

LAWYERS' COMMITTEE FOR CIVIL  
RIGHTS OF THE SAN FRANCISCO BAY AREA  
Zal K. Shroff, MJP 804620\*  
Elisa Della-Piana, SBN 226462  
131 Steuart Street, Ste. 400  
San Francisco, CA 94105  
Telephone: (415) 543-9444  
zshroff@lccrsf.org  
edellapiana@lccrsf.org

*\*application pro hac vice pending*

*Attorneys for Plaintiffs*

*Additional Counsel on Signature Page*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

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

Plaintiffs.

v.

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; SAN FRANCISCO  
DEPARTMENT OF EMERGENCY  
MANAGEMENT; LONDON BREED, in her  
official capacity as Mayor; and SAM DODGE,  
in his official capacity as Director of the Healthy  
Streets Operation Center (HSOC),

Defendants.

Case No. 3:22-cv-05502

**PLAINTIFFS' NOTICE OF MOTION  
AND MOTION FOR PRELIMINARY  
INJUNCTION; MEMORANDUM OF  
POINTS AND AUTHORITIES**

*[Declarations and Proposed Order Filed  
Concurrently]*

Date: TBD  
Time: TBD

1 ACLU FOUNDATION OF NORTHERN CALIFORNIA  
2 John Thomas H. Do, SBN 285075  
3 Brandon L. Greene, SBN 293783  
4 39 Drumm Street  
5 San Francisco, CA 94111  
6 Telephone: (415) 621-2493  
7 jdo@aclunc.org  
8 bgreene@aclunc.org

9 LATHAM & WATKINS LLP  
10 Alfred C. Pfeiffer, SBN 120965  
11 Wesley Tiu, SBN 336580  
12 505 Montgomery Street, Ste 2000  
13 San Francisco, CA 94111  
14 Telephone: (415) 391-0600  
15 al.pfeiffer@lw.com  
16 wesley.tiu@lw.com

17 LATHAM & WATKINS LLP  
18 Joseph H. Lee, SBN 248046  
19 650 Town Center Drive, 20th Floor  
20 Costa Mesa, CA 92626  
21 Telephone: (714) 540-1235  
22 joseph.lee@lw.com

23 LATHAM & WATKINS LLP  
24 Regina Wang, SBN 326262  
25 10250 Constellation Blvd., Suite 1100  
26 Los Angeles, CA 90067  
27 Telephone: (424) 653-5500  
28 regina.wang@lw.com

1 **NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION**

2 **PLEASE TAKE NOTICE THAT**, as soon as counsel may be heard at a hearing date and  
 3 time to be determined once this case is assigned, Plaintiffs Coalition on Homelessness  
 4 (“Coalition”), Toro Castaño, Sarah Cronk, Joshua Donohoe, Molique Frank, David Martinez,  
 5 Teresa Sandoval, and Nathaniel Vaughn (collectively, “Plaintiffs”) will and respectfully do move  
 6 the Court for a preliminary injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure  
 7 and Civil L.R. 7-2 of the Civil Local Rules of the U.S. District Court for the Northern District of  
 8 California

9 Plaintiffs respectfully request the Court grant their Motion for a Preliminary Injunction as  
 10 follows:

11 i. To prohibit Defendants from citing, arresting, stopping, searching, questioning, or  
 12 otherwise investigating or enforcing—or threatening to investigate or enforce—any ordinance  
 13 that punishes sleeping, lodging, or camping on public property. This includes a prohibition on the  
 14 issuance of “move along” orders or other police orders under threat of citation and arrest. The  
 15 prohibition shall last unless and until Defendants can confirm that San Francisco’s unhoused  
 16 residents have immediately available, appropriate, accessible, and voluntary shelter such that they  
 17 are not being punished for the involuntary status of homelessness. At a minimum, enforcement  
 18 of the following ordinances is to be enjoined:

- 19 a. Cal. Penal Code § 647(e) (no lodging without permission);
- 20 b. Cal. Penal Code § 148(a) (resisting, delaying, or obstructing an officer);
- 21 c. Cal. Penal Code §§ 370, 372 (public nuisance),
- 22 d. S.F. Police Code §§ 97(b), 168-169 (anti-camping, “sit/lie” ordinances,
- 23 prohibition on living in passenger vehicles)
- 24 e. S.F. Park Code §§ 3.12-3.13 (no lodging or sleeping); and
- 25 f. S.F. Port Code §§ 2.9-2.10 (no lodging or sleeping).

26 ii. To prohibit Defendants from summarily seizing and destroying the personal  
 27 property of homeless individuals, including momentarily unattended property, and to prohibit the  
 28 confiscation of unhoused individuals’ personal property except when bagged and tagged in

1 accordance with Defendants’ own written policies. This includes a prohibition on the summary  
 2 seizure and destruction of bulky items, which may not be confiscated except when properly  
 3 bagged and tagged consistent with Defendants’ written policies for personal items; and

4       iii.       To appoint a Special Master at Defendants’ expense to assist with the  
 5 implementation of this preliminary injunction, to monitor compliance with the terms of this  
 6 injunction, and to resolve disputes among the parties or other interested persons.

7       Plaintiffs’ Motion is brought pursuant to Fed R. Civ. Proc. 65(a), on the ground that  
 8 Plaintiffs have articulated “serious questions going to the merits” on their claims that Defendants’  
 9 criminalization of homelessness and property destruction practices are unconstitutional and that  
 10 “the balance of hardships tips sharply in Plaintiffs’ favor” because unhoused individuals continue  
 11 to have their survival belongings destroyed and are being targeted, policed, and punished for the  
 12 involuntary status of being homeless. *See Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281,  
 13 1291 (9th Cir. 2013).

14       Plaintiffs’ Motion is limited to specific causes of action from Plaintiffs’ Complaint for  
 15 Declaratory and Injunctive Relief. Specifically, Plaintiffs’ Motion corresponds to the First Cause  
 16 of Action (“Violation of Prohibition Against Cruel and Unusual Punishment Under the Eighth  
 17 Amendment”) and the Fifth Cause of Action (“Property Destruction: Unreasonable Search and  
 18 Seizure Under the Fourth Amendment”) in Plaintiffs’ Complaint.

19       Plaintiffs’ Motion is based upon this Notice of Motion and Motion for Preliminary  
 20 Injunction, the accompanying Memorandum of Points and Authorities, the Declarations in Support  
 21 of the Preliminary Injunction and all exhibits and attachments thereto, upon all the pleadings and  
 22 papers on file in this action, and upon all oral and documentary evidence that may be presented at  
 23 the time of the hearing on this Motion.

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## 1 I. INTRODUCTION

2 For decades, the City of San Francisco (the “City”) has failed to adequately invest in  
3 affordable housing and sufficient and adequate shelter, forcing thousands of its most vulnerable  
4 residents to set up tents and other makeshift structures on public sidewalks and in parks just to  
5 survive. Rather than addressing these underlying structural problems and devoting sufficient  
6 resources to create long-term solutions to homelessness, the City has instead embarked on a  
7 campaign to criminalize homelessness and destroy the property of unhoused people in clear  
8 violation of their Eighth and Fourth Amendment rights.

9 San Francisco’s official response to homelessness takes the form of an interagency task  
10 force known as the Healthy Streets Operation Center (“HSOC”). That name is misleading. HSOC  
11 is designed not to help homeless individuals, but to keep concealed the extent of the City’s  
12 homelessness crisis. The City pours money into HSOC’s illegal law enforcement operations so  
13 that the City can clear all visible signs of homelessness from the City streets.

14 To achieve this goal, the City routinely threatens, cites, and arrests unhoused San  
15 Franciscans in an attempt to drive them out of sight—punishing them for the involuntary status of  
16 homelessness when the City knows it has categorically failed to provide shelter for thousands of  
17 its unhoused residents and those unhoused residents have no voluntary access to shelter within the  
18 City. The City also has a pattern of destroying unhoused individuals’ tents and other survival  
19 belongings to eliminate evidence of street homelessness. These actions are unconstitutional. The  
20 City should know: the City is routinely violating its own policies.

21 This misguided, brutal, and unlawful approach only entrenches the City’s homelessness  
22 crisis and reinforces decades of failed tough-on-crime policies that harm the entire San Francisco  
23 community by creating more poverty. In short, the City has created an ongoing emergency.

24 The Coalition on Homelessness has dedicated the last three years to documenting HSOC’s  
25 unconstitutional practices, and now seeks to enjoin the City’s pattern and practice of violating the  
26 constitutional rights of unhoused people. The Coalition is joined by several unhoused individuals  
27 who have directly experienced the City’s unconstitutional arrest and property destruction practices,  
28 and who risk exposure to those same practices in the future.

## II. STATEMENT OF ISSUES TO BE DECIDED

1. Whether Plaintiffs have presented “serious questions going to the merits” on their claim that Defendants’ violate the Eighth Amendment by imposing civil and criminal penalties for the involuntary act of sleeping outside because San Francisco has failed to provide shelter for thousands of its unhoused residents and unhoused people have no voluntary access to shelter within the City (First Cause of Action in Plaintiffs’ Complaint);

2. Whether Plaintiffs have presented “serious questions going to the merits” on their claim that Defendants violate the Fourth Amendment by summarily seizing and destroying homeless individuals’ property without proper notice or adequate means of retrieval (Fifth Cause of Action in Plaintiffs’ Complaint); and

3. Whether Plaintiffs have demonstrated a likelihood of irreparable harm; that the balance of equities tips sharply in Plaintiffs’ favor; and that the public interest favors a preliminary injunction.

