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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

PEOPLE OF THE STATE OF CALIFORNIA, by and through Dennis J. Herrera, City Attorney for the City and County of San Francisco,

Plaintiff,

vs.

CHRISTIAN NOEL PADILLA-MARTEL aka CHRISTIAN PADILLA-MARTEL, an individual,

Defendant.

CASE NO. CGC-20-586763

DEFENDANT CHRISTIAN NOEL PADILLA-MARTEL'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Date: April 27, 2021
Time: 9:30 a.m.
Dept: 302
Judge: Hon. Ethan P. Schulman

Complaint Filed: September 24, 2020
Trial Date: Not Set

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I. INTRODUCTION

With this motion, the City asks the Court to give it the power to banish those it finds undesirable. While such a power might serve the short-term interests of police and politicians, it is an unproductive, unjustified, and unprecedented use of the public nuisance statute and Unfair Competition Law ("UCL"). Never before have these laws been used to impose such a sweeping injunction based on a handful of low-level drug crimes. To grant the requested injunction would be to hand the City Attorney a shocking new weapon that could be replicated and used against any number of groups it would prefer out of sight.

To be sure, substance abuse causes very real harms in the Tenderloin. But the City has not offered *evidence*, as compared to conjecture, that justifies holding Mr. Padilla-Martel liable for those harms. The motion asks the Court to speculate regarding the effects of Mr. Padilla-Martel's conduct based on the state of the Tenderloin, not *evidence* of anything he himself has done. The City also offers no *evidence* that banning him from a large, central, service-rich part of San Francisco is necessary or appropriate, and the banishment area it proposes is overbroad and arbitrary. There is also no *evidence* that the injunction would improve the lives of Tenderloin residents or reduce crime. The evidence submitted by Mr. Padilla-Martel in fact shows the opposite—injunctions and enforcement against street-level dealers are ineffective and even harmful. While the Court had to accept the City's allegations as true at the demurrer stage, now the City has to produce evidence to support its proposed injunction against this particular individual, and it has failed to do so. The motion should be denied.

II. STATEMENT OF FACTS

The City filed this action on September 24, 2020, along with identical complaints against 27 other individuals who had been criminally charged with low-level drug-related activity in the Tenderloin. That same day, City Attorney Dennis Herrera held a press conference touting the unprecedented nature of the lawsuits, calling them "a new approach."[1] The City failed to serve

[1] *Herrera files 28 civil lawsuits to keep known drug dealers out of the Tenderloin* (Sept. 24, 2020), available at https://www.sfcityattorney.org/2020/09/24/herrera-files-28-civil-lawsuits-to-keep-known-drug-dealers-out-of-the-tenderloin/.

Mr. Padilla-Martel with the complaint for over three months. Mr. Padilla-Martel answered the complaint in January 2021. In March 2021, the City filed the instant motion.

Although the City filed a range of declarations in support of its motion, they are replete with inadmissible and irrelevant statements, and Mr. Padilla-Martel has concurrently filed objections thereto. Those declarations are also notable for what they do *not* say. The City's evidence falls into two categories: civilian and police declarations. None of the civilian declarations describe interactions with or observations of Mr. Padilla-Martel, instead referencing unnamed "drug dealers" who are not defendants here. And while certain civilian declarations describe a location where arrest records separately suggest that Mr. Padilla-Martel has been, namely the 100 block of Hyde Street, the City presents no evidence connecting those declarant's observations to Mr. Padilla-Martel.

The police declarations do purport to describe Mr. Padilla-Martel's individual conduct. But they too are notable for what they lack. Although the City spends significant time describing violent outbursts of unnamed drug dealers, it submits *no* evidence that Mr. Padilla-Martel himself ever possessed a weapon or acted violently. And while on *one* occasion he was observed with four other people, the record also contains *no* evidence that he was blocking a sidewalk. Nor do the police declarations establish that Mr. Padilla-Martel sold "significant quantities" of substances in the Tenderloin, as the City misleadingly suggests. (MPA at 9.) The police searched Mr. Padilla-Martel on one occasion simply because he was determined to have violated San Francisco's stay-at-home order. (Juarez Decl. ¶ 4.) The other two arrests were purportedly based on only a few hand-to-hand drug sales. (Diaz Decl. ¶ 5; Gunn Decl. ¶ 4; Lyons Decl. ¶ 4).

