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17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA

19 COALITION ON HOMELESSNESS; TORO
 20 CASTAÑO; SARAH CRONK; JOSHUA
 21 DONOHOE; MOLIQUE FRANK; DAVID
 MARTINEZ; TERESA SANDOVAL;
 22 NATHANIEL VAUGHN,

23 Plaintiffs,

24 vs.

25 CITY AND COUNTY OF SAN
 FRANCISCO, et al.,

26 Defendants.
 27

Case No. 4:22-cv-05502-DMR (LJC)

**SAN FRANCISCO'S MOTION TO STAY A
 PORTION OF THE COURT'S ORDER
 PENDING APPEAL (ECF NO. 65)**

Hearing Date: March 9, 2023
 Time: 1:00 p.m.
 Place: Courtroom 4 – 3rd floor
 1301 Clay Street
 Oakland, CA 94612

Trial Date: April 15, 2024

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES ii

NOTICE OF MOTION AND MOTION TO STAY 1

MEMORANDUM OF POINTS AND AUTHORITIES 2

 I. Introduction..... 2

 II. Legal Standard 2

 III. Facts And Procedural History 3

 A. Preliminary Injunction Order And Administrative Motion For
 Clarification 3

 IV. Argument 5

 A. San Francisco Is Likely To Succeed On Appeal Because The Injunction
 Is Overbroad..... 5

 B. Enjoining San Francisco From Enforcing The Relevant Codes, Before
 Review On Appeal, Will Irreparably Injure the City And Is Not In The
 Public Interest. 6

 C. Granting the Stay Would Not Cause Plaintiffs Irreparable Harm 8

 V. Conclusion 8

TABLE OF AUTHORITIES

Cases

Apple, Inc. v. Samsung Elecs. Co.
 No. 11-CV-01846-LHK, 2012 WL 3536800 (N.D. Cal. Aug. 15, 2012).....3

Burford v. Sun Oil Co.
 319 U.S. 315 (1943).....7

City of Oakland v. Holder
 961 F. Supp. 2d 1005 (N.D. Cal. 2013)7

Fund for Empowerment v. City of Phoenix
 No. CV-22-02041-PHX-GMS, 2022 WL 18213522 (D. Ariz. Dec. 16, 2022).....5

Golden Gate Rest. Ass’n v. City and County of San Francisco
 512 F.3d 1112 (9th Cir. 2008)7

Haines v. Kerner
 492 F.2d 937 (7th Cir. 1974)5

Hilton v. Braunskill
 481 U.S. 770 (1987).....2, 3

Hisp. Taco Vendors of Washington v. City of Pasco
 994 F.2d 676 (9th Cir. 1993)6

Johnson v. City of Grants Pass
 50 F.4th 787 (9th Cir. 2022)5, 6

Martin v. City of Boise
 920 F.3d 584 (9th Cir. 2019)5

Miralle v. City of Oakland
 No. 18-CV-06823-HSG, 2018 WL 6199929 (N.D. Cal. Nov. 28, 2018).....7

Standard Havens Prod., Inc. v. Gencor Indus., Inc.
 897 F.2d 511 (Fed. Cir. 1990)3

Rules

Fed. R. Civ. Proc. 62(d)2

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NOTICE OF MOTION AND MOTION TO STAY

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE THAT, on March 9, 2023 at 1:00 p.m., or as soon thereafter as this matter may be heard in the United States District Court for the Northern District of California, 1301 Clay Street, 3rd Floor, Courtroom 4, before the Honorable Donna M. Ryu, Defendants City and County of San Francisco, San Francisco Police Department, San Francisco Department of Public Works, San Francisco Department of Homelessness and Supportive Housing, San Francisco Fire Department, and San Francisco Department of Emergency Management (collectively “San Francisco”) will and hereby do move this Court for an order staying a portion of its December 23, 2022 Order on Motion for Preliminary Injunction (“PI Order”) (ECF No. 65), pending San Francisco’s appeal to the United States Court of Appeals for the Ninth Circuit. Specifically, San Francisco seeks to stay the portion of the PI Order enjoining San Francisco from complying with its own policies regarding the enforcement or threatened enforcement of sit/lie/sleep laws when the total number of homeless individuals in San Francisco exceeds the total number of shelter beds.