## III. STATEMENT OF FACTS

San Francisco has a long history of mistreating unhoused people, and this problem has only gotten worse with the establishment of HSOC—a coordinated effort among different City agencies to respond to homeless encampments. The Coalition and its members have observed (and experienced) the systematic criminalization of involuntary homelessness and wholesale destruction of unhoused individuals’ survival belongings on a regular basis—both within large-scale HSOC sweep operations and in other daily enforcement actions carried out by the San Francisco Police Department (“SFPD”) and the Department of Public Works (“DPW”). These harmful practices are confirmed by the City’s own extensive public records documenting its sweep operations, by an expert review of the City’s records, by the direct observations of the Coalition and many of its staff and volunteers over the last two years, by the declarations of almost two dozen unhoused people who have had their belongings recently destroyed under threat of citation or arrest, and by a former City employee who participated in the City’s sweep operations and has attested to the City’s misconduct. In short, the evidence is overwhelming.

1           A.     **The City Does Not Have Enough Shelter Beds to House Thousands of Its**  
 2                   **Unhoused Residents, Forcing Unhoused People to Sleep on the Streets.**

3           San Francisco has a long history of inadequately caring for the unhoused, including a  
 4 chronic and dramatic shortfall of affordable housing and adequate shelter. According to San  
 5 Francisco’s 2019 Homeless Count and Survey, there were approximately 8,035 homeless  
 6 individuals residing in the City. Della-Piana Decl. Ex. 5 at 10.<sup>1</sup> But San Francisco had only  
 7 approximately 3,493 shelter beds available in 2019. *Id.* Ex. 6 at 4. Because not all of these beds  
 8 are immediately available for people experiencing homelessness, approximately 5,180  
 9 individuals—or 64 percent of the City’s homeless population—were forced to live unsheltered. *Id.*  
 10 Ex. 5 at 10. That trend continues today.

11           According to San Francisco’s 2022 Homeless Count and Survey, there were *at least* 7,754  
 12 homeless individuals residing in the City this year. *Id.* Ex. 7 at 19. Meanwhile, in 2021—the last  
 13 time the City reported on its total shelter bed availability—it reported having only 5,080 shelter  
 14 beds. *Id.* Ex. 6 at 3. The City is thus, by its own count, at least 2,600 shelter beds short. *Id.* But this  
 15 is likely a massive underestimate of the shortfall. Declaration of Chris Herring (“Herring Decl.”)  
 16 ¶¶ 24-28. For example, the 2022 Homeless Count and Survey indicated that only 3,357 individuals  
 17 were actually sheltered at the time of the survey. Della-Piana Decl. Ex. 7 at 19. This is because  
 18 San Francisco’s current shelter bed inventory includes 2,263 *temporary* shelter beds in Shelter-in-  
 19 Place (SIP) hotels that were in use during the pandemic but that the City is keeping vacant in  
 20 anticipation of an end to federal funding. *Id.*, *see also* Herring Decl. ¶ 26. Removing these unusable  
 21 beds, the City only has about 2,817 available shelter beds, and the City’s shelter bed shortage is  
 22 likely 4,000 beds or higher. In other words, the City’s shelters have no available capacity. *Id.* ¶ 27.

23           Earlier this year, even as the City congratulated itself on its decreasing unsheltered  
 24 population, the City still counted 4,397 unsheltered people—which is more than half of the City’s  
 25

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26           <sup>1</sup> For the Court’s convenience, all of the numerous exhibits and declarations filed in support of this  
 27 motion have been filed as exhibits to the Declaration of Elisa Della-Piana (“Della-Piana Decl.”).  
 28 For fact witness declarations (Exhibits 1 through 4), citations throughout identify in brackets the  
 Bates Stamped page on which the Court may find the relevant portion of each declaration. The  
 remaining exhibits are identified by exhibit number.

total homeless population. Della-Piana Decl. Ex. 7 at 19. And that is by the City’s own estimation; non-City estimates of the unsheltered homeless population are much higher. *See, e.g.* Della-Piana Decl. Ex. 21 (“the latest best estimates of homelessness range from almost 8,000 to more than 19,000). San Francisco’s categorical failure to provide sufficient shelter has forced the *majority* of the City’s unhoused residents to sleep on public sidewalks and in parks to survive.

The City’s extreme shortage of shelter beds means that unhoused people do not have sufficient access to shelter even when they actively seek it out. Prior to the start of the COVID-19 pandemic, City shelters could nominally be accessed through the 311 waitlist and same-day lines at shelters, albeit with wait lists of over 1000 people. Della-Piana Decl. Ex. 8; Herring Decl. ¶¶ 29-30. But shelter supply never met shelter demand. *Id.*<sup>2</sup>

Now, things are even worse. The City closed its 311 shelter waitlist during COVID-19 and never re-opened it. Della-Piana Decl., Ex. 9; Herring Decl. ¶ 31. The City has also closed same-day shelter so there is no ability to secure even a one-night shelter through a same-day line. *Id.* Therefore, the City currently provides no direct and obvious means of accessing shelter. *Id.* ¶ 39. The only way unhoused people can even ask about shelter currently is to leave a voicemail on a public telephone line. Della-Piana Decl., Ex. 10. The City’s Homeless Outreach Team (“HOT”) purports to respond to each voicemail within 72 hours— but there is no guarantee that unhoused people will hear back and no specific timeline on which they may be guaranteed a shelter bed. *Id.* (“Please note that shelter space is limited [...] we might not be able to immediately place you in a shelter”); Herring Decl. ¶ 32.

**B. The City’s Healthy Streets Operation Center Conducts Regular Sweeps to Conceal, Not Address, Homelessness.**

In 2018, the City established HSOC to “coordinate the City’s response both to homeless encampments and to behaviors that impact quality of life.” Della-Piana Decl. Ex. 11 at 3. That

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<sup>2</sup> Between approximately January 2015 and March 2020, the 311 wait-list for a 90-day bed was nearly always over 1,000 people and had wait times of up to three to eight weeks to secure a bed. Della-Piana Decl. Ex. 8; Herring Decl. ¶¶ 29-30. Meanwhile, securing even a one-night shelter required standing in line for two to eight hours before receiving a bed—with often as many as a hundred people waiting in line being turned away each night. *Id.* Under these circumstances, shelter has never been functionally available to those individuals. *Id.*

highly coded language obfuscates HSOC’s true purpose—to remove signs of homelessness from the City at all costs. Today, HSOC is led by its Director, Sam Dodge, and is a massive bureaucratic operation comprised of, and coordinates with, numerous City agencies. Della-Piana Decl. Ex. 12 at 4.

As part of its mandate, HSOC conducts major operations designed to remove visible unhoused communities, which it refers to as “encampment resolutions.” These operations are also informally referred to as “sweeps,” revealing their true nature to sweep away evidence of the homelessness crisis. Della-Piana Decl. Ex. 25. Based on public complaints and reports of congregations of homeless individuals, HSOC decides which encampments to prioritize. Herring Decl. ¶¶ 33, 46. The *purported* goal of an “encampment resolution” is to engage with and offer services (i.e. shelter beds) to homeless individuals living in encampments. Della-Piana Decl. Ex. 11 at 21. But HSOC’s on-the-ground actions demonstrate a different goal: not to provide shelter to homeless individuals, but rather to clear the encampment, force homeless individuals to vacate the area, and destroy all visible signs of homelessness—all under the threat of criminal enforcement. *See generally* Della-Piana Decl. Ex. 15; Wadkins Decl. ¶¶ 7-24 [1-42]; Cutler Decl. ¶¶ 7-26 [1-14]; Ackerman Decl. ¶¶ 7-11 [1-10]; Evans Decl. ¶¶ 7-26 [1-22]; and Bennett Decl. ¶¶ 6-31 [3-2]. Any assistance to homeless individuals is often provided as an afterthought, if it is offered at all. *See, e.g.*, Della-Piana Decl., Ex. 20 (“[N]o members of the city’s homeless outreach teams showed up to offer shelter or other resources when city officials began dismantling the encampment early Friday.”). These brutal removal operations, conducted with obvious knowledge that San Francisco never has enough shelter beds to offer all its unhoused residents, reveals HSOC’s true mission, to “sweep” the streets clean of any signs of homelessness, rather than to address the underlying issues. HSOC sweeps displace unhoused people, destroy their only sure sources of shelter, safety, and resources for survival, and leave them with nothing in return, only worsening the City’s homeless crisis. Wadkins Decl. ¶¶ 13-24 [1-43]; Friedenbach Decl. ¶¶ 12-16 [1-3]. SFPD and DPW employees harass unhoused people and destroy their property almost every day. Cutler Decl. ¶ 24 [1-17]; Jones Decl. ¶ 12 [4-51]; Hurd Decl. ¶¶ 3-5 [4-45]; Frank Decl. ¶ 3 [2-15]. This all begs a question raised by UCSF researchers in a recent article on the health impacts

of HSOC's sweeps: "Is our motive for addressing homelessness to promote the image of clean streets free of unhoused people, even if it means forcibly displacing people? Or do we care for the underlying needs of those on the streets?" Della-Piana Decl. Ex. 19.

