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 12 CITY AND COUNTY OF SAN FRANCISCO, et al.

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

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

18 Plaintiffs,

19 vs.

20 CITY AND COUNTY OF SAN
 21 FRANCISCO; SAN FRANCISCO POLICE
 22 DEPARTMENT; SAN FRANCISCO
 23 DEPARTMENT OF PUBLIC WORKS; SAN
 24 FRANCISCO DEPARTMENT OF
 25 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),

27 Defendants.

Case No. 4:22-cv-05502-DMR

**SAN FRANCISCO'S MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 OPPOSITION TO PLAINTIFFS' MOTION
 FOR PRELIMINARY INJUNCTION**

Hearing Date: December 22, 2022
 Time: 1:00 p.m.
 Place: Courtroom 4 – 3rd Floor

Trial Date: None set.

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INTRODUCTION

San Francisco has developed sophisticated, multipronged, robust, and compassionate policies to address homelessness. San Francisco's dedicated and highly-trained professionals implement San Francisco's homelessness policies, supported by an annual budget this year of \$672 million. Plaintiffs vigorously disagree with San Francisco's homelessness policies. But plaintiffs have not demonstrated San Francisco's policies are unconstitutional.

Within the economic and practical constraints it faces, San Francisco engages individuals experiencing homelessness with a progressive, services-first, harm reduction approach to providing services and support. San Francisco shares with plaintiffs the goal of providing permanent, secure housing to all who need it. The executive director of plaintiff Coalition on Homelessness serves on the oversight committee for San Francisco's Our City Our Home Fund, which dispenses more than \$200 million each year for homeless services and housing.¹

San Francisco's homelessness policies balance the needs of all San Franciscans for safe and clean streets and public spaces. Growing encampments on public property create public health risks, strain our communities, and create safety risks for San Franciscans with mobility impairments using the public right of way. See *Hastings College of the Law v. City & County of San Francisco*, Case No. 3:20-cv-03033-JST (N.D. Cal., filed May 4, 2020). To open new housing and shelters, San Francisco must overcome sometimes strident community opposition. E.g. *1075 Market Street Owners' Ass'n v. U.S. Dept. of Health & Human Servs.*, Case No. 20-15517 2021 WL 2229175 (9th Cir. June 2, 2021) (legal challenge to 256-unit supportive housing project at 1064 Mission Street); *Safe Embarcadero for All v. State of California*, Case No. CPF 19-516841 (S.F. Super. Ct., filed Sept. 5, 2019) (legal challenge to Embarcadero Navigation Center); *Evergood Sausage Co., v. Pankowski*, Case No. CGC-21-594280 (S.F. Super. Ct., filed Aug. 4, 2021) (legal challenge to Jennings Street Safe Sleep Site).

This lawsuit challenges one aspect of San Francisco's holistic response to homelessness. Plaintiffs allege San Francisco requires people who are experiencing homelessness to leave their

¹ See <https://sf.gov/public-body/our-city-our-home-oversight-committee>. San Francisco prevailed in a legal challenge to 2018's Proposition C, the voter initiative that created the Our City Our Home Fund. See *City & County of San Francisco v. All Persons Interested in Matter of Proposition C*, 51 Cal. App. 5th 703 (2020), review denied (Sept. 9, 2020).

1 encampments without having offered a shelter bed to the person, and that San Francisco confiscates
2 and destroys their property without providing an opportunity for them to retrieve it. These allegations
3 directly contravene San Francisco's homelessness policies. San Francisco's policies ensure a person
4 experiencing homelessness is asked to leave an encampment only after the person has received an
5 offer of shelter and declined it. And San Francisco's policies specify that it disposes of an item only
6 upon determining it is trash, garbage, debris, broken furniture, a discarded appliance, or presents an
7 immediate health or safety risk such as hazardous sharps, chemicals, items soiled by infectious or
8 hazardous materials, and items infested by rodents or insects, or is intermingled with refuse. Other
9 items are bagged and tagged and stored 90 days at a central warehouse. San Francisco trains its
10 employees on these policies and through effective oversight ensures these policies are followed.