The motion is based on the notice of motion and motion, the memorandum of points and authorities in support thereof, the declarations, papers and other evidence submitted, and any other matters the Court deems appropriate.

Dated: February 2, 2023

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By: /s/Kaitlyn Murphy
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MEMORANDUM OF POINTS AND AUTHORITIES**I. Introduction**

The Court issued a preliminary injunction regarding the enforcement of San Francisco’s sit/lie/sleep laws against individuals who are involuntarily homeless. The order did not define “involuntarily homeless,” and the parties dispute how to interpret that phrase. Plaintiffs’ interpretation—which would prevent Defendants City and County of San Francisco (“City”), San Francisco Police Department (“SFPD”), San Francisco Department of Public Works (“DPW”), San Francisco Department of Homelessness and Supportive Housing (“HSOC”), San Francisco Fire Department (“SFFD”), and San Francisco Department of Emergency Management (“DEM”, collectively “San Francisco” or “Defendants”) from enforcing sit/lie/sleep laws against any homeless person until San Francisco has sufficient shelter beds to offer constitutionally adequate shelter to every homeless person in its jurisdiction—is overbroad. To the extent Plaintiffs’ interpretation is correct, the Court should stay the portion of the injunction regarding enforcement of sit/lie/sleep laws pending San Francisco’s appeal of the Preliminary Injunction Order (ECF No. 65 (“PI Order”)) to the United States Court of Appeals for the Ninth Circuit. This holding is required because Plaintiffs’ interpretation exceeds what controlling authority and the Eighth Amendment require, making San Francisco likely to succeed on the merits of its appeal. It is also the reason Plaintiffs would suffer no harm from the stay. A stay of this portion of the PI Order is in the public interest, and will prevent further harm to San Francisco by empowering San Francisco to direct its own policies regarding public health and safety within constitutional boundaries.

II. Legal Standard

The district court is empowered to suspend or modify an injunction on appeal. Fed. R. Civ. Proc. 62(d). A court should stay an injunction when a combination of the following four factors weigh in favor of the moving party: (1) whether the moving party has made a strong showing of likelihood of success on the merits; (2) whether the moving party will be irreparably injured absent the stay; (3) whether or not the stay will substantially injure other parties in the proceeding; and (4) whether the public interest supports the stay. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). “Deciding whether to grant a stay of an order pending appeal is an equitable remedy. Each factor in the analysis need not be

1 given equal weight.” *Apple, Inc. v. Samsung Elecs. Co.*, No. 11-CV-01846-LHK, 2012 WL 3536800,
 2 at *1 (N.D. Cal. Aug. 15, 2012); *Hilton*, 481 U.S. at 777 (“Since the traditional stay factors
 3 contemplate individualized judgments in each case, the formula cannot be reduced to a set of rigid
 4 rules.”). Courts “adopt[] a flexible approach” in analyzing these factors “in the context of preliminary
 5 injunctions.” *Standard Havens Prod., Inc. v. Gencor Indus., Inc.*, 897 F.2d 511, 513 (Fed. Cir. 1990).
 6 Here, the Court should grant San Francisco’s motion because each factor favors the stay.

7 **III. Facts And Procedural History**

8 **A. Preliminary Injunction Order And Administrative Motion For Clarification**

9 Plaintiffs challenge aspects of San Francisco’s response to the national homelessness crisis and
 10 sought a preliminary injunction on September 27, 2020 (ECF No. 9), which the Court granted in part
 11 through the PI Order on December 23, 2022. (ECF No. 65.) Plaintiffs specifically sought to enjoin San
 12 Francisco’s practices surrounding the issuance of citations to individuals who refuse to leave during an
 13 encampment resolution and San Francisco’s policies for handling unhoused individuals’ property that
 14 remains after an encampment resolution.

15 San Francisco’s policies for implementing encampment resolutions are addressed in part
 16 through SFPD Bulletin 19-080 (“Enforcement Bulletin”), dated April 16, 2019, which states
 17 “[o]fficers must secure appropriate shelter before taking enforcement action” and “[i]f there is no
 18 shelter or navigation center bed available, officers may not issue a citation or seize the
 19 encampment/tent.” (ECF No. 9-8, Della-Piana Decl. Ex. 27.)¹ The City’s policy for handling an
 20 individual’s property during an encampment resolution, referred to as a “bag and tag policy,” is set
 21 forth in DPW’s Procedure No. 16-05-08 REV 3.” (ECF No. 62-1.)

