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9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 MICHAEL BLOOM, STEPHEN
13 CHATZKY, TONY DIAZ, VALERIE
14 GRISCHY, PENNY HELMS,
15 BENJAMIN HERNANDEZ, DOUG
16 HIGGINS, SUZONNE KEITH, GERALD
17 STARK, ANNA STARK, and DAVID
18 WILSON, individually and on behalf of
19 themselves and all others similarly
20 situated,

21 Plaintiffs,

22 vs.

23 CITY OF SAN DIEGO,

24 Defendant.

25 Case No.: 3:17-cv-02324-AJB-DEB

26 **PLAINTIFFS' NOTICE OF**
27 **MOTION, MOTION, AND**
28 **MEMORANDUM IN SUPPORT OF**
MOTION TO ENFORCE TERMS OF
SETTLEMENT AGREEMENT AND
REQUEST FOR SUPPLEMENTAL
ATTORNEYS' FEES FOR HAVING
TO FILE SAME

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES and the COURT: PLEASE TAKE NOTICE THAT Plaintiffs Stephen Chatzky, Tony Diaz, Valerie Grischy, Penny Helms, Benjamin Hernandez, Doug Higgins, Suzonne Keith, Gerald Stark, and Anna Stark¹ (collectively “Plaintiffs” or “Named Plaintiffs”), by and thorough their counsel of record, hereby move the Court to enforce the terms of settlement agreement, and request for attorneys’ fees for having to do the same. This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the concurrently filed declarations and exhibits, all pleadings and papers on file in this action, and any oral argument that may be presented.

By: /s/ Ann E. Menasche
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¹ During the course of this litigation, Plaintiffs Michael Bloom and David Wilson died.

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1 **I. INTRODUCTION**

2 Plaintiffs respectfully move this Court to issue an order enforcing the terms of
3 the February 2024 Settlement Agreement (“the Settlement Agreement,” Doc. No. 329-
4 2, Menasche Decl. Ex. A) signed by the parties and accepted by this Court.
5 Specifically, Plaintiffs request that the Court order Defendant, the City of San Diego
6 (“the City”), to comply with its agreement as follows:

7 1) Train and instruct its police officers to assess, on a case-by-case basis,
8 whether safe parking is reasonably available to a particular class member,
9 considering the *totality of circumstances* including distance to a
10 designated nighttime-only lot, prior to issuing a citation under the
11 nighttime provisions of the Oversized Vehicle Ordinance (OVO) (SD
12 Municipal Code § 86.0139(a)), or enforcing the nighttime provisions of
13 the Vehicle Habitation Ordinance (SD Municipal Code § 86.0137(f)) (*see*
14 Agreement, p. 2, ¶ 3, and p. 3, ¶ 4(A)). Plaintiffs also request that the
15 Court order the City to hold class members harmless regarding improperly
16 issued OVO tickets.

17 2) Improve the Mission Valley parking lot as required under the Agreement
18 (Agreement, p. 4, ¶ 5) focusing on essential improvements of electric
19 hookups, running water, bathrooms, and showers up to the allocated
20 budget of \$900,000. To ensure prompt compliance with this provision of
21 the Settlement Agreement, Plaintiffs further request that the City be
22 ordered to share estimates for the cost of work by outside contractors
23 and/or in-house projected costs, provide a time-line for completion, and
24 all relevant documents regarding any impediments to completing the
25 work, while allowing Plaintiffs and their experts to inspect the lot, as
26 necessary.

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1 3) Update daily and display on the City’s website the total number of vacant
2 spots in each of the City’s Safe Lot locations, including specifying the
3 number of parking spots in each lot that is available for oversized vehicles.

4 Plaintiffs’ motion is necessitated for three principal reasons. *First*, in the twenty
5 months since the parties signed the Agreement, the City has not complied with any of
6 the above-listed obligations under that Agreement except for improvements made to
7 the gate at the Mission Valley lot. *Second*, during Plaintiff’s attempts to meet and
8 confer with the City regarding its failure to perform the above, the City repeatedly
9 stated that it wanted to “renegotiate” the terms it had already agreed to before this
10 Court.² *Third*, the City’s failure to comply is adversely affecting Plaintiffs, especially
11 in light of the City’s (and its police department’s) return to the discriminatory and
12 illegal enforcement of the OVO and the threat of renewed VHO enforcement, which
13 Plaintiffs’ lawsuit was originally designed to address. Thus, Plaintiffs are left with no
14 reasonable option other than to seek to enforce the terms of the Settlement Agreement
15 given the City’s apparent desire to renege on what it promised to do.