**C. Anatomy and Timeline of an HSOC Sweep Operation: Law Enforcement Threats, Intimidation, and Property Destruction With No Viable Shelter.**

An HSOC sweep is a multi-hour operation that involves various City agencies. *See, e.g.* Bennett Decl. ¶¶ 6-14 [3-2]; Wadkins Decl. ¶¶ 13, 16 [1-43]; Cutler Decl. ¶¶ 8-10 [1-14]. The City averages two of these large-scale sweep operations weekly. Herring Decl. ¶ 45. Each sweep begins early in the morning, with SFPD and DPW arriving around 6:50 or 7 a.m. Bennett Decl. ¶¶ 6-8 [3-2]; Evans Decl. ¶ 12 [1-23]; Wadkins Decl. ¶ 18 [1-44]. Most unhoused people at the site learn about the sweep for the first time when DPW or SFPD starts shaking them out of their tents at 7 a.m. Bennett Decl. ¶¶ 6-8 [3-2]; Evans Decl. ¶ 13 [1-23]; Wadkins Decl. ¶¶ 19-22 [1-44]. DPW and SFPD tell all unhoused residents they need to clear out of the area immediately. Hurd Decl. ¶ 5 [4-45]; Wadkins Decl. ¶¶ 19-22 [1-44]. Unhoused individuals begin to frantically pack their belongings. Bennett Decl. ¶¶ 6-8 [3-2]; Jones Decl. ¶ 5 [4-49]; Wadkins Decl. ¶¶ 22 [1-45].

Members of the City's HOT team show up onsite between 7 and 7:30 a.m. Bennett Decl. ¶¶ 6-8 [3-2]; Wadkins Decl. ¶ 18 [1-44]; Cutler Decl. ¶¶ 11-12 [1-15]. HOT's job is to approach unhoused individuals and ask if they would be interested in receiving services—i.e. shelter. Bennett Decl. ¶¶ 6-8 [3-2]; Wadkins Decl. ¶ 18 [1-44]; Cutler Decl. ¶¶ 11-12 [1-15]. This is largely performative. HOT has no idea if it can offer shelter to any of the individuals onsite at this time—or if any shelter will become available that day at all. *See* Bennett Decl. ¶¶ 6-8, 15-18 [3-2]; Wadkins Decl. ¶ 18 [1-44]; Cutler Decl. ¶¶ 11-12 [1-15]. Nonetheless, the City uses the guise of potential shelter offers as a justification to continue the sweep operation—despite the fact that there is not sufficient shelter to offer. Herring Decl. ¶¶ 24-29, 33, 42.

By 8:00 a.m., DPW has already started to take people's belongings, while SFPD stands watch. Bennett Decl. ¶ 9 [3-2]; Wadkins Decl. ¶¶ 19-22 [1-44]; Cutler Decl. ¶¶ 13-17 [1-15]. DPW does not wait. Cleaning crews race to take any belongings that unhoused people have not already managed to pack up and move. Bennett Decl. ¶¶ 9-14 [3-2]; Wadkins Decl. ¶¶ 19-22 [1-44];

1 Ackerman Decl. ¶ 8 [1-10]; Cutler Decl. ¶¶ 13-17 [1-15]. DPW workers may also begin power-  
 2 washing the street—soaking unhoused people and their belongings and creating a noisy, chaotic  
 3 environment. Cutler Decl. ¶ 13 [1-15]. Although there are times when DPW purports to  
 4 differentiate between trash and people’s belongings, DPW more often indiscriminately throws  
 5 unhoused individuals’ essential items, survival gear, and precious personal property directly into  
 6 crusher trucks. Bennett Decl. ¶¶ 9-11 [3-2]; Wadkins Decl. ¶¶ 19-22, 26-27 [1-44]; Ackerman  
 7 Decl. ¶ 10 [1-10]; Cutler Decl. ¶¶ 13-17 [1-15]; Jones Decl. ¶ 10 [4-51]; Hill Decl. ¶¶ 6-7 [4-31];  
 8 Solis Decl. ¶¶ 6-7 [4-69]. DPW does not “bag and tag” any of this valuable and essential property  
 9 for safekeeping, and it is often immediately destroyed rather than stored. Bennett Decl. ¶¶ 9-11 [3-  
 10 2]; Wadkins Decl. ¶¶ 19-22, 26-27 [1-44]; Ackerman Decl. ¶ 8 [1-10]; Cutler Decl. ¶¶ 13-17 [1-  
 11 15]; Castaño Decl. ¶¶ 11-12 [2-3]; Orona Decl. ¶¶ 16-18 [4-59]; Delamora Decl. ¶¶ 3-4, 6-7 [4-  
 12 12]; Howard Decl. ¶¶ 9-13 [4-41]; Hurd Decl. ¶ 8 [4-46]; Dubose Decl. ¶ 7 [4-18]; Frank Decl. ¶  
 13 6 [2-15]; Hill Decl. ¶ 11 [4-31]; Solis Decl. ¶ 12 [4-70]. If unhoused people are not present at the  
 14 time of the sweep to vouch for their property—even when it is obviously the property of an  
 15 unhoused individual and arranged in a way that would obviously suggest the owner was relying  
 16 on it and wanted it—DPW will immediately throw away all of their belongings. Jones Decl. ¶ 10  
 17 [4-49], Hurd Decl. ¶ 9 [4-46], Dubose Decl. ¶ 8 [4-18]. Many unhoused individuals will leave their  
 18 tents momentarily unattended to use the restroom, or to seek employment or housing opportunities  
 19 in the community—only to find that DPW destroyed their belongings in their absence. Delamora  
 20 Decl. ¶¶ 3-4 [4-12], Sparks Decl. ¶ 6 [4-66], Jones Decl. ¶ 15 [4-51], Hurd Decl. ¶¶ 9-10 [4-46],  
 21 Dubose Decl. ¶ 8 [4-18], Frank Decl. ¶ 4 [2-15]. This happens even when unhoused individuals  
 22 have friends present to watch their property, as DPW will not let the friends safeguard the property.  
 23 Bryant Decl. ¶ 21 [4-4]; Howard Decl. ¶ 12 [4-42]; Martinez Decl. ¶ 5 [2-19].

24 DPW finishes its clearing of the area—including removing and destroying tents and other  
 25 property—around 9:30 or 10:00 a.m. Bennett Decl. ¶ 14 [3-3]; Wadkins Decl. ¶ 19 [1-44]; Cutler  
 26 Decl. ¶ 16 [1-16]. During this time, if an unhoused person is not packing up and leaving quickly  
 27 enough, SFPD often intervenes and threatens them with arrest or citation for refusing to “move  
 28 along.” Bennett Decl. ¶¶ 12-14 [3-3]; Wadkins Decl. ¶¶ 20-21 [1-44]. SFPD also often intervenes



1 whenever an unhoused person protests the destruction of their property—ordering them to leave  
 2 the area or risk citation or arrest. Orona Decl. ¶ 10 [4-57]; Castaño Decl. ¶ 5 [2-2]; Delamora Decl.  
 3 ¶ 7 [4-13]. SFPD officers threaten these consequences even though the individuals have been given  
 4 no access to shelter. Bennett Decl. ¶¶ 12, 15 [3-3]; Wadkins Decl. ¶¶ 20-21 [1-44].

5 When HOT members finally return, usually not until 9:30 or 10:00 a.m. at the earliest, they  
 6 often have at best a few shelter beds to offer some of the homeless people still onsite. Evans Decl.  
 7 ¶¶ 17-18 [1-24]; Bennett Decl. ¶¶ 15-18 [3-3]; Wadkins Decl. ¶¶ 23-24 [1-45]; Cutler Decl. ¶ 17  
 8 [1-16]. By this point, many unhoused individuals have already left the area after being told to  
 9 “move along” by DPW and SFPD or after being cited or arrested. Bennett Decl. ¶¶ 15-18 [3-3];  
 10 Wadkins Decl. ¶ 23 [1-45]. Even after the forced dispersal of most unhoused people onsite, HOT  
 11 often does not have enough shelter beds or shelter beds that are appropriate for the few individuals  
 12 remaining onsite. Bennett Decl. ¶¶ 15-18 [3-3]; Wadkins Decl. ¶ 23 [1-45]; Cutler Decl. ¶ 17 [1-  
 13 16]; James Decl. ¶ 14 [1-37]; Orona Decl. ¶¶ 19-21 [4-59]; Castaño Decl. ¶ 5 [2-2]; Delamora  
 14 Decl. ¶ 8 [4-14]; Brown Decl. ¶ 5 [4-7]; Howard Decl. ¶ 5 [4-40]; Murdock Decl. ¶ 5 [4-54]. When  
 15 HOT has nothing to offer, its members simply leave without engaging with the unhoused people  
 16 onsite to inform them that no shelter will be available to them. Bennett Decl. ¶ 17 [3-4]; Brown  
 17 Decl. ¶ 5 [4-7]. By the time the entire HSOC operation wraps up around 11:30 a.m., almost  
 18 everyone at the site has been displaced. They are stranded without shelter, and without many of  
 19 their survival belongings—most of which have been destroyed. Evans Decl. ¶ 20 [1-24]; Cutler  
 20 Decl. ¶¶ 8-17 [1-14]; Bennett Decl. ¶¶ 7-18 [3-2]; Wadkins Decl. ¶ 24 [1-45]; Brown Decl. ¶ 5 [4-  
 21 7]; Ackerman Decl. ¶¶ 8-9 [1-10].