22 The Court found the constitutionality of San Francisco’s enforcement policies regarding
 23 lodging and illegal encampments were “not at issue,” and Plaintiffs admit “that the substance of the
 24 Enforcement Bulletin is constitutional.” (PI Order at 38.) The Court nevertheless entered an injunction
 25 because it found evidence San Francisco’s practices diverged from its policy. (*Id.*) As a result, the
 26 Court issued the following injunction:

27 ¹ On January 25, 2023, to accommodate the uncertainty surrounding the scope of the PI Order,
 28 San Francisco’s Police Department issued Department Notice 23-007. (Murphy Decl. Ex. A
 [CCSF_COH_SFPD_000001-000003].)

1 Defendants are preliminarily enjoined from enforcing or threatening to enforce,
 2 or using California Penal Code section 148(a) to enforce or threaten to enforce,
 the following laws and ordinances to prohibit involuntarily homeless individuals
 from sitting, lying, or sleeping on public property:

- 3 • California Penal Code section 647(e)
- 4 • California Penal Code section 370
- 5 • California Penal Code section 372
- 6 • San Francisco Police Code section 168
- 7 • San Francisco Police Code section 169

8 This preliminary injunction shall remain effective as long as there are more
 9 homeless individuals in San Francisco than there are shelter beds available.

10 (PI Order at 50.) The PI Order also required San Francisco to comply with its existing bag and tag
 11 policy. (*Id.*)²

12 The PI Order does not define its phrase “involuntarily homeless.” San Francisco filed an
 13 administrative motion seeking to clarify “that a particular individual is not ‘involuntarily homeless’
 14 where San Francisco has offered that individual adequate temporary shelter,” which the Court denied
 on January 12, 2023, directing San Francisco to file a noticed motion if it required further clarification.
 (ECF Nos. 70 at 2:23-24; 84).

15 In their opposition to San Francisco’s motion for clarification, Plaintiffs confirmed their view
 16 that the PI Order prohibits all enforcement of the enumerated sit/lie/sleep laws against all persons until
 17 such time as the number of available shelter beds in the City exceeds the number of unhoused people
 18 experiencing homelessness anywhere in the City, regardless of whether San Francisco has offered a
 19 particular individual an adequate shelter bed. (ECF No. 81, at 1:2-4.) Plaintiffs maintain all
 20 unsheltered people experiencing homelessness (4,397 persons according to the 2022 Point-in-Time
 21 Count) are “involuntarily homeless,” and therefore they contend that San Francisco may not enforce
 22 sit/lie/sleep laws against any homeless person until the number of total available shelter beds within
 23 the City exceeds the total number of homeless individuals residing in the City. (*Id.*)

24 San Francisco filed a Notice of Appeal on January 23, 2023. (ECF No. 88.)

25
 26
 27 ² San Francisco does not seek to stay the portion of the Court’s order regarding bag and tag
 28 policies. San Francisco seeks to stay only the portion of the PI Order regarding the use and
 enforcement of sit/lie/sleep laws.

IV. Argument

A. San Francisco Is Likely To Succeed On Appeal Because The Injunction Is Overbroad.

The portion of the PI Order San Francisco seeks to stay exceeds the scope of Ninth Circuit precedent in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019) and *Johnson v. City of Grants Pass*, 50 F.4th 787 (9th Cir. 2022). San Francisco is therefore likely to succeed on its appeal.

The Eighth Amendment prohibits the imposition of certain criminal penalties for sitting, sleeping, or lying outside on public property against a person who has nowhere else to go. *Martin*, 920 F.3d at 617 (prohibiting enforcement against “homeless individuals who cannot obtain shelter.”). The Ninth Circuit has repeatedly held the category excludes those who either “have the means to pay” for shelter, or who have shelter offered “to them for free, but who chose not to use it.” *Id.* at 617 n.8; *see also Johnson*, 50 F.4th at 793 n.2. *Johnson* and *Martin* establish that a person is not “involuntarily homeless” if, as in San Francisco’s Enforcement Bulletin, that person is offered the opportunity for adequate temporary shelter for free before SFPD enforces or threatens to enforce any of the relevant code sections against that individual.