16 For these reasons, the Court should grant Plaintiffs’ motion and order the City
17 to perform its obligations under the terms of the Agreement.

18 **II. STATEMENT OF FACTS**

19 In February 2024, the Parties agreed to and signed the Settlement Agreement
20 that was hard fought and negotiated with the intention to resolve the issues raised in
21 Plaintiffs’ class action lawsuit against the City. That Settlement Agreement, attached
22 as Ex. A to the accompanying Declaration of Ann E. Menasche (“Menasche Decl.”),
23 sets forth detailed requirements that the City agreed to in order to resolve Plaintiffs
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25 _____
26 ² Indeed, when pressed during the meet and confers leading to this motion to explain
27 the City’s position, the deputy City attorney refused to provide the City’s substantive
28 position, and on two separate occasions intentionally disconnected the call with
Plaintiffs’ counsel and made no attempt to reconnect. *See* Menasche Decl., ¶¶ 34, 37.

1 claims that the OVO and VHO are unconstitutional and were being enforced in a
2 discriminatory manner. The Court reviewed and approved the Parties' Settlement
3 Agreement on October 10, 2024 (Doc. No. 346).

4 **A. OVO Ticketing Where Safe Parking Is Not Reasonably Available**

5 Since July 2025, the City police have been issuing OVO tickets to class members
6 even though, considering the totality of circumstances, Safe Parking was not
7 reasonably available to these individuals. Notably, in issuing those tickets, the police
8 have failed to inquire on a case-by-case basis about whether safe parking was
9 reasonably available, as the Settlement Agreement requires. Moreover, there is no
10 evidence that police have taken into account insurmountable obstacles described by
11 class members in using the new H-Barracks lot, and issued OVO tickets regardless of
12 class members' circumstances.

13 By way of background, the new Safe lot at H-Barracks next to the airport opened
14 at the end of May 2025, with room for RV parking. But it is open only overnight. This
15 is a problem because it is six miles each way from the area of Mission Bay where many
16 class members with oversized vehicles park during the day. They are in Mission Bay
17 because it offers plentiful parking for oversized vehicles and second vehicles, including
18 disabled parking spaces, running water, showers, garbage collection, and free waste
19 disposal sites for RVs. Mission Bay is also in close proximity to many class members'
20 medical providers. There is no free daytime parking suitable for RVs close to H-
21 Barracks. Participants must enter H-Barracks between 6:00 and 10:00 p.m. and leave
22 at 7:00 in the morning. No second vehicles are permitted at the lot. *See* Menasche
23 Decl., ¶ 10.

24 Soon after H-Barracks opened, the City gave the green light to the police to start
25 ticketing again, targeting class members under the OVO who declined to go to H-
26 Barracks. However, as revealed by the City's own documents and the testimony of
27

1 Class members, the City failed to properly train and instruct its officers as to the
2 requirements of the Settlement Agreement.

3 The City’s ticketing focused on those parked in and around Mission Bay, though
4 some class members have been ticketed in other locations as well. Since July, there
5 have been 1136 OVO tickets issued, with the most (525 tickets) in September. *See*
6 *Menasche Decl., Ex. B.*³

7 According to documents produced by the City, the police use a form to be filled
8 out for everyone issued an OVO ticket. *See Menasche Decl., Ex. C.* The City’s form
9 includes the following options for the issuing police officer to select:

- 10 • The officer knocked at the door and there was no answer *or* they spoke to
- 11 someone in the vehicle; and
- 12 • The OVO citation and flyer regarding the Safe Lot program was left on the
- 13 windshield, *or* the person answered and “declined services or refused to move
- 14 the oversized vehicle from location”.