11 In the absence of systemic training failures, plaintiffs have offered no basis for imposing
12 municipal liability on San Francisco. For these reasons, set forth more fully below, the Court should
13 deny plaintiffs' motion for preliminary injunction.

14 **BACKGROUND**

15 **I. Overview of San Francisco's Homelessness Response System**

16 San Francisco's Department of Homelessness and Supportive Housing (HSH) manages San
17 Francisco's homelessness response system. Cohen Decl. ¶8. HSH's budget for the current fiscal year is
18 \$672 million. This budget amount does not include the value of other departments' contributions to
19 homeless-serving programs, including the Department of Public Health (DPH), the Department of
20 Public Works (DPW), the Department of Emergency Management (DEM), the Police Department
21 (SFPD), and the Fire Department (SFFD). All of these departments partner with HSH to provide
22 homeless services. *Id.* ¶4. Between 2019 and 2022, San Francisco has reduced the number of
23 unsheltered homeless by 15 percent and increased its shelter bed capacity. *Id.* ¶¶5-6.

24 The core components of San Francisco's homelessness response system are: (1) street
25 outreach; (2) temporary shelter and crisis intervention; (3) coordinated entry; (4) problem solving; (5)
26 homelessness prevention; (6) supportive housing; and (7) the housing ladder. Cohen Decl. ¶8.
27 Coordinated Entry is the "front door" for connecting households experiencing homelessness to the
28

1 resources needed to resolve their housing crisis. Last year, HSH’s Coordinated Entry program
2 conducted 8,743 assessments. *Id.* ¶13.

3 San Francisco’s Homeless Outreach Team (SFHOT) provides citywide outreach seven days a
4 week, connecting individuals living outside with available and appropriate resources, through
5 outreach, engagement, and case management. SFHOT works collaboratively with DPH’s Street
6 Medicine team to address medical and behavioral health needs. During the 2021 fiscal year, SFHOT
7 made 1,652 shelter placements through this citywide outreach work. In addition, SFHOT made
8 approximately 1,000 placements in coordination with HSOC encampment resolutions. Cohen Decl.
9 ¶9. Specialized outreach teams also provide services-first alternatives to law enforcement for 911 calls
10 or 311 calls from the public. *Id.* ¶10.

11 HSH’s temporary shelter inventory includes navigation centers, transitional housing, cabins,
12 trailers, Shelter-in-Place hotels, other forms of congregate, non-congregate, and semi-congregate
13 shelters, stabilization beds, and safe sleep sites. By the end of 2022 HSH plans to open approximately
14 1,000 shelter beds through a combination of new programs and reopening or expanding programs that
15 had been closed or curtailed during Covid-19. Cohen Decl. ¶¶11-12.

16 HSH’s Problem Solving Program focuses on clients who do not require ongoing support, but
17 who can resolve their homelessness with a timely intervention, such as a one-time flexible grant to
18 help resolve their homelessness or to reconnect with a support network outside San Francisco. Cohen
19 Decl. ¶14. Last year, HSH’s Homelessness Prevention Program disbursed \$4.7 million to households
20 needing assistance with back rent, future rent, and/or move-in costs. *Id.* ¶15.

21 HSH devotes more than half of its annual budget to supportive housing, offering permanent
22 solutions to homelessness. Last year, HSH moved 2,057 households into supportive housing and
23 maintained approximately 11,000 households in existing permanent supportive housing. And HSH
24 acquired six sites for permanent supportive housing, which will provide 625 additional units with over
25 1,100 bedrooms. HSH’s newest supportive housing project at 1064 Mission Street offers 256 units of
26 supportive housing, with on-site services and a culinary job training and education program. Cohen
27 Decl. ¶16. HSH’s Housing Ladder Program offers opportunities for tenants in supportive housing,
28 when appropriate, to move up the “ladder” to subsidized housing using lower levels of support

1 services. Last year, HSH opened the Abigail Hotel on McAllister Street as a new Housing Ladder site.
2 *Id.* ¶ 17.