Despite this lack of evidence, the City has selected Mr. Padilla-Martel to be a scapegoat in its ill-conceived effort to make a political point. We all agree the Tenderloin is facing a drug-related health crisis, but as the declarations supporting this opposition show, advocates, service providers, defense attorneys, and academics intimately familiar with policing, substance use and abuse, and the Tenderloin community fiercely oppose the requested injunction: because the injunction would harm both Mr. Padilla-Martel and the community while doing nothing to

increase public safety or reduce substance abuse.[2]

Unfortunately, Mr. Padilla-Martel has to defend himself against this motion with one hand tied behind his back. The City initiated this action knowing that he is defending himself in criminal proceedings over the same alleged conduct. By pursuing this dual track, the City understood it was forcing him to choose between his constitutional protection against self-incrimination and his constitutional right to due process in this civil suit. (*Pacers, Inc. v. Superior Court* (1984) 162 Cal.App.3d 686, 688–89.) Submitting a declaration about past or current ties to the Tenderloin could be held to waive the privilege against self-incrimination, jeopardizing his defense in the criminal cases. (*In re Edmond* (4th Cir. 1991) 934 F.2d 1304, 1308-09 [declaration "operates like other testimonial statements to raise the possibility that the witness has waived the Fifth Amendment privilege"].) The City's strategic decision means that Mr. Padilla-Martel must remain silent here regarding his past and current ties to the Tenderloin.

III. LEGAL STANDARD

Courts "evaluate two interrelated factors" when ruling on a preliminary injunction motion: likelihood of success on merits, and a balancing of interim harms to the plaintiff of a denial and harm to the defendant of its issuance. (*Urgent Care Med. Servs. v. City of Pasadena* (2018) 21 Cal.App.5th 1086, 1092.) "The latter factor involves consideration of such things as the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo." (*Abrams v. St. John's Hospital & Health Center* (1994) 25 Cal.App.4th 628, 636.)

Where, as here, the government seeks to enjoin lawful activities, the Court must apply a clear and convincing evidence standard that "is satisfied where the evidence establishes a 'high probability' of the requisite findings." (*People ex rel. Reisig v. Acuna* (2010) 182 Cal.App.4th 866, 873 [citation omitted].) This stricter standard "arises not because the personal activities enjoined are sublime or grand but rather because they are commonplace, and ordinary. While it may be lawful to restrict such activity, it is also extraordinary." (*People v. Englebrecht* (2001) 88 Cal.App.4th 1236, 1256.) Thus, the Court's task is to determine if the City's evidence

[2] The City presents no such declarations, relying instead on police officers and a handful of business owners/property managers, the latter with no knowledge of or contact with Defendant.

"established a high probability (1) [the City] will prevail on the merits, and (2) the interim harm [the City] is likely to sustain if the preliminary injunction is denied is not exceeded by the interim harm defendant is likely to suffer if the preliminary injunction were issued." (*People ex rel. Reisig*, 182 Cal.App.4th at 873-74.) Courts may make these determinations on a "sliding scale." (*People v. Uber Techs., Inc*. (2020) 56 Cal.App.5th 266, 273.)

The City seeks to invoke the narrow *IT Corp.* presumption in its favor. (MPA at 8, 14 [citing *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63].) But this presumption only applies when a party seeks to enjoin conduct that the Legislature has specifically prohibited and for which it has specifically authorized injunctive relief. (*Id.* at 71-72.) That is not the case here. The City is not asking this Court to enjoin illegal drug dealing but instead to enjoin Mr. Padilla-Martel from entering a neighborhood and other lawful behavior, from socializing, shopping, and working to protesting, attending clinics, and receiving services. The proper standard is the "traditional" two-part test, which the City must show with clear and convincing evidence, and which does not require Mr. Padilla-Martel to show grave or irreparable harm. The City fails to meet that standard.

IV. ARGUMENT

A. The City Has Not Shown a Likelihood of Success on the Merits

1. No Showing that Defendant Is Creating a Public Nuisance

The City has not clearly established it is likely to succeed on the merits of its public nuisance cause of action. While Civil Code section 3479's definition of a "nuisance" includes the illegal sale of controlled substances and the "unlawful[] obstruct[ion]" of a public street, to prove the existence of a *public* nuisance, a plaintiff must also demonstrate that the defendant's conduct "affected a substantial number of people at the same time." (*Birke v. Oakwood Worldwide* (2009) 169 Cal.App.4th 1540, 1548.) The City has made no such showing here.[3]

The City first claims that Mr. Padilla-Martel created a public nuisance by "menac[ing] life