15 *See id.*

16 There is no space on the City’s form for noting any reasons the class member
17 may have given as to why H-Barracks was not reasonably available to them, nor are
18 police instructed to inquire or consider whether there are impediments to daily travel
19 to and from the lot or accessing the lot on arrival. The only consideration for police is
20 whether a space is open or has been filled, *not* whether the class member can reasonably
21 travel there and use the space considering the *totality of circumstances*. *See id.*

22 The City’s failure to have its police officers consider the totality of
23 circumstances has been made clear over the course of the City’s increased ticketing
24 efforts. In interacting with police, individual class members have expressed to police

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27 ³ Plaintiffs’ counsel have not yet received the City’s October ticketing records.

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1 orally and/or in writing (through filling out a form Plaintiffs’ counsel provided⁴)
2 several compelling reasons why H-Barracks is not reasonably available to them. Those
3 reasons include the following:

- 4 • That in light of the distance to H-Barracks from Mission Bay (12 miles
5 round trip), they could not afford the extra gas money of up to \$300 per
6 month⁵ and the wear and tear on their usually older vehicles to drive to H-
7 Barracks twice per day. *See* Declaration of Alberto Diaz; Declaration of
8 Sharone Tingley; Declaration of David Kern; Declaration of Germanos
9 Soklaropoulos; Declaration of Paulette Santana; Declaration of Sean
10 Halpin; Declaration of Teresa Lunsford; Declaration of Jodie Peterson;
11 Declaration of Kevin Denczek; Declaration of Ophelia Wendt;
- 12 • Some class members need a second vehicle close at hand to go to doctors’
13 appointments and a second vehicle is prohibited at H-Barracks, *see* Kern
14 Decl., Soklaropoulos Decl., Lunsford Decl., Denczek Decl., and some are
15 on medication or have visual impairments that make it dangerous for them
16 to drive at night or during dusk, *see* Tingley Decl., Soklaropoulos Decl.,
17 Declaration of Ophelia Wendt;

21 ⁴ Plaintiffs’ counsel provided class members with a form to assist them in
22 understanding and advocating for their rights with police. The police obtained a few
23 copies of the completed forms. Some of them showed up in the City’s record
production. *See* Menasche Decl., Ex. D.

24 ⁵ Class members’ RVs often only get 5 to 7 miles per gallon in their older RVs. Many
25 class members are on small, fixed incomes due to disability or retirement; a few have
26 no regular income at all except food stamps. *See* Diaz Decl., Tingley Decl., Kern
27 Decl., Soklaropoulos Decl., Santana Decl., Halpern Decl., Lunsford Decl., Peterson
Decl., Dencek Decl., Wendt Decl. At least since 2022, the City fully understood the
obstacle represented by distance to “Safe Parking” for class members with RVs
impacting their ability to utilize a nighttime-only lot.

- 1 • Some class members have a hearing impairment that would likely be
2 worsened by the loud noises at the H-Barracks location near the airport,
3 *see* Halpin Decl.;
- 4 • Many have mobility impairments or other physical disabilities that make
5 it impossible for them to carry out the multiple steps necessary to prepare
6 their RV for moving twice per day, or they depend on assistance of others
7 and the persons they rely on are not available with such frequency and/or
8 during the required times of the day, *see* Diaz Decl., Soklaropoulos Decl.,
9 Lunsford Decl., Denczek Decl.; and
- 10 • The hours for entering and exiting H-Barracks conflict with work
11 schedules, *see* Diaz Decl.

12 These are facts that the police should have taken into account in the context of the
13 totality of the circumstances, and which directly impact the factors required to be
14 considered by the Settlement Agreement.

15 Under the Settlement Agreement, the City was obligated to “adopt an amended
16 VHO Training Bulletin, which [was] attached to [the] Agreement,” and also to
17 “provide in-person training of police officers on the amended VHO Training Bulletin
18 that would begin on a rolling basis as soon as possible with the goal of completing the
19 training no later than three months of the Effective Date.” Menasche Decl., Ex. A
20 (Agreement), § 3. This requirement would logically include that the City’s police be
21 trained on how to “consider the totality of the circumstances, including the type of
22 vehicle, the distance to the safe parking lot, and whether there is adequate space for the
23 vehicle in the safe parking lot” in determining whether a space in a Safe Lot is
24 reasonably available. Such training should have been a prerequisite to renewed
25 enforcement of the OVO and VHO. *Id.*