22 **D. Outside of Formal HSOC Sweeps, DPW and SFPD Also Summarily Destroy**  
 23 **the Property of and Impose and Threaten Penalties on Homeless Individuals.**

24 Even when they are not working on specific HSOC initiatives, DPW and SFPD personnel  
 25 have a daily practice of summarily destroying the property of homeless people without proper bag  
 26 and tag, and of imposing or threatening civil and criminal penalties on homeless people simply for  
 27 being homeless. *See, e.g.*, Evans Decl. ¶ 25 [1-25]; Wadkins Decl. ¶ 30 [1-46]; Cutler Decl. ¶ 24  
 28 [1-17]; Hurd Decl. ¶¶ 8, 11 [4-46]; Hill Decl. ¶ 8 [4-31]; Solis Decl. ¶ 9 [4-69]. Specifically, police



officers are dispatched daily and constantly in response to calls about homelessness. Herring Decl. ¶¶ 61-65, 68-69. When SFPD arrives onsite, officers often order unhoused people to “move along” under threat of citation or arrest even though there is not even the guise of an offer of services because no HOT worker is present. Bryant Decl. ¶¶ 8, 23 [4-2]; Harrison Decl. ¶ 2 [4-22]; Hill Decl. ¶ 8 [4-31]; Solis Decl. ¶ 9 [4-69]; Solomon Decl. ¶ 3 [4-78]. SFPD has an explicit practice of authorizing its officers to cite and arrest unhoused people for failing to “move along” without any attempt to offer shelter—as long as the officers are policing in an area where an HSOC sweep has already taken place. Cutler Decl. ¶ 25 [1-17]; *see* Della-Piana Decl. Ex. 17 at 79; Bryant Decl. ¶ 23 [4-4]; Freehoffer Decl. ¶ 4 [4-20]; Harrison Decl. ¶ 3 [4-22]; Partee Decl. ¶ 7 [4-63]. SFPD calls this practice “re-encampment prevention” and uses it to threaten individuals with citation or arrest whether or not there is present shelter available to them, and regardless of whether they even received an offer of services at a prior sweep operation. Cutler Decl. ¶ 25 [1-17]; Della-Piana Decl. Ex. 17 at 79; Bryant Decl. ¶ 23 [4-4]. These SFPD enforcement operations happen across San Francisco with no safe harbor at any location within the City. *See, e.g.* Evans Decl. ¶ 26 [1-26]; Cutler Decl. ¶ 26 [1-18]; Hurd Decl. ¶¶ 8-11 [4-45]; Frank Decl. ¶ 6 [2-15]; Hill Decl. ¶ 11 [4-31]; Solis Decl. ¶ 12 [4-70]. SFPD often threatens unhoused people with arrest in the middle of the night. *See* Brown Decl. ¶ 3 [4-6]; Orona Decl. ¶ 9 [4-57].

Similarly, DPW dispatches to perform street cleaning in different neighborhoods across San Francisco on a daily basis and conducts informal sweep operations to displace unhoused people as a part of that process. Friedenbach Decl. ¶ 11 [1-3]. At informal sweeps, DPW consistently seizes and disposes of homeless individuals’ valuable personal property and survival gear without bagging, tagging, and storing that property. Friedenbach Decl. ¶¶ 21-22 [1-6]; Bryant Decl. ¶ 6 [4-2]; Harrison Decl. ¶ 6 [4-23]; Cronk Decl. ¶¶ 3-6 [2-8]; Donohoe Decl. ¶¶ 3-6 [2-12].

**E. The City’s Own Records Demonstrate a Pattern of Citing, Arresting, and Issuing “Move-Along” Orders to Homeless Individuals Despite Failing to Provide Access to Shelter.**

Public records make clear that the City is engaging in widespread enforcement of “quality of life” offenses that criminalize homelessness despite a complete lack of available shelter across

the City—meaning that involuntarily homeless people are being criminally enforced against. *See supra* Subsection III(A); Herring Decl. ¶ 58-79. The City’s own signs threaten that “[l]odging on public property without permission is unlawful” under Cal. Penal Code § 647(e). *See, e.g.*, Della-Piana Decl. Ex. 18 (a “no illegal lodging” sign from Woodward Street). A Policy Analysis Report from the Budget and Legislative Analyst’s Office to the Board of Supervisors notes police officers as a highly visible and active presence during encampment clearings. Della-Piana Decl. Ex. 14 at 16. SFPD citation and arrest data from encampment resolutions indicates that over the three-year period from July 2018 to October 2021, SFPD cited or arrested unhoused people for illegal lodging under Cal. Penal Code § 647(e) at least 360 times. Herring Decl. ¶ 70; Della-Piana Decl. Exs. 35, 36. During the same three-year period, SFPD cited or arrested unhoused people under Cal. Penal Code § 148(a) for refusal to obey a law enforcement order to vacate or “move along” at least 2,652 times. Herring Decl. ¶ 70; *see also* Della-Piana Decl. Ex. 27 (“officers may cite an individual for violating Penal Code § 148(a), where [...] the individual refuses to vacate an encampment”). This is likely a massive undercount of actual arrests made and citations issued at encampments due to gaps in reporting. Herring Decl. ¶¶ 71-73. It also does not appear to include arrests and citations for various other related San Francisco anti-homelessness ordinances. *Id.* ¶ 71.

SFPD also repeatedly issues “move along” orders under threat of citation and arrest in response to dispatch calls related to homeless encampments. Wadkins Decl. ¶ 20 [1-44] (“I have also seen SFPD threaten to give people a citation if they did not move.”), *see, e.g.* Harrison Decl. ¶¶ 2, 7 [4-22]; Delamora Decl. ¶ 8 [4-13]. These “move along” orders short of citation and arrest are seldom recorded. However, from July to September 2021 alone, SFPD was dispatched to respond to a “homeless complaint” between at least 744 and 965 times each month. Herring Decl. ¶¶ 60-61; Della-Piana Decl. Exs. 35, 36. Given that the City’s own analysis shows that as many as 89% of SFPD dispatches for “homeless-related” issues resulted in law enforcement issuing a move-along order under threat of citation or arrest, while another 10% resulted in a formal citation, the SFPD has likely subjected *thousands* of unhoused individuals to “move along” orders under threat of citation and arrest. *Id.* ¶¶ 67, 69-70.

Despite a lack of available shelter across the City and the fact that unhoused individuals

1 have no meaningful ability to seek shelter even when beds are available (*see supra* Subsection  
 2 III(A)), the City nonetheless justifies its sweep operations by purporting to hold specific shelter  
 3 beds open for law enforcement to offer when they threaten unhoused individuals with citation and  
 4 arrest for sleeping in public. Herring Decl. ¶ 33, 42. The City’s shelter shortage is so extreme,  
 5 however, that the City lacks sufficient shelter even for the specific homeless individuals it targets  
 6 for enforcement. In fact, when SFPD conducts enforcement during HSOC encampment operations,  
 7 the City knows that it can only manage to cobble together shelter for about 40% of the unhoused  
 8 people it displaces *at that very site*. Della-Piana Decl., Ex. 22 (“Sam Dodge, the newly appointed  
 9 director of the Healthy Streets Operation Center, told the San Francisco Public Press in October  
 10 2021 that the formula changes each week, and at the moment teams head out with enough shelter  
 11 beds available for around 40% of any encampment”). Often, the City has even less shelter to offer  
 12 than that. Bennett Decl. ¶¶ 15-18 [3-3]; Herring Decl. ¶¶ 24, 28-45-50.

13 This does not stop the City from citing and arresting unhoused individuals for being  
 14 homeless. In fact, public records from January 1, 2021 to June 30, 2021 reveal that SFPD cited  
 15 and arrested unhoused individuals for being homeless on at least 70% of days when HSOC’s own  
 16 records confirm that the City did not have nearly enough shelter to offer each unhoused person  
 17 targeted for enforcement that day. Herring Decl. ¶ 75; Della-Piana Decl. Ex. 22. In other words,  
 18 the City fails to meet even its own pre-enforcement standards. *See* S.F. Police Code § 169 (the  
 19 City is required to “offer Housing or Shelter to *all residents of the Encampment who are present*”  
 20 and “shall not enforce the prohibition [...] unless there is available Housing or Shelter for the  
 21 person or persons in the Encampment.”) (emphasis added). Moreover, SFPD often conducts its  
 22 citations and arrests at encampment resolutions even *before* limited shelter offers are made to the  
 23 few individuals onsite lucky enough to receive them. Bennett Decl. ¶¶ 12-14 [3-3] (former City  
 24 worker confirming the practice); Friedenbach Decl. ¶ 14 [1-4]; Cutler Decl. ¶¶ 11-17 [1-15]; *see*  
 25 *also supra* Subsection III(C) at 7:16-8:7. This likewise violates the City’s own pre-enforcement  
 26 standards. Della-Piana Decl. Ex. 27 (before an order to vacate can be criminally enforced for non-  
 27 compliance, SFPD policy requires that there has been a “written offer of shelter or housing at least  
 28 24 hours before ordering removal of a tent or encampment”). However the City arranges the

1 numbers, they do not add up. Della-Piana Decl. Ex. 23 (DPW employee writes that “40+ tents will  
 2 be cleared” even though they were only offering “at least 18 HSH shelter beds + whatever safe  
 3 sleep is available”). And the City conducts these law enforcement operations knowing full well  
 4 that *none* of the unhoused people it targets would be able to meaningfully access shelter through  
 5 the City’s shelter placement process. *Id.* Ex. 24 (“There is always a waiting list of at least 1,000  
 6 people wanting a shelter bed” so there are not “enough shelter beds available to match the number  
 7 of people who are homeless[.]”).