[3] The City conflates nuisance per se and *public* nuisance per se in arguing that drug sales constitute a public nuisance. Its reading of section 3479 renders meaningless section 3480's core statutory requirement that a public nuisance affects a "considerable number of people."

or limb," referring to the "actual or potential injury" that results from using drugs and the possibility that someone using drugs may "discard[] used syringes." (MPA at 15:9-12.) While such unsubstantiated inferences sufficed at the demurrer stage, the City now must support its claims with evidence. And it offers no evidence that Mr. Padilla-Martel injured anyone or sold drugs to someone who discarded a syringe on the sidewalk. Nor does the City offer any evidence that he "is peddling dozens if not hundreds of doses of dangerous drugs." (MPA at 15:25-26.)[4]

The City next argues—again without citing evidence—that Mr. Padilla-Martel created a public nuisance by forcing people to "detour" around him in public spaces. (MPA at 15:16.) None of City's declarants claims to have "detoured" around Mr. Padilla-Martel, and none claims to have observed him blocking a public space. While the City is correct that blocking a sidewalk or a highway can, in some instances, constitute a public nuisance, it has offered no evidence that Mr. Padilla-Martel himself has done so.

Mr. Padilla-Martel also is not liable under public nuisance law for the cumulative harms caused by the decades-long drug crisis. The parties agree that the City must demonstrate that he was a "substantial factor" in bringing about the nuisance. (MPA at 16 [citing *People v. ConAgra Grocery Prod. Co.* (2017) 17 Cal.App.5th 51, 101.]) This standard requires "that the contribution of the individual cause be more than negligible or theoretical." (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 978.) If a defendant's conduct operated simultaneously with others to create a nuisance, it is a substantial factor only if the "full extent" of the injury "would not have occurred but for that conduct." (*City & Cty. of San Francisco v. Purdue Pharma L.P.* (N.D. Cal. Sept. 30, 2020) 2020 WL 5816488, at *40 [quoting *In re Ethan C.* (2012) 54 Cal.4th 610, 640].)

The City provides no evidence that Mr. Padilla-Martel's conduct was necessary to bring about the harms described by the City. The allegations against him, even if true, cite only a few hand-to-hand drug sales. (Diaz Decl. ¶ 5; Gunn Decl. ¶ 4; Lyons Decl. ¶ 4.) The City provides

[4] Neither *Wade v. Campbell* (1962) 200 Cal.App.2d 54 nor *People v. McDonald* (2006) 137 Cal.App.4th 521 supports the argument that a few drug sales is a public nuisance. In *Wade*, the public nuisance caused by dairy farm affected nearly 25% of the area residents. (200 Cal.App.2d at 59.) *McDonald* involved a motion to suppress, not an injunction, and the court recognized that the standards for enjoining a public nuisance under section 3480 differ from those for prosecuting a Penal Code section 370 violation, the statute at issue. (137 Cal.App.4th at 537.)

no evidence that these alleged sales (or the sales the City hypothesizes about, but has no proof of, based on his alleged possession of drugs) resulted in an overdose. Nor does the record show that the alleged buyers used drugs in public, littered, bothered neighborhood residents, or committed a crime to afford their purchase. Indeed, the police claim to have seized the drugs purchased by one of the alleged buyers before they could be consumed. (Lyons Decl. ¶ 4.) The record also contains no evidence that he contributed in any way to the violence in the neighborhood or possessed a weapon. His arrests occurred in a tiny portion of the proposed banishment zone. (Verner-Crist Decl., Ex. D.) His three arrests in 2020 constitute just 0.48% of the drug arrests that year in the Tenderloin. (Verner-Crist Decl. ¶ 3; *see also* Gutierrez Decl. ¶ 7 [no change over the past ten years in perceived sense of safety or comfort].) In short, the City establishes no "causative link" (*In re Firearm Cases* (2005) 126 Cal.App.4th 959, 988) between Mr. Padilla-Martel's conduct and the Tenderloin's longstanding difficulties. His contribution was merely "negligible or theoretical." (*Rutherford*, 16 Cal.4th at 978.)

By contorting the public nuisance statute to apply to isolated instances of street-level drug dealing without showing that those sales affected "at the same time an entire community or neighborhood, or any considerable number of persons" (Civ. Code, § 3480), the City asks the Court to expand public nuisance law in an unprecedented and unsupportable manner. This Court should reject the City's invitation to create a "standardless notion of what constitutes a 'public nuisance.'" (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1107.) The alternative would be to hand a tool to overreaching prosecutors, police, and politicians that they could use to go after anyone they view as "unsightly, dangerous, or disorderly." (Beckett & Herbert Decl. ¶ 9.)