This is true regardless of whether the City has adequate shelter beds to offer every other homeless individual within its geographic boundaries, because Eighth Amendment rights are held personally. The Eighth Amendment provides a “constitutional guarantee[] of individual rights.” *Haines v. Kerner*, 492 F.2d 937, 942 (7th Cir. 1974). Compliance with the Eighth Amendment must hinge on whether the *individual* has access to adequate shelter. The Court transformed an individual’s Eighth Amendment right into a collective right by keeping its preliminary injunction in effect until the number of available shelter beds in San Francisco exceeds the total number of homeless individuals residing in the City, rather than focusing on whether a shelter bed was offered to a particular individual. A recent order from the federal District Court in Arizona confirmed this interpretation. *Fund for Empowerment v. City of Phoenix*, No. CV-22-02041-PHX-GMS, 2022 WL 18213522 (D. Ariz. Dec. 16, 2022). The district court recognized the need for individualized determinations to assess whether a person is “involuntarily” homeless under the Eighth Amendment and found under similar circumstances to those present in San Francisco, where “the unsheltered outnumber available beds,” the public entity must “inquir[e] as to whether individuals can practically obtain shelter” before

1 enforcing the criminal prohibitions. *Id.* at *7. The question of availability, therefore, focused on the
2 individual, rather than on the community.

3 Unlike the Court in *Fund for Empowerment*, Plaintiffs' interpretation of the PI Order would
4 prohibit San Francisco from enforcing state or local sit/lie/sleep laws against an individual even after
5 San Francisco has offered that individual the opportunity for adequate temporary housing, so long as
6 the total number of homeless individuals within the City exceeds the total number of shelter beds. In
7 doing so, the Court required more of San Francisco than the Eighth Amendment demands. This is
8 especially true where Plaintiffs acknowledge San Francisco's Enforcement Bulletin complies with the
9 Eight Amendment (PI Order at 38), yet the Court fashioned a new and broader standard instead of
10 ordering San Francisco to comply with its own bulletin.

11 The Ninth Circuit vacated in part and remanded the district court's injunction in *Johnson* under
12 similar circumstances, determining "the district court must narrow its injunction to enjoin only those
13 portions of the anti-camping ordinances that prohibit conduct protected by *Martin* and this opinion."
14 *Johnson*, 50 F.4th at 813. The overbroad injunction was not permitted to stand.

15 The Court's PI Order, under Plaintiffs' interpretation, makes one person's Eighth Amendment
16 right depend on the availability of shelter beds for all other unhoused persons in the City, regardless of
17 their interest or willingness to occupy those beds. This is not the law.

18 **B. Enjoining San Francisco From Enforcing The Relevant Codes, Before Review On**
19 **Appeal, Will Irreparably Injure the City And Is Not In The Public Interest.**

20 The government and public interest merge in cases where the government is the moving party.
21 Both weigh in favor of San Francisco's requested stay for two reasons. Encampment resolutions
22 promote public health and safety. Additionally, the questions on appeal concern legal issues not
23 squarely addressed by controlling precedent about which local governments have already made policy
24 determinations.

25 Encampment resolutions are part of San Francisco's multipronged, robust, and compassionate
26 policies to address the national homelessness crisis, which includes addressing issues of public health
27 and safety. Health and safety regulations are legitimate government interests. *Hispanic Vendors of*
28 *Washington v. City of Pasco*, 994 F.2d 676, 680 (9th Cir. 1993). Encampment resolutions are a key

1 element in San Francisco's \$672 million Homeless Response System. (ECF No. 45-2 (Cohen Decl.) ¶
2 4.) The resolutions are essential to keep public spaces clean and sanitary, and to allow safe access to
3 the public right of way on San Francisco's streets. San Francisco has made "difficult decisions it
4 judges to be in the best interests of all its residents by implementing a policy it believes appropriately
5 balances the important individual and community rights implicated by encampments on public land."
6 *See Miralle v. City of Oakland*, No. 18-CV-06823-HSG, 2018 WL 6199929, at *4 (N.D. Cal. Nov. 28,
7 2018) (holding public interest did not "weigh[] conclusively in favor of enjoining the City from
8 exercising its considered judgment as to how to best maintain public health and safety"). This Court
9 should not lightly upend San Francisco's balanced policy determinations while the appeal is pending.

10 San Francisco currently lacks sufficient shelter beds to house every homeless person in the
11 city. Thus, under the PI Order San Francisco cannot enforce its sit/lie/sleep laws against any homeless
12 individual until it spends hundreds of millions of dollars beyond its current funding allocations to
13 fund, build, and maintain thousands of additional shelter beds.