8 **F. The City’s Own Records Demonstrate a Pattern of Summarily Destroying**  
 9 **the Property of Unhoused Residents in Violation of the City’s Own Policies.**

10 As noted above, the City’s regular practice is to seize and destroy the property of unhoused  
 11 individuals—rather than “bagging and tagging” that property for storage and safekeeping. *See*  
 12 Subsection III(C)-III(D)); *see also* Bennett Decl. ¶¶ 9-11 [3-2]; Cutler Decl. ¶ 22 [1-17]; Wadkins  
 13 Decl. ¶¶ 25-27 [1-45]; Orona Decl. ¶¶ 15-18 [4-58]; Hill Decl. ¶¶ 10-115 [4-31]; Solis Decl. ¶¶  
 14 11-12 [4-69]. The City’s DPW work crews engage in wholesale property destruction by purporting  
 15 that unhoused people have abandoned their property simply because it is momentarily unattended.  
 16 Vaughn Decl. ¶ 5 [2-25]; Sandoval Decl. ¶ 7 [2-22]. DPW also classifies survival belongings and  
 17 personal property of homeless individuals as trash without making any attempt to store belongings  
 18 or return them to their owners, even when unhoused individuals are begging to keep their  
 19 belongings as DPW carts them away. Wadkins Decl. ¶¶ 19-23 [1-44] (“There is no sorting and no  
 20 attempt to safeguard any property of value—from tents to medications to expensive technology  
 21 and heirlooms.”); Evans Decl. ¶ 15-16 [1-23]; Cutler Decl. ¶ 22 [1-17]; Ackerman Decl. ¶ 8 [1-  
 22 10]. Knowing in advance that it will destroy substantial amounts of homeless individuals’ property,  
 23 DPW often brings a crusher truck to facilitate the mass destruction of personal property. Evans  
 24 Decl. ¶ 15 [1-24]; Cutler Decl. ¶¶ 10, 15 [1-15]; Wadkins Decl. ¶¶ 19-23 [1-23] (“DPW has brought  
 25 its crusher truck to throw all of [the] belongings away”).

26 These widespread practices are directly contrary to the City’s own written policies that  
 27 require City employees to “bag and tag” all valuable personal property of unhoused people for  
 28 safekeeping regardless of whether or not that property is momentarily unattended. *See* Della-Piana

Decl. Ex. 26 (“[u]nattended property is not abandoned if it is accompanied by signs of ownership, for example, an unattended tent that is filled with personal belongings or items that are being stored in an orderly manner (i.e., packed up, wrapped or covered)” [...] “all unattended personal property that is collected for storage will be bagged and tagged upon collection [...] the department will store personal items for 90 days”). The City’s policies also require appropriate sorting of belongings to ensure that valuable property is not haphazardly discarded as trash and is instead properly stored and returned to the owner. *Id.* (“If staff has a reasonable doubt as to whether an item constitutes trash, it should be collected and stored”). Indeed, items are only to be destroyed if they clearly pose an immediate health and safety risk. *Id.* (property only to be immediately destroyed if it poses an immediate health or safety risk, such as “needles, scissors, knives,” “human waste, body fluids, moldy, mildewed items,” or “items infested by rodents and insects”).<sup>3</sup>

Public records make clear that the City is destroying the property of unhoused people on a regular basis notwithstanding these written policies. For example, between January 1, 2021 and June 30, 2021, the City reported displacing at least 1,282 homeless people through HSOC sweeps. Della-Piana Decl., Exs. 30, 31; Herring Decl. ¶¶ 54, 84. DPW or SFPD were dispatched to respond to and/or clear individual tents *thousands* more times. Herring Decl. ¶¶ 60-61, 84. However, in that same time period, DPW logs only indicated 195 bag and tags. Della-Piana Decl. Exs. 30-31; Herring Decl. ¶¶ 83-84.<sup>4</sup> Again, the City’s numbers do not add up.

This data is consistent with field research. A 2019 study identified that 42% of San Francisco’s unhoused residents reported having belongings confiscated or destroyed by City employees. Herring Decl. ¶ 87. This reality is confirmed by DPW records from January 2018

<sup>3</sup> DPW’s apparently revised, but unpublished, August 2021 policy purports to include even more expansive protections—particularly requiring the City to store even so-called “Bulky Items” for safekeeping and storage. Della-Piana Decl. ¶¶ 32-33.

<sup>4</sup> Indeed, the actual number of bag and tag logs is probably even smaller, as it appears that a number of these logs are duplicates. *See* Ex. 30. DPW’s recent PRA response shows similarly few bag and tag records—only 27 bag and tag logs in July 2021, 44 bag and tag logs in August 2021, 38 bag and tag logs in September 2021, 30 bag and tag logs in October 2021, 25 bag and tag logs in November 2021, 31 bag and tag logs in December 2021, 21 bag and tag logs in January 2022, 27 bag and tag logs in February 2022, 38 bag and tag logs in March 2022, 27 bag and tag logs in April 2022, 22 bag and tag logs in May 2022, 30 bag and tag logs in June 2022, 29 bag and tag logs in July 2022, and 59 bag and tag logs in August 2022. Della-Piana Decl. Ex. 32.

through September 2021, which contain insufficient information to identify whether any property is actually being safely stored and collected. *Id.* ¶ 88.

The City’s destruction of property has also been the subject of prior litigation. In August 2021, for example, the Honorable Judge Michelle Tong of the San Francisco Superior Court determined that the City had unlawfully destroyed the property of 10 unhoused individuals during an HSOC sweep operation—and noted in the decision that “DPW notices for bagging and tagging [...] were not provided to the Court by any of the Defense witnesses.” Della-Piana Decl. Ex. 41-50. These public records collectively demonstrate the City’s pattern and practice of destroying the survival belongings of unhoused individuals on a regular basis. Herring Decl. ¶¶ 85-89.

**G. Thirty-One Sworn Declarants Confirm the City’s Criminalization and Property Destruction Practices.**

Plaintiffs have submitted a series of declarations in support of this motion. Twenty-five of those declarations come directly from unhoused people and report their recent experiences with being cited, arrested, or threatened to “move along” simply because they were sleeping in public<sup>5</sup>—as well as each unhoused individual’s detailed experience with the City’s destruction of personal property.<sup>6</sup> Many have provided an itemized list of the critical survival gear the City took from them (tents, blankets, warm clothing, etc.), as well as other valuable personal property such as laptops, cellphones, jewelry, and precious family keepsakes. *See, e.g.*, Bryant Decl. ¶ 18 [4-3] (“all of my tools I had used for my work as an automobile technician” that “cost thousands of dollars”); Martinez Decl. ¶ 5 [2-19] (items included a “brand new pop-up tent from Coleman that

<sup>5</sup> *See, e.g.* Brown Decl. ¶¶ 3-4 [4-6]; Bryant Decl. ¶¶ 8, 16-17, 23 [4-2]; Castaño Decl. ¶¶ 5-9 [2-2]; Connick Decl. ¶ 4 [4-10]; Cronk Decl. ¶ 8 [2-9]; Donohoe Decl. ¶ 8 [2-9]; Delamora Decl. ¶ 7 [4-13]; Dubose Decl. ¶ 4 [4-17]; Frank Decl. ¶ 7 [2-16]; Freehoffer Decl. ¶ 4 [4-20]; Harrison Decl. ¶ 7 [4-23]; Hill Decl. ¶ 8 [4-31]; Hurd Decl. ¶ 6 [4-46]; Martinez Decl. ¶ 3 [2-18]; Orona Decl. ¶ 9 [4-57]; Sandoval Decl. ¶ 3 [2-21]; Solis Decl. ¶ 9 [4-69]; Sparks Decl. ¶ 11 [4-66]; Vaughn Decl. ¶ 3 [2-24]; Vetter Decl. ¶¶ 8-11 [4-82].

<sup>6</sup> *See, e.g.*, Brown Decl. ¶ 10 [4-8]; Bryant Decl. ¶¶ 9-22 [4-2]; Castaño Decl. ¶¶ 11-12, 14-15 [2-3]; Cronk Decl. ¶¶ 3-6 [2-8]; Delamora Decl. ¶¶ 3-4, 6-7 [4-12]; Donohoe Decl. ¶¶ 3-7 [2-12]; Dubose Decl. ¶¶ 4, 7-9 [4-17]; Frank Decl. ¶¶ 3-6, 8-10 [2-15, 2-16]; Freehoffer Decl. ¶ 5 [4-21]; Hill Decl. ¶¶ 3, 5-8, 10-17 [4-68]; Howard Decl. ¶ 9-13 [4-41]; Hurd Decl. ¶¶ 3, 5-6, 9-10 [4-45]; Jones Decl. ¶¶ 4, 5, 8-10 [4-49]; Martinez Decl. ¶¶ 5-8 [2-19]; Partee Decl. ¶ 12 [4-64]; Sandoval Decl. ¶¶ 5-8 [2-22]; Sparks Decl. ¶ 11 [4-66]; Solis Decl. ¶¶ 2, 5-9, 11-18 [4-68]; Vaughn Decl. ¶ 7 [2-25]; Vetter Decl. ¶¶ 8, 10-14 [4-82].



I was living in,” “[m]y laptop and two cell phones that I used to look for work and stay in contact with family members,” and “[m]y congestive heart failure medication”), Vaughn Decl. ¶ 5 [2-25] (listing at least sixteen items destroyed by the City).<sup>7</sup> All describe how the City’s sweeps have disrupted their lives and their sense of safety. Bryant Decl. ¶ 25 [4-5]. Remarkably, one unhoused individual was employed by the City at the time that the City destroyed his survival belongings. Delamora Decl. ¶ 3 [4-12]. Other accounts corroborate Plaintiffs’ accounts of property loss. *See* Della-Piana Decl. Ex. 16 at 26.<sup>8</sup>

Plaintiffs have also submitted five declarations from staff and volunteers at the Coalition on Homelessness—who together have directly witnessed, recorded, and reported on well over thirty sweep operations. These five trained observers—including three organizers staffed with the Coalition, a scientist from UCSF, and a small business owner in the Haight-Ashbury—have documented the property destruction, law enforcement threats, and shelter scarcity they observed at the City sweep operations they attended. Ackerman Decl. ¶¶ 7-10 [1-10]; Cutler Decl. ¶¶ 8-26 [1-14]; Evans Decl. ¶¶ 7-26 [1-22]; James Decl. ¶¶ 15-19 [1-37]; Wadkins Decl. ¶¶ 13-30 [1-43].