2. No Showing that Defendant Is Violating the UCL

The UCL prohibits "unfair competition," defined as "any unlawful, unfair or fraudulent business act or practice." (Bus. & Prof. Code, § 17200.) Although the Legislature framed its substantive provisions in "broad, sweeping language," the UCL is "intended to preserve fair competition and protect consumers from market distortions." (*Kwikset Corp. v. Super. Ct.* (2011) 51 Cal.4th 310, 320, 331.)

The City seeks the injunction based on Defendant's alleged violation of the UCL's

unlawful prong. (MPA at 16-17.) The Legislature's addition of the word "unlawful" to describe the types of wrongful business conduct that could be enjoined did not transform the statute into "a roving warrant for a prosecutor to use injunctions and civil penalties to enforce criminal laws." (*People v. E.W.A.P. Inc.* (1980) 106 Cal.App.3d 315, 320.) The UCL was, and still is, a consumer protection statute that "governs anti-competitive business practices as well as injuries to consumers." (*Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180.)

This case has nothing to do with fair competition. Instead, the City seeks to use the UCL as a new weapon to enjoin individuals from entering portions of the City. The remedy sought in no way, shape, or form meets the purpose and intent of the UCL. The City is going after the victims of poverty and desperation that the UCL is meant to protect.

The City has not shown that Mr. Padilla-Martel has engaged in a business practice or act within the meaning of the UCL, "a question of fact dependent on the circumstances of each case." (*E.W.A.P.*, 106 Cal.App.3d at 321-22.) While the UCL's unlawful prong can be predicated on a criminal violation, never has a court found a UCL violation in circumstances like those here. Courts instead find UCL violations where the defendant is a corporation or comparably organized business. (*See*, *e.g.*, *People v. K. Sakai Co.* (1976) 56 Cal.App.3d 531, 533 [corporate owner and operators of grocery store]; *People v. McKale* (1979) 25 Cal.3d 626, 631 [owner of a mobile home park, its managers, and Wells Fargo Bank].) We have found no decision applying the UCL to a single defendant who has no storefront, no registered business, no business license, and no commercial dealings and is not alleged to be part of a conspiracy. Mr. Padilla-Martel is alleged only to have engaged in a few isolated, street-level drug sales. To find a UCL violation here would be a sea change in the nearly century-old law of unfair competition in California.

The City's cited cases are inapposite. *People ex rel. Trutanich v. Joseph* (2014) 204 Cal.App.4th 1512 involved a storefront business in unlawful marijuana sales violated the UCL. The defendant in *Cel-Tech* was a government-licensed company that sold cellular telephones and services. (*Cel-Tech,* 20 Cal.4th at 169.) *E.W.A.P.* concerned a corporation organized and headquartered in California that had formally appointed officers. (*E.W.A.P.*, 106 Cal.App.3d at 319.) The *E.W.A.P.* majority cautioned against the "misapplication of the law in a future case"

with even less evidence of a defendant's alleged "business" activities. (*Id.* at 322; *see also id.* at 326 [warning to not "lose sight of the fact that section 17200 is a definition of unfair competition. Surely the concept of 'competition' relates solely to the method of conducting a business, and not to the nature of the product sold or service rendered"] [dissenting].)

B. The City Cannot Establish the Balance of Interim Harms Tips in Its Favor

"The ultimate goal of any test to be used in deciding whether a preliminary injunction should issue is to minimize the harm which an erroneous interim decision may cause." (*White v. Davis* (2003) 30 Cal.4th 528, 554.) Here, minimizing harm from an erroneous interim decision means denying the requested injunction, which, in turn, protects the status quo.