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1 Police officers do not appear to be abiding by the express terms of the Settlement
2 Agreement. Rather than doing the case-by-case assessment considering the totality of
3 circumstances to determine whether safe parking is reasonably available, as required,
4 police dismiss class members’ information regarding circumstances making the Safe
5 Lot not feasible, apparently failing to consider *any* of these reasons before
6 automatically issuing OVO tickets. *See* Diaz Decl., Tingley Decl., Kern Decl.,
7 Soklaropoulos Decl., Santana Decl., Halpin Decl., Lunsford Decl., Petterson Decl.,
8 Denezek Decl, Wendt Decl. When class members attempt to explain their
9 circumstances, police simply note that a class member had “declined services.” Some
10 police have openly expressed hostility and disdain toward class members attempting to
11 explain the barriers they faced in utilizing H-Barrack.⁶ Based on class members’
12 interactions with police, it appears that the City failed to properly train its police on
13 how to address class members and determine reasonable availability of Safe Parking
14 under the terms of the Settlement Agreement.⁷

15 The City has not only failed to provide such training required under the
16 Agreement, but it has also failed to provided a timeline for completing this training.
17 As a result, the City’s police officers continue to enforce the OVO in contravention to
18 the terms of the Settlement Agreement.

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20 ⁶ In one instance, when a class member explained their circumstances, officers
21 responded by saying, “I don’t give a damn.” Tingley Decl. On another occasion,
22 after a class member explained why it was unreasonable for him to park at H
23 Barracks, officers told him that if he could not park there, he must leave the City of
24 San Diego. “We don’t want you here.” Halpin Decl.

25 ⁷ In addition, some of the members of Plaintiffs’ class have declared that although the
26 form San Diego police complete indicates that police are supposed to knock, and
27 despite the officer checking the box that they did knock, there are instances where
28 that did not occur before a citation was issued. *See* Diaz Decl., Kern Decl.,
Soklaropoulos, Decl. Peterson Decl., Denezek Decl., Wendt Decl. Without knocking,
class members are not given an opportunity to relocate if they are able or to explain
why they cannot assess H-Barracks, before receiving a ticket.

1 Moreover, the City is denying class members’ requests for reasonable
2 modifications due to their disabilities. In the Settlement Agreement (at § 6), the City
3 expressly agreed to consider all reasonable requests for modifications based on
4 individual’s disabilities. Despite this obligation, the City has denied at least two
5 reasonable modification requests on the spurious grounds that any exceptions that
6 would give these class members priority for placement in a 24-hour lot (or that would
7 instruct police to refrain from ticketing and towing vehicle homes under the OVO until
8 they are appropriately placed) would constitute a “fundamental alteration of the
9 program.” Menasche Decl., Ex. G. Under such flawed reasoning, no class member
10 with disabilities could realistically obtain a reasonable modification to excuse them
11 from going to H-Barracks, no matter what the circumstances. This is in direct
12 contravention to the intent and text of the Settlement Agreement. *Id.*, Ex. A
13 (Agreement), p. 5, § 6.

14 **B. Failure To Make Required Improvements at Mission Valley Lot**

15 The Settlement Agreement requires the City to make “essential improvements”
16 to the Mission Valley lot, including to provide “electric hookups, running water,
17 bathrooms, and showers.” Menasche Decl., Ex. A (Agreement), pp. 4-5, § 5. The City
18 committed under the Settlement Agreement to spend up to \$900,000 for such
19 improvements. *Id.*

20 To date, none of these essential improvements have been completed. The only
21 fix the City has made is to the entrance gate to the Mission Valley safe lot. Menasche
22 Decl., ¶ 20; *see also* Declaration of Penny Helms. This is a start—but it’s not enough.
23 The City’s failure to make the improvements it is contractually obligated to make
24 leaves the Mission Valley Safe Lot an unsanitary, unsafe, and difficult to access space.

25 When Plaintiffs raised this issue with the City, it had neither a plan nor any viable
26 excuse. At first, the City claimed that construction involving digging was precluded
27

1 because the lot was a protected archeological site; the City later withdrew that claim.
2 *See Menasche Decl.*, ¶ 21. While the Parties have discussed creative ideas for
3 providing electricity through use of solar panels, the need for clean running water, and
4 addressing the infestation by vermin, the City has not acted to bring about any change
5 to the conditions of the lot. And despite Plaintiffs counsels’ request for information,
6 the City has not shared any plans nor a timeline for when the requisite work will start.
7 *Id.*, ¶ 24.