3 The Covid-19 pandemic prompted significant changes in San Francisco’s response to
4 homelessness. To comply with Covid-19 health guidelines, HSH reconfigured its congregate shelters,
5 reducing their capacity by 70%, and opened a new congregate shelter site. The first Shelter-in-Place
6 (SIP) hotel sites opened in April 2020 to provide temporary non-congregate shelter for people
7 experiencing homelessness who were most vulnerable to Covid-19. At its highest capacity, San
8 Francisco’s SIP Hotel Program provided 2,288 rooms across 25 sites. HSH opened an SIP trailer site
9 at Pier 94 with a capacity of 116 trailers. Isolation and Quarantine (IQ) sites provided safe places for
10 people with Covid-19 to recover. The City managed as many as 538 IQ hotel rooms and shelter beds.
11 The Safe Sleep Program created tent sites where people could sleep a safe distance apart from each
12 other, off the public sidewalks, with services available. At its peak, the Safe Sleep Program offered 5
13 tent sites. Cohen Decl. ¶18.

14 As the city emerges from Covid-19, HSH is winding down the Shelter-in-Place Hotel program.
15 HSH now maintains 2 SIP hotel sites accommodating approximately 400 guests. HSH will add one of
16 those sites to its permanent supportive housing inventory. HSH will continue to operate the trailer site
17 at Pier 94 as a long-term program. HSH has closed three of the Safe Sleep Sites and plans to maintain
18 two Safe Sleep sites with a combined capacity for approximately 60 guests. Cohen Decl. ¶19.

19 **II. HSOC Encampment Resolutions.**

20 San Francisco’s Healthy Streets Operation Center (HSOC) conducts several homeless
21 encampment resolutions (“HSOC engagements”) each week. The goals of an HSOC engagement are
22 to conduct outreach to clients, offer services and housing to clients, remove hazardous or abandoned
23 tents, structures, and vehicles, and clean and secure the site after campers have relocated. Dodge
24 Decl. ¶7.

25 Each week the HSOC Director circulates to the participating departments a proposed schedule
26 of times and locations for the next week’s engagements, including projected shelter needs for each
27 engagement. After consultation with the participating departments, the Director finalizes the next
28 week’s HSOC engagement schedule on Wednesday. Dodge Decl. ¶9. HSH’s guest placement services

1 team receives these projected shelter needs on Wednesday or Thursday, and this projection of
2 anticipated shelter needs informs HSH's shelter allocations during the following week. *Id.* ¶10.

3 Each weekend, typically on Saturdays, SFHOT outreach workers conduct outreach at each of
4 the encampments that is scheduled for an HSOC resolution during the following week. Nakanishi
5 Decl. ¶ 5; Piastunovich Decl. ¶¶ 4, 5. The SFHOT weekend staff provide the occupants of the
6 encampment verbal notice of the upcoming HSOC resolution, assess them for housing and interest in
7 shelter or other services, explain the process for accessing shelter, explain what to expect on the day of
8 the resolution, and post written notices of the upcoming HSOC resolution in and around the
9 encampment. Nakanishi Decl. ¶ 5; Piastunovich Decl. ¶ 5; *see also* Piastunovich Decl. Exs. A, B.

10 The written notice includes the date and location of the upcoming resolution. Piastunovich
11 Decl. Ex. A. The written notice informs encampment occupants that "During the encampment
12 resolution, we will provide access to shelter, safe sleeping villages, and/or hotels based on eligibility."
13 *Id.* The written notice informed encampment occupants that "Outreach workers from the Department
14 of Homelessness and Supportive Housing and/or the Department of Public Health may also offer"
15 other services. *Id.* The written notice includes additional "Information on some of the services
16 available for people experiencing homelessness" *Id.* The written notice further informs
17 encampment occupants:

18 Please also note that during the resolution, the Department of Public Works will
19 clean the sidewalks and street. **Any personal property that is left at the
20 encampment will be removed and taken to the Public Works Operations
21 Yard at 2323 Cesar Chavez Street.**

22 *Id.* (original emphasis). The written notice also informs encampment occupants what types of items
23 will *not* be stored but may be discarded:

24 Please be advised that the following types of items will not be stored and may
25 be discarded: (1) items that present an immediate threat to public health or
26 safety (i.e., items that are soiled or infested with vermin, and needles), (2) items
27 that are evidence of a crime, (3) trash, (4) perishable food, and (5) bulky items
28 (i.e., furniture, mattresses, sheds, structures, and pallets), except for tents and
operational bicycles, walkers, crutches, wheelchairs.