1. The Proposed Injunction Would Inflict Grave Harm

The City pushes a misleading framework: that it merely seeks to enjoin the per se nuisance of *drug dealing*. (MPA at 8, 21.) To the contrary, a banishment injunction means enjoining both lawful and unlawful conduct. The Court must focus on the broader harms to Mr. Padilla-Martel, and the community, that such a sweeping injunction would entail. (*Acuna*, 14 Cal.4th at 1109.)

a. Irreparable Harm to Defendant's Constitutional Rights

The City's sweeping injunction would cause serious constitutional harm. As explained above, Mr. Padilla-Martel cannot respond directly to the City's claims about his past or current uses of the Tenderloin. But based on all the evidence before it, and on well-established constitutional law, this Court should find the City's ill-considered, "novel" proposed ban a violation of Mr. Padilla-Martel's freedom of movement, speech, and association. These harms will be both grave and irreparable. (*Roman Cath. Diocese of Brooklyn v. Cuomo* (2020) -- U.S. --, 141 S.Ct. 63, 67 [per curiam] ["The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."] [citation and internal marks omitted].)[5]

Freedom of movement

The proposed injunction would burden Mr. Padilla-Martel's right to free movement—"to

[5] (*Cuviello v. City of Vallejo* (9th Cir. 2019) 944 F.3d 816, 833 ["chill on" "free speech rights" is "irreparable harm"]; *Upshaw v. Alameda Cty*. (N.D. Cal. 2019) 377 F.Supp.3d 1027, 1033 [similar]; *Am. Booksellers Assn., Inc. v. Sup. Ct.* (1982) 129 Cal.App.3d 197, 206 [similar].)

move at will from place to place therein, and to have free ingress thereto and egress therefrom[.]" (*United States v. Wheeler* (1920) 254 U.S. 281, 293.) The California Constitution similarly protects the right to travel. (*In re White* (1979) 97 Cal.App.3d 141, 148.) Indigence does not affect this right. (*Wheeler*, 254 U.S. at 294; *In re White*, 97 Cal.App.3d at 148-49.) A burden is only constitutionally permissible if narrowly tailored to protect a compelling government interest. (*Nunez ex rel. Nunez v. City of San Diego* (9th Cir. 1997) 114 F.3d 935, 946.)

An injunction barring access to an entire area constitutes an "undeniable interference with protected liberty interests." (*People v. Sanchez* (2017) 18 Cal.App.5th 727, 743-45, 754; *see also In re White*, 97 Cal.App.3d at 144, 147-51 [banishment order unconstitutional that prevents defendant from participating in "many legal activities" within prohibited area]; *Nunez*, 114 F.3d at 948-49 [similar]; *Catron v. City of St. Petersburg* (11th Cir. 2011) 658 F.3d 1260, 1270-71 [similar]; *City of New York v. Andrews* (Sup. Ct. 2000) 719 N.Y.S.2d 442, 452 [banishment order unconstitutional, even given public nuisance].) In contrast, in *People v. Moran* (2016) 1 Cal.5th 398, 407, the order to defendant to stay away from Home Depot stores was "reasonable and incidental" where he could still "freely move about his community, the city, and the State of California." (*Id.* [describing many activities in which defendant *could* still engage].) Here, City's very purpose is to restrict movement by banning entry into and presence in a neighborhood.

Because the requested injunction would directly burden Mr. Padilla-Martel's freedom of movement (Padilla Decl. ¶ 6, 10; see generally Villalobos Decl. ¶ 9 [burden on movement]), it is subject to strict scrutiny. While the City might have a compelling interest in reducing drug sales and increasing public safety, the City could not and does not identify a constitutionally sufficient nexus between such goals and banishing Mr. Padilla-Martel from a neighborhood. The relief is not narrowly tailored to the scope of the alleged unlawful conduct. (*Compare Acuna*, 14 Cal. 4th at 1110 [injunction applying to four-block area and directly targeting nuisance behavior].) Further, the City provides no proof that banishment would noticeably reduce drug sales in the Tenderloin, let alone meaningfully so.

Banishing him, in contrast, would severely harm Mr. Padilla-Martel. (*People v. Beach* (1983) 147 Cal.App.3d 612, 623 [conducting balancing].) The injunction would exclude him

from a service-rich area and deprive him of constitutionally protected liberty interests. (*See infra*; *City of Chicago v. Morales* (1999) 527 U.S. 41, 54 [plurality; *Catron*, 658 F.3d at 1266.)

The City's narrow exception permitting Mr. Padilla-Martel to seek permission to enter the neighborhood is exceptionally onerous and essentially meaningless. (S*ee* [Proposed] Preliminary Injunction and Stay Away Order, § 2(d); *Vasquez v. Rackauckas* (9th Cir. 2013) 734 F.3d 1025, 1042, 1043 [lack of sufficient exceptions "places a heavy burden[]" on the constitutional rights].)