8 **C. Inaccurate and Incomplete Posting of Safe Lot Vacancies**

9 The Settlement Agreement requires the City to provide on the City’s website
10 “vacant spots in Safe Lots ..., including whether spaces may be suitable for oversized
11 vehicles, on at least a nightly basis.” *Menasche Decl.*, Ex. A (Agreement), p. 4, § 4(I).

12 The City has not updated the information required by the Settlement Agreement
13 regarding space vacancies. For example, since H-Barracks first opened and for many
14 months now, the City has posted *the same* information, claiming there are only twenty
15 Safe Parking spaces available, with no indication of where these spaces are located or
16 how many of the parking spaces are appropriate for RVs. *Menasche Decl.*, ¶ 32. The
17 only information that is modified on the City’s website from one day to the next is the
18 date that the notice is allegedly “updated.”⁸

19 **D. Plaintiffs’ Efforts to Resolve This Dispute Have Been Unsuccessful**

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23 ⁸ For example, the listing for October 21, 2025, on the City’s website reads, “The
24 City’s Safe Parking Program currently has 20 spaces available, including spaces for
25 oversized vehicles. Interested individuals should call the program operator, Jewish
26 Family Service San Diego (JFS), at [858-637-3373](tel:858-637-3373) to learn more about options and
27 how to enroll. JFS maintains an active waiting list should spaces become available.
Updated Oct. 21, 2025)” [https://www.sandiego.gov/homelessness-strategies-and-
solutions/services/safe-parking-program](https://www.sandiego.gov/homelessness-strategies-and-solutions/services/safe-parking-program).

1 After the above identified deficiencies came to light and after investigating
2 numerous complaints from class members regarding OVO ticketing, Plaintiffs’ counsel
3 attempted multiple times to meet and confer with the City to address these issues, as is
4 required by the Settlement Agreement—but to no avail.⁹ On September 10, 2025,
5 Plaintiffs’ counsel sent to Deputy City Attorney Michelle Neff a Notice of Dispute
6 concerning the City’s non-compliance with the Settlement Agreement. *See* Menasche
7 Decl., Ex. H, (“Notice Letter”). The Notice Letter included the above identified
8 deficiencies in the City’s compliance with the Settlement Agreement. Plaintiffs’
9 Notice Letter explicitly identified that, among the other issues, that City police were
10 issuing OVO tickets without considering the totality of the circumstances to determine
11 whether Safe Parking was reasonably available to a particular class member as required
12 by the Settlement Agreement.

13 On September 12, 2025, Plaintiffs’ counsel met with City attorney Michelle
14 Neff. During that call, while Plaintiffs’ counsel was attempting to get the City’s
15 position on certain issues and see if the parties could reach agreement, the City attorney
16 intentionally disconnected the call in the middle of the parties’ discussions and made
17 no attempt to reconnect. Menasche Decl., ¶ 35. Plaintiffs’ counsel sent a follow-up
18 letter to the City attorney Ms. Neff on September 15, 2025, summarizing the parties’
19 positions and stating Plaintiffs’ willingness to continue to meet. *See* Menasche Decl.,
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21 _____
22 ⁹ Section 11 of the Agreement, on Dispute Resolution, provides in relevant part: “If
23 any Party believes that another Party is substantially violating this Agreement, within
24 30 days of receipt of information...counsel of record for that Party shall provide a
25 written Notice of Dispute to counsel of record for the other Party, setting forth the
26 Dispute in reasonable detail. Counsel for the other Party shall be required to respond
27 to the Notice of Dispute within 14 days. To the extent non-compliance is identified,
the responding Party will have 45 days to cure the non-compliance...If the parties are
unable to resolve the Dispute within 45 days of the Notice of Dispute, the Party that
served the Notice of Dispute may thereafter petition the Court through Judge Butcher
for resolution of the Dispute...” Menasche Decl., Ex. A (Agreement), p. 7, § 11.