14 Granting a stay is also in the public interest because the legal questions presented by San
15 Francisco's appeal relate to the rights and responsibilities of state and local governments. *City of*
16 *Oakland v. Holder*, 961 F. Supp. 2d 1005, 1015 (N.D. Cal. 2013) (finding public interest weighed in
17 favor of municipality's requested stay where the core of the lawsuit was a "novel legal issue"
18 regarding a municipality's rights). This case implicates issues of federalism. "[R]esponsible public
19 officials in San Francisco have already considered" the appropriate process for managing the
20 homelessness crisis, which the injunction would modify. *Golden Gate Rest. Ass'n v. City and County*
21 *of San Francisco*, 512 F.3d 1112, at 1126 (9th Cir. 2008) (granting City's request for stay pending
22 appeal). The injunction allows a federal court to overrule local government officials regarding matters
23 otherwise vested in the local officials' authority. There is a specific harm to the public interest when
24 federal courts interfere with "the rightful independence of state governments in carrying out their
25 domestic policy." *Burford v. Sun Oil Co.*, 319 U.S. 315, 318 (1943) ("for it is in the public interest that
26 federal courts of equity should exercise their discretionary power with proper regard for the rightful
27 independence of state governments in carrying out their domestic policy."). State and local
28 governments are bound by the federal constitution, but where genuine questions exist regarding

1 whether and under what circumstances the encampment resolutions conflict with the Eighth
2 Amendment, principles of federalism weigh in favor of staying the injunction while the appeal is
3 pending.

4 **C. Granting the Stay Would Not Cause Plaintiffs Irreparable Harm**

5 Plaintiffs will suffer no irreparable harm from the limited stay San Francisco seeks because the
6 motion is confined to the portion of the injunction that requires the City to do more than the Ninth
7 Circuit and the Eighth Amendment require. The Court identified two irreparable harms to Plaintiffs as
8 grounds for ordering the injunction: the irreparable harm that accompanies a constitutional injury and
9 the negative physical and mental health impacts that accompany “encampment closures *without offers*
10 *of shelter.*” (PI Order at 45 (emphasis added).) San Francisco’s requested stay would resurrect neither.

11 There can be no constitutional injury from the requested stay because Plaintiffs agree the
12 Enforcement Bulletin complies with the Eight Amendment, (PI Order at 38), yet, unlike its order
13 regarding San Francisco’s bag and tag policy, the Court did not simply enjoin San Francisco from
14 violating the Enforcement Bulletin, but instead re-wrote the policy itself, creating an overbroad
15 injunction.

16 The requested stay also presents no risk Plaintiffs would be subject to the physical or mental
17 harms identified by the Court that attend encampment resolutions without offers of shelter because the
18 Enforcement Bulletin only permits threatened or actual enforcement of the sit/lie/sleep laws after
19 SFPD officers “secure appropriate shelter” and expressly prohibits officers from using enforcement
20 “[i]f there is no shelter or navigation center bed available.” (ECF No. 9-8, Della-Piana Decl. Ex. 27.)

21 **V. Conclusion**

22 San Francisco respects the PI Order and has already found solutions to come into compliance
23 with the injunction. However, the record and controlling case law show San Francisco has
24 demonstrated a limited stay of the provisions which enjoin it from enforcing the city’s encampment
25 resolution policies is appropriate pending appeal. For the foregoing reasons, the Court should grant
26 San Francisco’s motion.

Dated: February 2, 2023

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MANAGEMENT; MAYOR LONDON BREED; SAM
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 17 NORTHERN DISTRICT OF CALIFORNIA

18 COALITION ON HOMELESSNESS; TORO
 19 CASTAÑO; SARAH CRONK; JOSHUA
 20 DONOHOE; MOLIQUE FRANK; DAVID
 21 MARTINEZ; TERESA SANDOVAL;
 NATHANIEL VAUGHN,

22 Plaintiffs,

23 vs.