Moreover, an injunction "must not prevent" a person "from presenting her grievances to government officials" (*Balboa Island Village Inn, Inc. v. Lemen* (2007) 40 Cal.4th 1141, 1160 [citation omitted]). The proposed injunction would bar Mr. Padilla-Martel from entering the U.S. Court of Appeals. And the banishment zone ending at the edge of other courthouses and the Community Justice Center means that he will take a great risk and engage in great contortions to reach them. These burdens are especially severe given the City's proposed ban on exiting from the Civic Center and Powell stations or buses on Van Ness (and ban on using other bus lines).

Freedom of expression & association

Injunctions affecting "First Amendment rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate," "tailored as precisely as possible to the exact needs of the case." (*Carroll v. President & Cmmr. of Princess Anne* (1968) 393 U.S. 175, 183-84; *Madsen v. Women's Health Center, Inc.* (1994) 512 U.S. 753, 765.) In *Acuna*, the Court emphasized facts dramatically different from those here. The relevant area was an "urban war zone." (14 Cal.4th at 1121.) Yet the injunction only limited gang activity, not all activity, and was limited to four-square blocks. Similarly, the injunction in *Englebrecht*, 88 Cal.App.4th 1236, limited only certain associations and gang-related signaling.[6] By contrast, the City's proposed injunction forbids all activity in an entire neighborhood, sweeping up protected speech and association, including in historically important locations for political expression. It would directly burden rights to free expression and assembly far more

[6] The City misreads *Englebrecht* to argue that geographic scope "does not raise any First Amendment issue." (MPA at 21.) Unlike here, the restricted speech was not protected, so location did not matter. (88 Cal.App.4th at 1262 [emphasis added].)

than necessary to serve the governmental interest at stake.

b. Other Harms to Defendant

Mr. Padilla-Martel has many demands on him to support others. (Padilla-Martel Decl. ¶¶ 2-3.) Yet the proposed injunction would prevent him from getting critical services, including those related to affordable housing, social services, and job assistance. (Boden Decl. Ex. A, p.1; Gutierrez Decl. ¶ 9; Villalobos Decl. ¶ 5, 9.) He would face further criminal prosecution for violating this injunction, as well as ruinous penalties. (Padilla-Martel Decl. ¶ 9.) And the injunction, by fusing the civil with the criminal, diminishes his due process rights. (Beckett & Herbert Decl. ¶ 11.) Moreover, forcing him to obtain permission to enter the Tenderloin imposes a heavy practical burden on him. (*See* Proposed Injunction, § 2(d).) He is a monolingual Spanish speaker in an already difficult position. Having to initiate this process, with an interpreter, and finding a way to print a stipulation to "carry" it with him makes the offer empty, as well as incredibly cynical.

c. Harms to the Community

The injunction also will harm the community. Banishment only marginalizes the already marginalized and punishes the most vulnerable among us. (Beckett & Herbert ¶¶ 9, 12; Boden Decl. ¶ 8.) Overdoses will increase, including because individuals will seek assistance less. (Boden Decl. Ex. A, p.2; Zanipatin Decl. ¶¶ 9-10.) The injunction will compromise service providers' effectiveness. (Villalobos Decl. ¶ 7.) People die without services. (Tiwari Decl. ¶ 17.) The banishment injunction will erode community trust. (Boden Decl. ¶ 8.) It will harm vulnerable immigrant youth (Boden Decl. Ex. A pp.1-2; Tiwari Decl. ¶ 10) and persons of color in particular. (DePietro Decl. ¶ 8; Zanipatin Decl. ¶¶ 6, 13, 23.) It will increase surveillance, including of young Latinx males; profiling; and arrests and prosecutions for otherwise innocent conduct—providing greater license to question and arrest people in public spaces. (Boden Decl. Ex. A, p.1; Camacho Decl. ¶ 6; Villaran Decl. ¶ 8; Beckett & Herbert Decl. ¶¶ 10-12; DePietro Decl. ¶ 8.) The community will be less safe, not more. (Boden Decl. ¶ 9; Andrews Dec. ¶ 4.)

Moreover, the City asks this Court to impose expansive aiding and abetting liability on top of the already extraordinarily broad injunction. (*See* Proposed Injunction, at 2 ["Anyone who has

notice of the terms of this PRELIMINARY INJUNCTION, and who aids, abets, or acts in concert with DEFENDANT to violate it, is also subject to enforcement."].) The City has provided no evidence that aiding and abetting has contributed to the alleged public nuisance, yet this provision sweeps a whole new and unidentified set of potential defendants into future civil or criminal contempt proceedings, with no due process rights afforded.