Id. The written notice also explains how to retrieve property that has been collected and stored. *See id.*

Also in advance of each HSOC engagement, outreach specialists from the Felton Institute visit
the encampment, engage everyone on-site to assess their health and interest in any treatment or other

1 services, and again remind people of the upcoming HSOC engagement. They then report to DPH in
2 advance of each HSOC encampment resolution about behavioral needs they have identified among
3 people at the encampment. This advance report ensures DPH is equipped to provide behavioral health
4 resources matching the needs of the clients at the site. Dodge Decl. ¶¶13-14; Horky Decl. ¶¶10-12.

5 During HSOC resolutions, San Francisco offers encampment occupants shelter and provides
6 them additional time to pack up and move their belongings. On the morning of HSOC resolutions,
7 SFHOT outreach workers again conduct outreach at the encampment. *See* Nakanishi Decl. ¶6;
8 Piastunovich Decl. ¶6. The Encampment Resolution Team (“ERT”) – SFHOT outreach workers
9 assigned to staff HSOC resolutions – arrive at the encampment at 7:00 a.m. and begin engaging
10 encampment occupants by 7:30 a.m. Nakanishi Decl. ¶6; Piastunovich Decl. ¶6; Dodge Decl. ¶15; *see*
11 *also* Dilworth Decl. ¶5. ERT reminds encampment occupants of the timeframe and process of the
12 HSOC resolution, and – as discussed with encampment occupants the weekend prior – offer to connect
13 them to various services, including shelter. Nakanishi Decl. ¶6; Piastunovich Decl. ¶6. The DPH street
14 medicine team provides a range of services at HSOC encampment resolutions, including: (a) assisting
15 with de-escalation, crisis management, 5150 assessments; (b) engaging all clients with reported or
16 observed behavioral health symptoms; (c) assessing clients for interest in services and determining
17 appropriate referrals; and (d) completing referrals and linkage. Horky Decl. ¶7.

18 While ERT has not yet confirmed during this initial engagement the specific shelters that are
19 available, ERT informs encampment occupants that shelter is available; and if an individual is
20 interested, ERT takes their information, including their preference for any specific shelter or type of
21 shelter. Piastunovich Decl. ¶6. By around 8:30 a.m., HSH communicates to HSOC what shelter space
22 has been allocated to HSOC that day. Dodge Decl. ¶17; Piastunovich Decl. ¶6; Nakanishi Decl. ¶7.

23 ERT then reengages with encampment occupants to match those interested in shelter with an
24 appropriate placement. Dodge Decl. ¶17; Piastunovich Decl. ¶6; Nakanishi Decl. ¶7. At 9:30 a.m.,
25 HSH confirms shelter availability. Dodge Decl. ¶17; Piastunovich Decl. ¶8; Nakanishi Decl. ¶7.
26 Throughout the HSOC resolution, field staff, including ERT, are in regular communication with HSH
27 about who is interested in shelter and any specific shelter needs or preferences. Dodge Decl. ¶17;
28 Piastunovich Decl. ¶7; Nakanishi Decl. ¶8. If an encampment occupant is interested in shelter, HSH

1 confirms they are not already housed or sheltered in a San Francisco-supported program. Dodge Decl.
 2 ¶17; Piastunovich Decl. ¶7.² Throughout the HSOC resolution – including before the 8:30 a.m.
 3 allocation and continuing after the 9:30 a.m. confirmation – HSOC-affiliated staff advocate for
 4 encampment occupants to try to obtain from HSH the specific and/or additional shelter allocations
 5 requested by encampment occupants. Dodge Decl. ¶17; Piastunovich Decl. ¶¶7-8; Nakanishi Decl. ¶8.
 6 Beginning around 9:30 a.m., HSOC arranges transportation for those individuals who accepted a
 7 shelter placement. Dodge Decl. ¶17; Piastunovich Decl. ¶8; Nakanishi Decl. ¶9.³

8 DPW typically does not arrive at the encampment until 8:00 a.m. or later. Dilworth Decl. ¶5;
 9 Dodge Decl. ¶20; Nakanishi Decl. ¶10. And DPW will not begin cleaning up an encampment until
 10 after ERT has conducted outreach, typically around 9:30 or 10:00 a.m. *See* Dilworth Decl. ¶5; Dodge
 11 Decl. ¶20; Nakanishi Decl. ¶10. While DPW waits for ERT to conduct its outreach so that it may
 12 begin cleaning up the encampment, DPW crews perform a variety of other street cleaning duties
 13 around the encampment’s perimeter. Dilworth Decl. ¶5.