24 CITY AND COUNTY OF SAN
 FRANCISCO, et al.,

25 Defendants.

Case No. 4:22-cv-05502-DMR (LJC)

**DECLARATION OF KAITLYN MURPHY IN
 SUPPORT OF MOTION TO STAY A
 PORTION OF THE COURT’S ORDER
 PENDING APPEAL (ECF NO. 65)**

Hearing Date: March 9, 2023
 Time: 1:00 p.m.
 Place: Courtroom 4 – 3rd floor
 1301 Clay Street
 Oakland, CA 94612

Trial Date: April 15, 2024

1 I, Kaitlyn Murphy, hereby declare:

2 1. I am a member of the bar of the state of California and counsel of record for defendants
3 in this action (collectively, "San Francisco"). I submit this declaration to support San Francisco's
4 Motion to Stay A Portion of the Court's Order Pending Appeal. If called as a witness, I could and
5 would testify competently to the matters set forth herein.

6 2. On January 25, 2023, to accommodate the uncertainty surrounding the scope of the
7 Court's Preliminary Injunction Order, San Francisco's Police Department issued Department Notice
8 23-007, which was produced in this matter with the bates range CCSF_COH_SFPD_000001-000003.
9 Attached hereto as **Exhibit A** is a true and correct copy the notice.

10 I declare under penalty of perjury under the laws of the State of California that the foregoing is
11 true and correct. Executed February 2, 2023, in San Francisco, California.

12
13 By: /s/Kaitlyn Murphy
14 KAITLYN MURPHY

EXHIBIT A to
Declaration of Kaitlyn Murphy in Support
of Motion to Stay a Portion of the Court's
Order Pending Appeal (ECF No. 65)



DEPARTMENT NOTICE

23-007

Published: 01/25/23

Expires: 01/25/26

Enforcement of Laws and Ordinances for Homeless Individuals Sitting, Lying, or Sleeping on Public Property

(Supersedes DB 19-080 & DN 20-100)

On December 23, 2022, the United States District Court, Northern District of California, partially granted a preliminary injunction (“injunction”) regarding the enforcement of some laws pertaining to homeless encampments, (Case No. 22-cv-05502-DMR).

The injunction states that Department members may “NOT use, enforce, or threaten to enforce” the following laws and ordinances to prohibit *homeless* individuals from sitting, lying, or sleeping on public property:

Cal. Penal Code § 148(a) [authorizes law enforcement against “[e]very person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician... in the discharge or attempt to discharge any duty of his or her office or employment...”]

Cal. Penal Code § 647(e) [public lodging]

Cal. Penal Code § 370 [public nuisance]

Cal. Penal Code § 372 [public nuisance]

San Francisco Police Code § 168 [prohibition against sitting and lying down on public sidewalks except for lawful conduct consistent with permit requirements]

San Francisco Police Code § 169 [Proposition Q, prohibition of encampments without permits on public sidewalks]

The injunction’s use of the word “threat” should be interpreted as any statement of an intention regarding the possibility of enforcement and should not rise to the level of a criminal threat under California Penal Code section 422. Under the injunction, Members may still ask individuals who are experiencing homelessness to relocate voluntarily, so long as the City’s request is not accompanied with a threat of enforcement, or any language mentioning those statutes that could reasonably be interpreted as a threat to enforce any of the above listed laws. This also includes any conduct that could be reasonably seen as forcing a particular action without an explicit threat. The circumstances of any such request must make it clear there is no possibility of enforcement of the enumerated laws if the individual declines to move. If members ask individuals experiencing homelessness to move, that request must have a legal basis besides those listed above. Examples of what may still be enforced are listed below.

Page 1 of 3

Safety with Respect

CCSF_COH_SFPD_000001

The injunction does not restrict enforcement for conduct other than sitting, lying, or sleeping. For example, if an individual is obstructing access to a public facility or not allowing a 48" wide path of travel on a public sidewalk, the injunction still allows members to require the individual abate the obstruction. Members should avoid requiring the individual to relocate any further than is necessary to abate the obstruction.

If the sole basis for asking someone to move is for temporary cleaning, members should make it clear that once the cleaning is completed that individual may return.

What can Officers Enforce?

Members can also continue to enforce nuisance laws, as long as they are separate and distinct from sitting, lying, or sleeping on public property, such as when there is a need to clean accumulated trash and debris around an encampment that creates a health hazard. If it is necessary for an individual to remove their tent to accomplish the task, the injunction allows for members to require the individual move personal property, including their tent, to allow effective nuisance abatement. Members may temporarily move individuals but individuals are not required to leave the general area.