2. Permitting Defendant in the Tenderloin Will Not Harm the Public

The City provides no evidence that Mr. Padilla-Martel's mere presence in the Tenderloin causes harm. And the City seeks to enjoin that presence, not nuisance conduct. Moreover, the evidence the City *does* submit about the Tenderloin is entirely disconnected from Mr. Padilla-Martel. (*Supra*, Statement of Facts & Section IV(A)(1).) The City may no longer rely on bare assertions that he is "one of many causing these terrible conditions." (MPA at 13.)

Because the injunction will accomplish nothing, irreparable harm will *not* result if this Court denies the motion. The Tenderloin's problems are real. (DePietro Decl. ¶ 8.) But the proposed injunction will not address those problems. (DePietro Decl. ¶ 9; Camacho Decl. ¶ 12; Razzaq Decl. ¶ 7.) Street-level dealers are easily replaced.[7] The injunction ignores demand, higher-level players, and the source of drugs. (Camacho Decl. ¶ 8; Villaran ¶¶ 5, 9; Andrews ¶ 7; *see also* Razzaq Decl. Ex. A pp.1-2.) It does not address "root causes." (Boden Decl. Ex. A, pp. 1, 2; Zanipatin Decl. ¶ 8; Tiwari Decl. ¶ 4; Andrews ¶ 6; *see also* Beckett & Herbert Decl. ¶ 12; Razzaq Decl. ¶ 7.)[8] Rejecting a worthless policy poses no harm.

In contrast, an effective policy would address demand, shifting resources to those who need material support, not banishment.[9] It would provide harm reduction and drug treatment services. And housing. And employment. And safe use and supervised consumption sites. Assistance obtaining secure immigration status and screening and referral services. An effective policy would address demand, not supply.

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[7] (Boden Decl. ¶¶ 6, 8 & Ex. A; Camacho Decl. ¶ 10; Welch Decl. ¶¶ 6-10; Lober Decl. ¶ 5; Tiwari Decl. ¶¶ 17, 24; Zanipatin Decl. ¶¶ 8, 10.)

[8] Because ineffective, it is also wasteful and therefore harmful, especially given scarce resources and a pandemic. (Boden Decl. Ex. A, pp. 1-2; Tiwari Decl. ¶ 17; DePietro Decl. ¶ 10.)

[9] (Boden Decl. ¶¶ 7-9; Andrews Decl. ¶ 5; Razzaq Decl. ¶ 7; DePietro Decl. ¶¶ 8, 10; Zanipatin Decl. ¶¶ 12, 16, 18; Tiwari Decl. ¶¶ 4, 15-17; Villaran Decl. ¶ 12; Camacho Decl. ¶ 12.)

The City's excessive delay also demonstrates that irreparable harm would not result if this Court denies the motion. The City filed the complaint in September 2020 but waited five and a half months to seek relief. This Court should take that long delay into account when "determining what weight to give plaintiffs' claim of imminent irreparable injury." (*O'Connell v. Superior Ct.* (2006) 141 Cal.App.4th 1452, 1481-82 [denying preliminary injunction where plaintiffs delayed filing for six months] [citations omitted].)

3. The City Has an Adequate Remedy at Law

"A court of equity will not issue an injunction in cases of nuisance any more than in other cases in the absence of a showing that there is no plain, speedy and adequate remedy at law." (*Randall v. Freed* (1908) 154 Cal. 299, 302.) While an adequate remedy at law is "usually" one for damages, courts routinely decline to order injunctive relief where an alternative, non-monetary form of relief is available. (*See Dep't of Fish & Game v. Anderson-Cottonwood Irrigation Dist.* (1992) 8 Cal.App.4th 1554, 1565.) Adequate remedies may also include criminal sanctions, fines and penalties—such as those Mr. Padilla-Martel is already subject to.