Plaintiffs also submit the declaration of a former City employee who worked for the City’s HOT, participated in countless City sweep operations, and attested to the City’s criminalization of homelessness and destruction of property. The former employee confirmed that HOT often had no ability to connect unhoused individuals with the shelter or resources the City claimed that it was providing. Bennett Decl. ¶ 27 [3-6] (“The reality is that, no matter the number of tents identified at an encampment, the HSOC schedule would estimate that only a small fraction of people would need services. In other words, we never once showed up prepared to provide everyone a shelter bed.”); *see generally* Herring Decl. ¶¶ 58-88 (demonstrating that unhoused people are regularly exposed to the City’s criminalization and property destruction practices on an ongoing basis).

<sup>7</sup> *See, e.g.* Castaño Decl. ¶ 15 [2-4]; Connick Decl. ¶ 4 [4-10]; Delamora Decl. ¶ 7 [4-13]; Frank Decl. ¶ 10 [2-16]; Freehoffer Decl. ¶ 5 [4-21]; Harrison Decl. ¶ 8 [4-23]; Hill Decl. ¶ 17 [4-33]; Howard Decl. ¶ 14 [4-42]; Hurd Decl. ¶ 10 [4-46]; Partee Decl. ¶ 8 [4-63]; Sparks Decl. ¶ 12 [4-66]; Solis Decl. ¶ 18 [4-71].

<sup>8</sup> A 2022 campaign by the Latino Task Force which engaged with 110 unhoused individuals reported that nearly three quarters of respondents recently had property confiscated by the city without proper bag and tag, in violation of the city’s own policies. *Id.* at 3, 26.

**H. Plaintiffs Suffer Significant Harm as a Result of the City’s Conduct.**

Plaintiff Coalition on Homelessness is an advocacy organization of, by, and for unhoused San Franciscans. Friedenbach Decl. ¶ 6 [1-2]. Over the past several years, the Coalition made the difficult choice to depart from its mission-related activities—proactive housing and community empowerment work—to focus on the dire need to protect unhoused people from the City’s ongoing criminalization and property destruction practices. Friedenbach Decl. ¶¶ 11-22 [1-3]. The Coalition’s unplanned, reactive work to monitor and protect unhoused people from Defendants’ sweeps has had a measurable fiscal impact on the organization. Friedenbach Decl. ¶¶ 17-20 [1-5]. The Coalition has also spent its limited donor dollars to replace survival gear for unhoused people that the City of San Francisco has destroyed. Friedenbach Decl. ¶ 22 [1-6].

Individual Plaintiffs are unhoused individuals who have each experienced the City’s criminalization and property destruction practices in the past, and who fear that the City will subject them to those same practices in the future because they are homeless or at imminent risk of becoming homeless again. Castaño Decl. ¶¶ 20-21 [2-5]; Cronk Decl. ¶ 13 [2-10]; Donohoe Decl. ¶ 12 [2-14]; Frank Decl. ¶ 2, 15 [2-15], Martinez Decl. ¶ 11 [2-20]; Sandoval Decl. ¶ 9 [2-22]; Vaughn Decl. ¶ 3 [2-24]. A significant body of research shows that law enforcement threats and destruction of survival belongings seriously harm unhoused individuals’ physical and mental health, can damage their employment prospects and their ability to exit homelessness, and exposes them to a much greater risk of criminal violence. Herring Decl. ¶¶ 90-105. In other words, Individual Plaintiffs face significant and documented harm in light of the City’s enforcement practices, as anyone would if everything they owned were destroyed.

**IV. LEGAL STANDARD**

Plaintiffs are entitled to obtain a preliminary injunction if they can show (1) “that [they are] likely to succeed on the merits,” (2) “that [they are] likely to suffer irreparable harm in the absence of preliminary relief,” (3) “that the balance of equities tips in [their] favor,” and (4) “that an injunction is in the public interest.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). These elements “must be balanced, so that a stronger showing of one element may offset a weaker showing of



another.” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). For example, “a stronger showing of irreparable harm to plaintiff might offset a lesser showing of likelihood of success on the merits.” *Cottrell*, 632 F.3d at 1131. Thus, “serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *Id.* at 1135 (internal quotation marks omitted). This “serious questions” standard “permits a district court to grant a preliminary injunction in situations where it cannot determine with certainty that the moving party is more likely than not to prevail on the merits of the underlying claims, but where the costs outweigh the benefits of not granting the injunction.” *Id.* at 1133 (quoting *Citigroup Glob. Markets, Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010)).<sup>9</sup>

## V. ARGUMENT

### A. Plaintiffs Are Likely to Succeed on the Merits of Their Eighth Amendment Claim Against the City for the Criminalization of Involuntary Homelessness.

“[T]he Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.” *Martin v. City of Boise*, 920 F.3d 584, 616 (9th Cir. 2019), *cert. denied sub nom. City of Boise, Idaho v. Martin*, 140 S. Ct. 674, 205 L. Ed. 2d 438 (2019). “That is, as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.” *Id.* at 617. Whether enforcement “is consistent with the Eighth Amendment will depend . . . on whether it punishes a person for lacking the means to live out the ‘universal and unavoidable consequences of being human.’” *Id.* at 617 n.8. Under this framework, the City’s criminalization of homelessness is plainly unconstitutional.

<sup>9</sup> Plaintiffs seek a prohibitory, not mandatory, injunction. See *Hernandez v. Sessions*, 872 F.3d 976, 998 (9th Cir. 2017) (an injunction that “prevents future constitutional violations [is] a classic form of prohibitory injunction”).

1                   1.       San Francisco Is Thousands of Shelter Beds Short and Therefore Any  
 2                               Criminal Enforcement Within the City Is Unconstitutional *Per Se*.

3           In *Martin*, the Ninth Circuit held that “so long as there is a greater number of homeless  
 4 individuals in jurisdictions than the number of available beds [in shelters], the jurisdiction cannot  
 5 prosecute homeless individuals for involuntarily sitting, lying, and sleeping in public.” *Id.* at 617  
 6 (citation omitted). San Francisco has never had enough shelter for its unhoused residents, and has  
 7 indeed fallen short by *thousands* of beds. The City’s present shelter shortage is, at a minimum,  
 8 anywhere between 2,600 and 4,000 beds (by the City’s own estimates), which forces the vast  
 9 majority of the City’s homeless population to live unsheltered. *See supra* Subsection III(A).  
 10 Despite clearly insufficient shelter resources, SFPD has cited, arrested, and forced unhoused  
 11 individuals to “move along” under threat of citation and arrest well over 3,000 times over the last  
 12 three years for the mere fact of sleeping outside or failing to move from such shelter when  
 13 ordered—with no safe harbor for unhoused individuals anywhere within the City. *See supra*  
 14 Subsection III(E); Herring Decl. ¶¶ 70, 73. This is the end of the constitutional inquiry. The City  
 15 is criminalizing the status of homelessness in clear violation of *Martin*’s express holding. *See*  
 16 *Martin*, 920 F.3d at 617 (“[S]o long as there is a greater number of homeless individuals in [a  
 17 jurisdiction] than the number of available beds [in shelters], the jurisdiction cannot prosecute  
 18 homeless individuals for involuntarily sitting, lying, and sleeping in public.”) (citation omitted).

19                   2.       The City’s Ongoing Criminal Enforcement Violates the Eighth  
 20                               Amendment’s Core Protections Against Criminalizing Involuntary Acts.

21           Beyond the City’s enforcement campaign in the clear absence of sufficient shelter beds—  
 22 which alone establishes a violation of *Martin*—the City’s criminalization of homelessness also  
 23 violates the Eighth Amendment’s core protection against punishing conduct that is involuntary.  
 24 *See Robinson v. California*, 370 U.S. 660, 666 (1962) (striking down a statute “which makes the  
 25 ‘status’ of narcotic addiction a criminal offense”); *Powell v. Texas*, 392 U.S. 514, 550 n.2 (1968)  
 26 (White, J., concurring in the result) (“[t]he proper subject of inquiry is whether volitional acts  
 27 brought about” the condition that is criminalized). These principles animate *Martin*’s requirement  
 28 that “as long as there is no option of sleeping indoors, the government cannot criminalize indigent,

homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.” *Martin*, 920 F.3d at 617.

Unhoused individuals in San Francisco have no such choice. The City’s shelters are at full capacity, the City’s shelter waitlist has been disbanded, unhoused individuals can no longer wait in same-day lines for even a temporary shelter stay, and unhoused individuals must resort to leaving a voicemail and waiting 72 hours with no guarantee of a response before they *might* be able to be connected with shelter—if the City’s extremely limited shelter system can accommodate them at all. *See supra* Subsection III(A). This reality means that unhoused individuals genuinely cannot access shelter, and therefore have no choice but to sleep outdoors. *See* Herring Decl. ¶ 39. The City’s widespread citations, arrests, and “move along” orders under threat of citation and arrest therefore punish involuntary homelessness in violation of the Eighth Amendment’s core protections. *See Martin*, 920 F.3d at 617; *Powell*, 392 U.S. at 550.