The injunction explicitly states it **does not** restrict the City's enforcement of any of the following laws:

Cal. Penal Code § 647c prohibiting "willfully and maliciously obstruct[ing] the free movement of any person on any street, sidewalk, or other public place or on or in any place open to the public";

S.F. Police Code §§ 22-24 prohibiting "willfully and substantially obstruct[ing] the free passage of any person or persons on any street, sidewalk, passageway or other public place";

S.F. Police Code §§ 25-27 prohibiting "willfully remain[ing] upon any private property or business premises after being notified by the owner, lessee, or other person in charge thereof to leave" or entering upon private property or business premises "without permission, expressed or implied, of the owner, lessee, or other person in charge of private property or business premises ... after having been notified by the owner, lessee, or other person in charge thereof to keep off or to keep away therefrom"); or

S.F. Municipal Health Code §§ 581, 596 prohibiting "public nuisance" on real property "owned, occupied, or controlled by him/her," including "Any accumulation of filth, garbage, decayed or spoiled food, unsanitary debris or waste material, or decaying animal or vegetable matter" and "Any buildings, structures, or portion thereof found to be unsanitary" and "Any matter or material which constitutes, or is contaminated by, animal or human excrement, urine, or other biological fluids").

ENFORCEMENT PROCEDURES

Officers may encourage individuals to abate the violation by voluntarily removing their encampment, without the need for an admonishment, citation, or arrest. Officers may encounter individuals who respond to the officer's request to abate the violation by merely dismantling the encampment and then reinstalling it as soon as the officer leaves, or by moving it across the street or around the corner. Officers shall exercise their judgment in determining whether an individual has fully abated the violation. For example, if the encampment was initially in violation of the criminal laws that prohibit obstructing sidewalks, and is moved across the street to a location where it continues to obstruct sidewalks, the violation has not been abated. Regardless of whether there is or is not an enforcement action being taken, if there is a health and safety concern due to garbage, rubbish, waste or any other items that give rise to a public health concern or any other violation, officers may ask the individual to pack up the tent and facilitate having DPW clean up the area in order to abate the violation.

If the officer provides an admonishment, the officer should:

1. Document the admonishment in the CAD or
2. Take a photograph of the encampment and
3. Prepare an incident report regarding the admonishment and attach the photograph.


OR if the officer issues a citation or makes a custodial arrest, the officer shall:

1. Take a photograph of the encampment.
2. If the person is arrested, request the DPW to "bag and tag" the encampment as evidence of a crime and issue the individual a property receipt in duplicate. (Refer to DN 20-167 Bag and Tag and DGO 6.15 Property Processing).
3. Prepare an incident report that articulates the factual circumstances surrounding the encampment, including documenting the securing of shelter and attach the photograph of the encampment.

Members shall document in an incident report any enforcement or threat of enforcement of the above listed penal codes, to demonstrate the enforcement was conducted for reasons separate from simply sitting, lying, or sleeping on public property.

Members should activate their body worn cameras during enforcement efforts and preserve them in accordance with the DGO 10.11, Body Worn Camera Policy.

For contact information and additional resources, members should refer to the Homeless Resources Guide (SFPD 507).


WILLIAM SCOTT
Chief of Police

Per DN 20-150, all sworn & non-sworn members shall electronically acknowledge this Department document in PowerDMS. Members whose duties are relevant to this document shall be held responsible for compliance. Any questions regarding this policy should be made to sfpd.writtendirectives@sfgov.org who will provide additional information.

Page 3 of 3

Safety with Respect

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17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA

19 COALITION ON HOMELESSNESS; TORO
 20 CASTAÑO; SARAH CRONK; JOSHUA
 21 DONOHOE; MOLIQUE FRANK; DAVID
 MARTINEZ; TERESA SANDOVAL;
 22 NATHANIEL VAUGHN,

23 Plaintiffs,

24 vs.