1 Ex. I. Plaintiffs also requested that the City provide a timeline for completion of the
2 Mission Valley improvements. *Id.*; Menasche Decl., ¶ 37.

3 Attempts to reschedule a follow-up meet and confer were unsuccessful. The
4 City attorney improperly insisted that only certain Plaintiffs’ counsel—but not others—
5 be permitted to attend any additional meet and confer. *See* Menasche Decl, ¶ 37. After
6 several more tries, including the above referenced attempts to obtain accommodation
7 for two disabled class members, Plaintiff’s counsel again contacted the City’s attorney
8 on October 16, 2025, to express concern about police harassing and threatening
9 Plaintiff class members. Plaintiffs’ counsel shared that the City police were apparently
10 threatening the two class members seeking accommodation (Ms. Lunford and Mr.
11 Soklaropoulos) with OVO tickets and the possibility of towing their vehicles.
12 Menasche Decl., ¶ 38. During that conversation, the City attorney again intentionally
13 disconnected the call and made no attempt to reconnect. Plaintiffs’ counsel again
14 followed by email expressing Plaintiffs’ concerns in writing. *Id.*

15 While Plaintiffs’ counsel remains willing to continue meeting and conferring
16 with the City, further attempts to do so on this issue seemed unlikely to bear fruit. At
17 this point, more than 45 days have passed since Plaintiffs provided notice of the dispute,
18 and the parties remain at an impasse with no clear path to resolution. As such,
19 Plaintiffs’ motion to enforce the terms of the Settlement Agreement is ripe for
20 adjudication.

21 **III. ARGUMENT**

22 **A. The City Violating Explicit Terms of the Settlement Agreement**

23 A court’s interpretation of a settlement agreement is governed by principles of
24 local law which apply to interpretation of contracts generally. *Parsons v. Ryan*, 912 F.
25 3d 486 (9th Cir. 2014). Settlement agreements are governed by the same rules as other
26 contracts. In California, courts look to the plain meaning of the agreement’s language;

1 if the agreement’s language is clear and explicit, and it does not involve an absurdity,
2 it controls. Cal. Civil Code § 1638; *Alvarado v. WalMart*, 2025 WL 2775774 (9th Cir.,
3 Sept. 3, 2025). “The whole of a contract is to be taken together, so as to give effect to
4 every part, if reasonably practicable, each clause helping to interpret the other.” Cal.
5 Civil Code § 1641.

6 As explained above, the Settlement Agreement explicitly requires police to
7 consider the *totality of the circumstances* regarding whether safe parking is reasonably
8 available to a homeless individual before issuing an OVO ticket. Per the Settlement
9 Agreement, police are required to “determine whether a safe parking lot is reasonably
10 available to an involuntarily homeless person sheltering in their vehicle,” and “Officers
11 should consider the totality of the circumstances...including the distance to the safe
12 parking lot.” Menasche Decl., Ex. A (Agreement), p. 2, § 3. The distance to the lot is
13 relevant for homeless individuals sheltering in their vehicles because the location of a
14 night-time only lot (where one must drive back and forth between nighttime and daytime
15 locations) directly impacts cost and creates other obstacles.

16 There is no evidence that the City is complying with the plain language of the
17 Settlement Agreement. The Settlement Agreement requires police to determine, on a
18 case-by-case basis, whether a parking spot is reasonably available to someone who is
19 involuntarily experiencing homelessness. The phrase “totality of the circumstances”
20 and the express language in the Settlement Agreement require police to consider
21 distance to the lot in the Settlement Agreement. The City police are not doing this.
22 Instead, the City measures “reasonable availability” as a generic standard, merely
23 determining whether “a parking spot [is] open for anyone with an oversized vehicle to
24 park.” But this overly narrow and simplified interpretation violates the express
25 language of the Settlement Agreement.

1 In narrowing its analysis to the sole question of whether a parking spot is open,
2 the police disregard whether class members are able to travel to and from the lot each
3 day due to distance (which implicitly includes disability or financial constraints), or the
4 condition of the vehicle, whether the lot’s hours conflict with work schedules, or
5 whether the conditions at the lot itself are inaccessible to that individual based on
6 disability. In other words, the police are not considering the totality of the
7 circumstances expressly required by the Settlement Agreement.

