¶¶ 41, 42, 50, 111,

1 137, 332-333 (alleging daily collusion across city agencies). The conspiracy “permeates the ranks
 2 of the organization’s employees”—as exhibited by detailed allegations regarding coordination
 3 between the Departmental Defendants and their employees. *Hartman*, 4 F.3d at 471; *see also*
 4 Compl. ¶¶ 225-241 (alleging in detail ongoing and repeated communications from high-level
 5 agency heads and line staff regarding constitutional violations and their coordination). As such,
 6 this is far from the “single action” that might be protected by the intracorporate conspiracy
 7 doctrine. *Dickerson*, 200 F.3d at 770.

8 Because Defendants effectively concede that separately suable entities can conspire with
 9 one another, and the Departmental Defendants are indeed separately suable public entities—the
 10 conspiracy cause of action cannot be dismissed. Regardless, the intracorporate conspiracy doctrine
 11 should not apply at all in civil rights cases. Even if it does apply, the allegations against the
 12 Departmental Defendants establish exceptions to the doctrine. Therefore, Defendants’ motion to
 13 dismiss Plaintiffs’ thirteenth cause of action for conspiracy should be denied.

14 **V. REQUEST FOR LEAVE TO AMEND THE COMPLAINT AS TO MAYOR**
 15 **BREED AND HSOC DIRECTOR DODGE**

16 To the extent the Court agrees that the City and individual official capacity defendants may
 17 be duplicative, Plaintiffs request leave to amend the Complaint to select which of these Defendants
 18 is appropriate to keep in the litigation. Plaintiffs are prepared to elect to voluntarily dismiss as
 19 duplicative either: 1) the City and County of San Francisco; or (2) San Francisco’s Mayor London
 20 Breed and Sam Dodge, Director of San Francisco’s Healthy Streets Operation Center, in their
 21 official capacities. *Wilson v. City of San Jose*, 111 F.3d 688, 692 (“plaintiff may dismiss some or
 22 all of the defendants, or some or all of his claims, through a Rule 41(a)(1) notice”); Fed. R. Civ.
 23 P. 41(a).

24 However, Plaintiffs’ Complaint alleges that both Mayor London Breed and HSOC Director
 25 Samuel Dodge were also *personally* involved in violating Plaintiffs’ civil rights—including
 26 specifically directing and coordinating with subordinate staff to conduct sweep operations, remove
 27 unhoused people, and destroy their property—either for personal convenience or in a manner that
 28 they understood to be unlawful. *See supra* Statement of Relevant Allegations; *see also* Compl. ¶¶

1 133 n.118, 53 n.22. Plaintiffs therefore seek leave to amend the Complaint to determine whether
2 to name Mayor London Breed and HSOC Director Dodge as defendants in their individual and/or
3 supervisory capacities, to name them as individual co-conspirators, and to add corresponding
4 claims against them.

5 Courts routinely grant leave to amend a complaint to change the capacity of a defendant—
6 and have found no cognizable prejudice in doing so even years after a complaint has been filed.
7 *See, e.g., Bowles v. Reade*, 198 F.3d 752, 758 (9th Cir. 1999) (noting that it was an abuse of
8 discretion to deny leave to amend regarding a mere change to correct the capacity in which a party
9 was being sued); *Hill v. Shelander*, 924 F.2d 1370, 1378 (7th Cir. 1991) (finding that a complaint
10 could be amended to replace official capacity claims with individual capacity claims even after the
11 statute of limitations period had run, because the defendant had already been sued in some capacity
12 and therefore experienced no prejudice); *Canales v. Sheahan*, No. 12-cv-00693, 2016 WL 489896,
13 at *2 (W.D.N.Y. Feb. 9, 2016) (“[C]ircumstances would warrant granting plaintiff leave to amend.
14 The proposed second amended complaint is substantially similar to the prior complaints; the only
15 notable changes are . . . the labeling of all defendants as having acted in an individual capacity”
16 despite years since the complaint was filed.); *Proctor v. Van Horn*, No. 12-cv-00328, 2014 WL
17 794217, at *1 (D. Nev. Feb. 26, 2014) (authorizing leave to amend “to change [the] suit against
18 Dr. Gedney from her official capacity only to her individual capacity”); *Satterfield v. Franklin Cty.*
19 *Sheriff*, No. 08-cv-00387, 2009 WL 3031180, at *2 (S.D. Ohio Sept. 17, 2009) (granting leave to
20 amend to bring a claim against the Sheriff in his individual rather than official capacity because
21 “[t]he addition of Sheriff Karnes in his individual capacity will not require the Defendant to expend
22 significantly more resources in his defense, nor will granting leave to amend the complaint
23 significantly delay the resolution of the dispute”).

24 Plaintiffs thus request leave to amend the Complaint to consider adding Mayor London
25 Breed and HSOC Director Sam Dodge as individual capacity defendants for their personal and
26 supervisory actions. Any decision on voluntary dismissal of duplicative official capacity
27 defendants can be resolved at the same time, to determine how and in what capacity these
28 defendants should remain in the litigation.

1 **VI. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that Defendants’ motion to
3 dismiss the Departmental Defendants and the Thirteenth Cause of Action for Conspiracy be
4 denied. Plaintiffs also request leave to amend the Complaint as to Mayor London Breed and
5 HSOC Director Sam Dodge, whom Plaintiffs may wish to sue in their individual and supervisory
6 capacities, with corresponding adjustments to the Complaint.

7
8 Dated: November 17, 2022

Respectfully submitted,

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