25 CITY AND COUNTY OF SAN
 FRANCISCO, et al.,

26 Defendants.
 27

Case No. 4:22-cv-05502-DMR (LJC)

**[PROPOSED] ORDER GRANTING
 DEFENDANTS' MOTION TO STAY A
 PORTION OF THE COURT'S ORDER
 PENDING APPEAL (ECF NO. 65)**

Hearing Date: March 9, 2023
 Time: 1:00 p.m.
 Place: Courtroom 4 – 3rd floor
 1301 Clay Street
 Oakland, CA 94612

Trial Date: April 15, 2024

1 Having reviewed Defendants City and County of San Francisco, San Francisco Police
2 Department, San Francisco Department of Public Works, San Francisco Department of Homelessness
3 and Supportive Housing, San Francisco Fire Department, and San Francisco Department of
4 Emergency Management (collectively “Defendants”) motion to stay a portion Court’s preliminary
5 injunction order pending appeal, and good cause appearing therefore, the Court grants the motion.

6 Defendants sought to stay the portion of the Court’s order that enjoins them from enforcing or
7 threatening to enforce, or using California Penal Code section 148(a) to threaten to enforce, the
8 following laws and ordinances to prohibit homeless individuals from sitting, lying, or sleeping on
9 public property after Defendants have offered that individual the opportunity to use an adequate
10 shelter bed, but where the total number of homeless individuals in San Francisco exceeds the total
11 number of shelter beds available:

- 12 • California Penal Code section 647(e)
- 13 • California Penal Code section 370
- 14 • California Penal Code section 372
- 15 • San Francisco Police Code section 168
- 16 • San Francisco Police Code section 169

17 The motion for stay is granted and shall remain in effect until the United States Court of
18 Appeals for the Ninth Circuit issues an order on the forthcoming appeal.

19
20 IT IS SO ORDERED.

21
22
23 Dated: _____

HONORABLE DONNA RYU
United States Magistrate Judge

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

**U.S. District Court
California Northern District**

Notice of Electronic Filing

The following transaction was entered on 2/2/2023 at 4:58 PM PST and filed on 2/2/2023

Case Name: Coalition on Homelessness et al v. City and County of San Francisco et al

Case Number: [4:22-cv-05502-DMR](#)

Filer:

Document Number: 98(No document attached)

Docket Text:

CLERK'S NOTICE: Defendants' Motion to Stay a portion of the court's Order pending Appeal [97] was noticed for hearing on a date that is not an available hearing date on Magistrate Judge Donna M. Ryu's calendar. The 3/9/2023 01:00 PM hearing date is VACATED. Defendants shall re-notice (not re-file) the motion for a hearing in compliance with Local Rule 7-2(a) and Judge Ryu's Standing Order. The briefing schedule remains in effect. (This is a text-only entry generated by the court. There is no document associated with this entry.) (ig, COURT STAFF) (Filed on 2/2/2023)

4:22-cv-05502-DMR Notice has been electronically mailed to:

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4:22-cv-05502-DMR Please see [Local Rule 5-5](#); Notice has NOT been electronically mailed to:

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Case No. 4:22-cv-05502-DMR (LJC)

**DEFENDANTS' RE-NOTICE OF MOTION TO
 STAY A PORTION OF THE COURT'S ORDER
 PENDING APPEAL (ECF NO. 65)**

Hearing Date: April 13, 2023
 Time: 1:00 p.m.
 Place: Courtroom 4 – 3rd floor
 1301 Clay Street
 Oakland, CA 94612

Trial Date: April 15, 2024

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE THAT, on April 13, 2023 at 1:00 p.m., or as soon thereafter as this matter may be heard in the United States District Court for the Northern District of California, 1301 Clay Street, 3rd Floor, Courtroom 4, before the Honorable Donna M. Ryu, Defendants City and County of San Francisco, San Francisco Police Department, San Francisco Department of Public Works, San Francisco Department of Homelessness and Supportive Housing, San Francisco Fire Department, and San Francisco Department of Emergency Management (collectively “San Francisco”) will and hereby do move this Court for an order staying a portion of its December 23, 2022 Order on Motion for Preliminary Injunction (“PI Order”) (ECF No. 65), pending San Francisco’s appeal to the United States Court of Appeals for the Ninth Circuit. Specifically, San Francisco seeks to stay the portion of the PI Order enjoining San Francisco from complying with its own policies regarding the enforcement or threatened enforcement of sit/lie/sleep laws when the total number of homeless individuals in San Francisco exceeds the total number of shelter beds.

This motion was filed on Thursday February 2, 2023 (ECF No. 97) and originally set for hearing on March 9, 2023, when the Court is unavailable. (ECF No. 98).

Dated: February 6, 2023

DAVID CHIU
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By: /s/Kaitlyn Murphy
KAITLYN MURPHY

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