### 3. The City’s Pretextual Weaponization of Shelter Unconstitutionally Punishes Involuntary Homelessness.

The City apparently seeks to avoid the square holdings of *Martin* by purporting that—despite a clear lack of sufficient shelter availability across the City—it can hold its limited shelter beds open to justify threatening specific unhoused people with citation or arrest. *See* Herring Decl. ¶¶ 33, 42. This is a well-documented and persistent practice in San Francisco—weaponizing shelter as a means to carry out criminal enforcement despite insufficient shelter availability and individuals having no voluntary access to shelter anywhere in the City. *See supra* Subsection III(A). But this scheme fundamentally misconstrues Eighth Amendment doctrine. The City’s scheme is such that the *only* way for unhoused people to access shelter is, paradoxically, to be subjected to a “move along” order or threatened by law enforcement for the involuntary act of sleeping in public, and even then there is no guarantee of shelter. The result is perverse, particularly because the few shelter beds that become available and which unhoused people could otherwise access to avoid law enforcement scrutiny are intentionally withheld to justify the City’s ongoing enforcement actions. At its core, the City’s withholding of shelter beds for the purposes of criminal enforcement actually perpetuates the criminalization of involuntary homelessness—because no

1 unhoused person has any genuine option to obtain shelter until they are first subject to law  
 2 enforcement consequences. *See Martin*, 920 F.3d at 616 (“[T]he Eighth Amendment prohibits the  
 3 imposition of criminal penalties for sitting, sleeping, or lying outside . . . for homeless individuals  
 4 who cannot obtain shelter.”).

5 4. The City Has a Pattern of Punishing Unhoused Individuals with Law  
 6 Enforcement Consequences Regardless of Whether Shelter Is Offered to  
 7 Them, in Violation of the Eighth Amendment and the City’s Own  
 8 Problematic Pre-Enforcement Standards.

9 In addition, the City’s weaponized shelter scheme fails on its own terms: the shelter  
 10 shortage is so severe that the City lacks sufficient shelter to provide even to the specific homeless  
 11 individuals it targets with enforcement. *See supra* Subsection III(A); Herring Decl. ¶¶ 42-43. The  
 12 City readily admits that it is only prepared to offer shelter to about 40% of the unhoused people it  
 13 displaces through its formal HSOC sweep operations (i.e., out of 10 individuals living in an  
 14 encampment, the City will only have 4 potentially available beds). *See Della-Piana Decl.*, Ex. 22.

15 Often, the City has even less shelter to offer than that—as regularly there are only a couple  
 16 of beds available for dozens of unhoused people onsite. *Evans Decl.* ¶¶ 17-18 [1-24]; *Bennett Decl.*  
 17 ¶¶ 15-18 [3-3]; *Herring Decl.* ¶¶ 45-53. The City is then clearly failing to meet even its own  
 18 problematic pre-enforcement standards. *See supra* Subsection III(B); *cf.* S.F. Police Code § 169(d)  
 19 (the City is required to “offer Housing or Shelter to *all residents of the Encampment who are*  
 20 *present*” and “shall not enforce the prohibition . . . unless there is available Housing or Shelter for  
 21 the person or persons in the Encampment”) (emphasis added).

22 The City nonetheless continues to cite and arrest unhoused individuals for the involuntary  
 23 status of being homeless. For example, between January 1 and June 30, 2021, the City conducted  
 24 HSOC enforcement actions on 83 days, which resulted in the displacement of at least 1,282  
 25 individuals experiencing homelessness in the City. *Herring Decl.* ¶¶ 45-53. But SFPD cited and  
 26 arrested unhoused individuals on at least 51 of these days when HSOC’s *own records* reveal that  
 27 the City did not have nearly enough shelter to offer each unhoused person targeted for enforcement  
 28

that day. Herring Decl. ¶ 75.<sup>10</sup> As noted above, this data does not even begin to account for SFPD’s regular dispatches and informal enforcement actions across the City that occur without even the guise of offering shelter to unhoused people. *See supra* Subsection III(D). The City’s practice is, unquestionably, “criminaliz[ing] indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.” *Martin*, 920 F.3d at 617.

5. Even When Limited Shelter Is Available, the City Has a Pattern of Punishing Unhoused Individuals Before Ever Offering Them Shelter—Which Is Squarely Unconstitutional.

At formal HSOC sweep operations, the City will often, but not always, eventually offer shelter to at least *some* of the individuals on site. *See supra* Subsection III(C); Bennett Decl. ¶¶ 6-8 [3-2]. But *none* of the unhoused individuals onsite are offered shelter before SFPD and DPW work crews seize and destroy their belongings and order them to leave the area under threat of citation and arrest. *Id.* Instead, SFPD cites and arrests individuals at encampment resolutions well before limited shelter offers are made to any few individuals remaining. Bennett Decl. ¶¶ 12-14 [3-3] (recent former City worker confirming the practice); Wadkins Decl. ¶¶ 20-21 [1-44]; *see also supra* Subsection III(C). This is because HOT has no information about what shelter may become available that day until *after* SFPD and DPW have already completed their brutal sweep of the area and have forced the unhoused people onsite to disperse after destroying their belongings. Bennett Decl. ¶¶ 6-8, 15-18 [3-2]; Wadkins Decl. ¶ 18 [1-44]; Cutler Decl. ¶¶ 11-12 [1-15]. Under these circumstances, the City’s conduct fails to meet the constitutional standards articulated in *Martin*. *See Martin*, 920 F.3d at 617 (“[T]he Eighth Amendment prohibits the imposition of criminal penalties [...] for homeless individuals who cannot obtain shelter”).<sup>11</sup>

<sup>10</sup> It is unsurprising that the City categorically lacks enough shelter to conduct these enforcement actions even by the City’s own stated pre-enforcement standards. In order to displace 1,282 unhoused individuals under the City’s own purported standards, the City would have needed to make available nearly a *third* of the City’s entire shelter bed capacity. This is impossible given that the City’s entire shelter system is at functional capacity. Herring Decl. ¶¶ 24-39.

<sup>11</sup> This pattern of conduct violates the City’s own pre-enforcement standards. Della-Piana Decl. Ex. 27 at 3 (before an order to vacate can be criminally enforced for non-compliance, SFPD policy requires that there has been a “written offer of shelter or housing at least 24 hours before ordering removal of a tent or encampment”).

Citations, arrests, orders to “move along” under threat of citation and arrest, and property destruction in response to involuntary homelessness—without first providing viable access to shelter—have each been found to be actionable as unconstitutional punishment under the Eighth Amendment. *See Martin*, 920 F.3d at 617-18 (citations identified as impermissible punishment); *Cobine v. City of Eureka*, 250 F. Supp. 3d 423, 428, 432 (N.D. Cal. 2017) (denying motion to dismiss Eighth Amendment claim where “Notice to Vacate” identified that homeless individuals would be prosecuted for refusing to leave the area); *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006) (unhoused individuals “suffer[ing] the loss of their personal property” at the hands of law enforcement was a “preconviction harm” that established standing for Eighth Amendment claim), *vacated by settlement*, 505 F.3d 1006 (9th Cir. 2007); *Phillips v. City of Cincinnati*, 479 F. Supp. 3d 611, 654-55 (S.D. Oh. 2020) (Eighth Amendment claim proper where “Plaintiffs alleg[ing] they do not have access to permanent shelter” were “forced to move multiple times under threat of arrest by police”).

The City has repeatedly engaged in conduct proscribed by the Eighth Amendment, as it has cited and arrested thousands of individuals for illegal lodging or failing to comply with a “move along” order in recent years—has threatened to cite or arrest thousands more—and has engaged in widespread property destruction, all despite the City’s failure to provide access to shelter. *See Herring Decl.* ¶¶ 70-73, 80-85. The Eighth Amendment does not permit these punishments for involuntary homelessness. *See Martin*, 920 F.3d at 617.

**B. Plaintiffs Are Likely to Succeed on the Merits of their Fourth Amendment Claim Against the City for Summarily Seizing and Destroying Unhoused Individuals’ Belongings.**

The Fourth Amendment prohibits local governments from summarily seizing and destroying the personal property of unhoused individuals. *See Garcia v. City of L.A.*, 11 F.4th 1113, 1124 (9th Cir. 2021) (stating clearly that “the government may not summarily destroy the unabandoned personal property of homeless individuals that is kept in public areas”); *Lavan v. City of L.A.*, 693 F.3d 1022, 1030 (9th Cir. 2019) (affirming district court holding that the Fourth Amendment protects homeless persons from government seizure and summary destruction of their

unabandoned, but momentarily unattended, personal property). “[E]ven if the seizure of the property would have been deemed reasonable had the City held it for return to its owner instead of immediately destroying it, the City’s destruction of the property rendered the seizure unreasonable.” *Id.* at 1030. The requirement that property be safeguarded and stored applies equally to so-called “bulky items” such as tents, mattresses, and other larger survival belongings. *See Garcia*, 11 F.4th at 1119 (“The fact that Plaintiffs’ items are larger than sixty gallons does not reduce their possessory interests in those items”).

The City’s stated policies make clear that City employees are required to store personal property so unhoused people can reclaim it—i.e. “bag and tag”.<sup>12</sup> *See supra* Subsection III(F); Della-Piana Decl. Ex. 26. However it is also clear that the City regularly destroys the belongings of unhoused individuals—indiscriminately and aggressively—in violation of its own policies. *See supra* Subsections III(F), (G). Despite its near-daily sweeps at homeless encampments over the last several years, the City has jarringly sparse logs associated with the storage of property. Herring Decl. ¶ 86; Della-Piana Decl. Ex. 30. The City’s limited bag and tag records reveal that at least hundreds of unhoused people have had their property destroyed by the City. *Id.* at ¶¶ 80-85. Additionally, 42% of unhoused residents reported having their belongings destroyed by the City in a recent survey of unhoused San Franciscans. *Id.* at ¶ 87. This data is supported, *inter alia*, by the declarations of 25 unhoused individuals who had their property destroyed by the City; by the eyewitness accounts of various volunteers from the Coalition after observing over 30 sweep operations; and by the account of a recent City employee who watched the City destroy the belongings of unhoused people. *See supra* Subsection III(G); Bennett Decl. ¶¶ 9-11 [3-2].