An adequate remedy at law exists here. Stay-away orders are routinely sought in criminal prosecutions for drug crimes under the Penal Code and Health and Safety Code. (*See also* Camacho Decl. ¶ 11 [stay-away orders typical in low-level drug cases].) Indeed, the City points to stay-away orders that have been obtained against Mr. Padilla-Martel in pending and recent criminal cases. (RJN, Exhibits E-F.) The City's civil claim here amounts to an argument that these criminal restraining orders should encompass a larger swath of San Francisco. But the City has not shown that the State could not obtain a broader order through criminal proceedings with appropriate facts. Moreover, the Health and Safety Code includes a detailed monetary scheme for the imposition of penalties against individuals convicted of selling drugs. (*See, e.g.*, Health & Saf. Code, § 11372 [penalties and fines]; Health & Saf. Code, § 11372.5 [laboratory analysis fee]; Health & Saf. Code, § 11372.7 [drug program fee].) Such fines are statutorily subject to additional assessments, surcharges, and penalties (*see* Pen. Code, § 1464, *et seq*.), and correspond to specific offenses. The City cannot meaningfully argue that such penalties are not monetary compensation. Allowing it to obtain injunctive relief would require the Court to overlook this

entire statutory scheme, with its related due process and constitutional protections.

4. **The City Has Not Shown That the Alleged Conduct Will Recur**

"Injunctive relief has no application to wrongs which have been completed absent a showing that past violations will probably recur." (*People v. Toomey* (1984) 157 Cal.App.3d 1, 20 [citations omitted].) The City alleges that Mr. Padilla-Martel illegally sold and possessed drugs long before it filed its complaint, but does not show that Mr. Padilla-Martel has engaged in similar conduct since then. This case is no longer at the demurrer stage—the City cannot simply say conduct is "ongoing." It must prove it. Having only alleged past misconduct, the City cannot obtain injunction relief. (*See also Choice–In–Education League v. Los Angeles Unified School Dist.* (1993) 17 Cal.App.4th 415, 422 ["An injunction should not be granted as punishment for past acts. . . ."]; *California Service Station etc. Assn. v. Union Oil Co.* (1991) 232 Cal.App.3d 44 [injunctive relief denied where defendant voluntarily discontinued the alleged conduct].)

C. In Any Event, the Proposed Injunction Is Improper and Overbroad

What the City requests here is *not* a standard stay-away order, as it claims in its brief. (MPA at 19.) The City cites no decision in which a court barred an individual from entering a neighborhood based on violations of Civil Code section 3480 or the UCL. Where, as here, the government seeks to enjoin otherwise lawful activities, such restrictions should not be undertaken "without firmly establishing the facts making such restrictions necessary." (*Englebrecht*, 88 Cal.App.4th at 1256.) "[I]njunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." (*Califano v. Yamasaki* (1979) 442 U.S. 682, 702; *see also People v. Mason* (1981) 124 Cal.App.3d 348, 354.) The requested injunction is far broader than necessary to remedy any harm from Mr. Padilla-Martel's alleged conduct.

The City's overbroad request is premised on the claims of two SFPD members who opine in a conclusory manner that "a stay away order enjoining a drug dealer merely from one address or intersection in the Tenderloin is not effective, because the dealer simply moves to another location within the Tenderloin," and, "if drug sales are not occurring on a particular block at any given moment, users and sellers know they can move a block or two and find each other elsewhere in the Tenderloin." (Fabbri Decl. ¶ 25; Montero Decl. ¶ 20.) The City's evidence

undercuts the concept that drug dealers move block-to-block through every stretch of the neighborhood and shows that in the first half of 2020 large portions of the Tenderloin had few if any drug arrests. (Fabbri Decl., Ex. C.) The City's civilian declarations similarly focus on a small fraction of the Tenderloin. The proposed banishment zone is not evidence-based. The City has drawn arbitrary lines so it can claim to be taking action in the Tenderloin, when, in reality, the requested injunction is harmful to the community.

The City's proposed 50-square-block drug abatement area is utterly disproportionate to the scope of Mr. Padilla-Martel's alleged conduct. He is the only defendant in this case, not the hundreds of individuals who over the past several years have been engaged in drug dealing in the Tenderloin. And his alleged activity occupies a tiny fraction of the proposed drug abatement area. (Verner-Crist Decl., Ex. D.) In addition to being overbroad geographically, the requested injunction is an overbroad "absolute prohibition" injunction banning *all* activities by a defendant. Mr. Padilla-Martel has a right to engage in activities in the Tenderloin that are not nuisances. Courts reject such sweeping injunctions when they can craft narrower ones to abate specific conduct. (*Anderson v. Souza* (1952) 38 Cal.2d 825, 840 [order entirely prohibiting operation of airport reversed]; *Mason*, 124 Cal.App.3d 348 [order prohibiting all noise from restaurant and bar reversed].) This onerous and impractical "solution" is no solution at all.

V. CONCLUSION

The City's motion for preliminary injunction should be denied in its entirety.

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