8 This is particularly egregious when one considers that the express intent of the
9 Settlement Agreement is to avoid ticketing and towing of class members who have no
10 alternative but to park in violation of the OVO’s nighttime parking ban—*a goal the*
11 *City agrees with*. Menasche Decl. Ex. A (Agreement), p. 2, § 2 (“The City agrees that
12 it does not want to tow vehicles that provide the sole means of shelter to individuals or
13 families who are experiencing involuntary homeless.”) Thus, a policy of ticketing and
14 towing the vehicles of class members who, through no fault of their own, cannot utilize
15 the H-Barracks night-time-only lot, and where the police are not considering the totality
16 of the circumstances, violates the clear intent and express language of the Settlement
17 Agreement.

18 Likewise, the failure of the City—one year after this Court approved the
19 Settlement Agreement—to do anything to improve the Mission Valley lot, save for one
20 gate is also a violation of the clear, explicit language of the Settlement Agreement. To
21 be sure, construction can take time, but the City refuses to provide a timeline for when
22 the agreed on “essential improvements of electric hookups, running water, bathrooms,
23 and showers” the City is contractually obligated to make will be started or completed.
24 See Menasche Decl., Ex. A (Agreement), p. 3, § 5. This is a straightforward violation
25 of the Settlement Agreement that this Court can correct by requiring compliance from
26 the City.

1 Finally, the unambiguous language of the Settlement Agreement requires the
2 City to post accurate information updated daily on the number of spots available in
3 each of the Safe Lots and how many of those are suitable for oversized vehicles. It has
4 failed to do so. Listing 20 spots available for months now without specifying where
5 these spots are located or how many are suitable for RVs makes a mockery of this
6 requirement and undermines the City’s purported attempts to provide “services.” This
7 is another clear violation of the Settlement Agreement that Plaintiffs must seek this
8 Court’s assistance in compelling the City to fulfill its contractual obligations.

9 **B. The City Violated Its Obligation of Good Faith and Fair Dealing**

10 In addition to the express terms of the Settlement Agreement, the doctrine of
11 good faith and fair dealing requires that the parties perform their obligations in good
12 faith. As the California Supreme Court explained, “In every contract, there is an
13 implied covenant of good faith and fair dealing that neither party will do anything
14 which injures the right of the other to receive the benefits of the agreement.” *Brown v.*
15 *Superior Court*, 34 Cal. 2d 559 (1949). Furthermore, the law holds that “all things that
16 in law or usage are considered as incidental to a contract or as necessary to carry it into
17 effect, are implied therefore, unless some of them are express mentioned therein, when
18 all things of the same class are deemed to be excluded.” Cal. Civ. Code § 1656.

19 The City’s harsh enforcement of the OVO in violation of the terms of the
20 Settlement Agreement show a lack of good faith and fair dealing. Even if there is some
21 ambiguity in the language of the Settlement Agreement regarding the police’s
22 obligation to individually assess whether a safe lot spot is reasonably available to a
23 class member, or the timing of improvements to the Mission Valley lot, through the
24 actions and inactions described above, the City has injured the rights of class members,
25 many with disabilities, and deprived them of the benefit of the Settlement Agreement
26 by reinstating the same punitive measures that originally led to this lawsuit, and
27

1 maintaining the uninhabitable conditions at the Mission Valley lot. This is another
2 reason the Court should find the City in violation of the Settlement Agreement terms
3 and compel the City to comply with the agreed to terms and conditions of that
4 agreement.

5 **C. Awarding Plaintiffs’ Attorney Fees Is Appropriate**

6 Plaintiffs request an award of attorneys’ fees associated with this enforcement
7 of the Settlement Agreement. Pursuant to § 10 of the Settlement Agreement, Plaintiffs
8 believe that the funds allocated by the City for enforcement should be used to cover
9 these fees and costs. In the alternative, Plaintiffs request that the Court order the City
10 to reimburse Plaintiffs for the fees incurred in bringing the motion. Plaintiffs will
11 provide documentation of hours expended at the Court’s request.

12 **IV. CONCLUSION**

13 Based on the above, Plaintiffs request that this Court Order the City to comply
14 with provisions of the Settlement Agreement as set forth in this motion.

15
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