In short, significant evidence demonstrates that the City has a pattern and practice of violating its own written policies designed to ensure compliance with Fourth Amendment requirements. *See Redman v. County of San Diego*, 942 F.2d 1435, 1445-46 (9th Cir. 1991) (“even if it could be said that the general policy [was sound], the routine failure (or claimed inability) to

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<sup>12</sup> The City’s published policy does NOT instruct City employees to properly bag and tag “bulky items,” although the City has represented that the published policy has been amended to expressly require that these items are also safely collected and stored. *See supra* at 13 n.1; Della-Piana Decl. ¶ 33 [referencing revised bag and tag policy].



1 follow the general policy at the SBDF constitutes a custom or policy which overrides,  
 2 for *Monell* purposes, the general policy”), *abrogated on other grounds by Farmer v. Brennan*, 511  
 3 U.S. 825 (1994); *C.B. v. Sonora School District*, 691 F. Supp. 2d 1170, 1185-86 (E.D. Cal. 2010).  
 4 The overwhelming evidence of this pattern and practice demonstrates “strong questions”—and  
 5 more forcefully, a likelihood of success on the merits—of Plaintiffs’ Fourth Amendment claim.  
 6 *See Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013).

7 The City has in the past tried to defend its summary destruction of unhoused individuals’  
 8 property by alleging: (1) that the property was abandoned; and (2) that the property created a safety  
 9 issue or was trash. But neither argument is sufficient. *First*, every declaration submitted in support  
 10 of this motion attests that the property the City destroyed was *not* abandoned. *See Pottinger v. City*  
 11 *of Miami*, 810 F. Supp. 1551, 1559 (S.D. Fla. 1992) (observing homeless “property . . . is  
 12 reasonably distinguishable from truly abandoned property” because it can be “reasonably  
 13 identifiable by its nature and organization”); *supra* Subsection III(G).<sup>13</sup> Second, claims that  
 14 property is creating a safety issue or is trash are indefensible when the City indiscriminately  
 15 destroys all of a person’s clearly valuable property without sorting, collecting, and storing anything  
 16 that can be salvaged. *See Mitchell v. City of L.A.*, No. CV1601750SJOGJSX, 2016 WL 11519288,  
 17 at \*3 (C.D. Cal. Apr. 13, 2016) (unreasonable seizure where the government “summarily  
 18 dispose[d] of essential medications and medical equipment, without distinguishing contaminated  
 19 property from other property and without separating each individual’s property”).<sup>14</sup>

20 **C. Plaintiffs Have Demonstrated a Likelihood of Irreparable Harm, That**  
 21 **Injunction is in the Public Interest, and that the Balance of Harms Tips**  
 22 **Sharply in Plaintiffs’ Favor.**

23 Individual Plaintiffs have clearly articulated a credible fear that they will again be subject  
 24 to the City’s pattern and practice of criminalizing involuntary homelessness and destroying the

24 <sup>13</sup> Unhoused people have had belongings destroyed that clearly included survival gear and valuable  
 25 personal property that had not been abandoned. *See* Wadkins Decl. ¶ 25 [1-45]; Evans Decl. ¶ 23  
 26 [1-25]. Declarants attest that they had no intention of abandoning their property and had arranged  
 27 it in the place which they considered their home. *See, e.g.*, Hurd Decl. ¶ 13. But, although they  
 28 begged the City to return these items as they were being heaped into piles and destroyed, the City  
 ignored those requests and simply removed the property for destruction. *See* Ackerman Decl. ¶ 8  
 [1-10], *See* Howard Decl. ¶ 12 [4-42]; Castaño Decl. ¶¶ 14-15 [2-3]; Evans Decl. ¶ 26 [1-26].

<sup>14</sup> *See also Kincaid v. City of Fresno*, No. 106CV-1445 OWW SMS, 2006 WL 3542732, at \*37  
 (E.D. Cal. Dec. 8, 2006); *Rios v. Cnty. of Sacramento*, 562 F. Supp. 3d 999, 1016 (E.D. Cal. 2021).



valuable personal property of unhoused individuals. *See, e.g.,* Sandoval Decl. ¶¶ 2-9 [2-21]; *see also Martin*, 920 F.3d at 608 (credible threat of future enforcement confers standing). The Coalition has also articulated that it has standing to sue both on behalf of its many unhoused members and for its own sake—as the organization is continuing to divert its limited resources to address the City’s repeated unconstitutional conduct. Friedenbach Decl. ¶¶ 11-22 [1-4]; James Decl. ¶ 4 [1-35]; *see also Garcia v. City of L.A.*, 481 F.Supp.3d 1031, 1041 (C. D. Cal. 2020).

Deprivation of Plaintiffs’ constitutional rights establishes irreparable harm *per se*. *See Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (“It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury’”). Furthermore, when a plaintiff establishes “a likelihood that Defendants’ policy violates the U.S. Constitution, Plaintiffs have also established that both the public interest and the balance of the equities favor a preliminary injunction.” *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014).

The nature of this deprivation and unhoused individual Plaintiffs’ particular vulnerability tips the balance of equities *sharply* in Plaintiffs’ favor as a matter of law. *See, e.g., Sausalito/Marin Cnty. Chapter of California Homeless Union v. City of Sausalito*, 522 F. Supp. 3d 648, 658 (N.D. Cal. 2021) (holding that a ban on day camping would pose a risk to unhoused plaintiffs’ health and safety such that the balance of equities “tip[] decidedly in Plaintiffs’ favor”); *Price v. City of Stockton, Cal.*, 394 F. Supp. 2d 1256, 1268-69 (E.D. Cal. 2005) (stating that the harm unhoused plaintiffs would face by being forced to vacate SROs would “work[] a profound hardship” that would “far outweigh[]” any hardship defendants might suffer); *Garcia v. City of Los Angeles*, 481 F. Supp. 3d 1031, 1051 (C.D. Cal. 2020), *aff’d*, 11 F.4th 1113 (9th Cir. 2021) (holding that, where a city took or destroyed personal property from homeless individuals during cleanups, the “balance of the equities and the public interest tip[ped] sharply in Plaintiffs’ favor”).<sup>15</sup> Every day that an injunction is not in place, the risk is high that more unhoused San Franciscans will traumatically and irreparably lose their only possessions.

<sup>15</sup> This clear balance of equities means that Plaintiffs can secure a preliminary injunction even on a diminished showing on the merits. However, as identified above, Plaintiffs have clearly asserted that they have a likelihood of success on the merits—which is sufficient to secure a preliminary injunction even under ordinary circumstances where the balance of equities is less obvious. *See Shell Offshore, Inc.*, 709 F.3d at 1291.

**VI. CONCLUSION**

For the foregoing reasons, Plaintiffs request that the Court grant their application for a preliminary injunction.

Dated: September 27, 2022

By: /s/ Zal K. Shroff

LAWYERS' COMMITTEE FOR CIVIL  
RIGHTS OF THE SAN FRANCISCO BAY  
AREA

Zal K. Shroff, MJP 804620\*  
Elisa Della-Piana, SBN 226462  
131 Steuart Street, Ste. 400  
San Francisco, CA 94105  
Telephone: (415) 543-9444  
zshroff@lccrsf.org  
edellapiana@lccrsf.org

*\*application pro hac vice pending*

By: /s/ John Thomas H. Do

ACLU FOUNDATION OF NORTHERN  
CALIFORNIA

John Thomas H. Do, SBN 285075  
Brandon L. Greene, SBN 293783  
39 Drumm Street  
San Francisco, CA 94111  
Telephone: (415) 293-6333  
jdo@aclunc.org  
bgreene@aclunc.org

By: /s/ Alfred C. Pfeiffer, Jr.

LATHAM & WATKINS LLP  
Alfred C. Pfeiffer, Jr., SBN 120965  
Wesley Tiu, SBN 336580  
505 Montgomery Street, Ste 2000  
San Francisco, CA 94111  
Telephone: (415) 391-0600  
Al.Pfeiffer@lw.com  
Wesley.Tiu@lw.com

LATHAM & WATKINS LLP  
Joseph H. Lee, SBN 248046  
Town Center Drive, 20th Floor  
Costa Mesa, CA 92626  
Telephone: (714) 540-1235  
Joseph.Lee@lw.com

LATHAM & WATKINS LLP  
Regina Wang, SBN 326262  
10250 Constellation Blvd., Suite 1100

Los Angeles, CA 90067  
Telephone: (424) 653-5500  
Regina.Wang@lw.com

*Attorneys for Plaintiffs*

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**ATTORNEY ATTESTATION**

I am the ECF User whose identification and password are being use to file the foregoing Plaintiffs' Notice of Motion and Motion for Preliminary Injunction; Memorandum of Points and Authorities. Pursuant to Civil Local Rule 5-1(h)(3) regarding signatures, I, Alfred C. Pfeiffer, Jr., attest that concurrence in the filing of this document has been obtained. Executed this 27th day of September 2022, in San Francisco, California.

DATED: September 27, 2022

/s/ Alfred C. Pfeiffer, Jr.  
Alfred C. Pfeiffer, Jr.