14 DPW is in regular communication with ERT and the HSOC Incident Commander about ERT’s
 15 outreach, including who has left the encampment and who needs more time to pack up their
 16 belongings. Dilworth Decl. ¶7; Hardiman Decl. ¶4; Nakanishi Decl. ¶10. DPW stores and discards
 17 items left behind pursuant to its policy and procedure for the removal and temporary storage of
 18 personal items collected from public property, known as its “bag and tag” policy. *See* Dilworth
 19 Decl. ¶6. Plaintiffs attach a copy of Procedure No. 16-05-08, entitled ‘Removal and Temporary
 20 Storage of Personal Items Collected From Public Property’ to their motion. That policy provides:

21 Upon inspection by street cleaning staff, unattended personal items - such as
 22 medication, tents, luggage, bedding, backpacks, personal papers, and
 23 operational wheelchairs- will be collected and stored for up to 90 days for
 retrieval. Only items listed below under “Items That Will Be Discarded” will be
 discarded immediately. All other items will be removed and stored.

24
 25 ² It is not uncommon for someone who is already sheltered to nevertheless be residing in an
 encampment rather than in their shelter. Piastunovich Decl. ¶7.

26 ³ Plaintiffs mischaracterize San Francisco’s Policy Analyst Report, Della-Piana Decl. Exh. 14,
 27 when they assert police inject a “highly visible and active presence” at HSOC resolutions. Plaintiffs’
 MPA at 10. To the contrary, Exhibit 14, dated April 2022, explains “efforts have been made to de-
 28 emphasize the law enforcement nature of City policy towards homeless encampments, and to enhance
 service referrals and mental health and substance abuse outreach.”

1 Della-Piana Decl. Exh. 26 at §B(1). The policy authorizes DPW to discard: “Items that present an
 2 immediate health or safety risk”; “Furniture, mattresses, sheds, rolling structures, and bulky items”;
 3 “Perishable items, perishable food”; “Contraband, illegal items”; “Trash, garbage, and/or debris”; and
 4 “Abandoned property.” *Id.* at §C. The policy advises DPW staff that:

5 Temporarily unattended property is different from abandoned property, which
 6 may be immediately discarded. In determining if property is abandoned, staff
 7 should evaluate the facts and circumstances surrounding the items. Unattended
 8 property is not abandoned if it is accompanied by signs of ownership -for
 9 example, an unattended tent that is filled with personal belongings, or items that
 10 are being stored in an orderly manner (i.e., packed up, wrapped, or covered). In
 11 addition, if there is a third party present who states s/he has been designated to
 12 watch or secure the items during the owner's temporary absence, the items are
 13 not considered abandoned.

14 By contrast, abandoned items are unaccompanied by objective indications of
 15 ownership, for example, an empty or broken tent sitting by itself on a sidewalk
 16 with no other belongings, a bag of clothes open and strewn across a sidewalk, or
 17 items that are broken, disheveled, surrounded by trash, or show other signs of
 18 neglect. This policy does not apply to abandoned property.

19 *Id.* at §B(1) (Distinguishing Between Unattended vs. Abandoned Property).

20 When any items are bag-and-tagged, DPW staff provide information about when and where to
 21 retrieve the items to their owner. Dilworth Decl. ¶8. If no one is present, a written notice including the
 22 date, time, and location of removal, a description of items removed, the removing DPW staff
 23 member’s name and vehicle number, and instruction for retrieval, is posted in the immediate vicinity
 24 of the removal. *Id.* San Francisco stores items that have been bag-and-tagged at the Public Works
 25 Operations Yard at 2323 Cesar Chavez Street for 90 days. Dilworth Decl. ¶8.

26 **III. Beyond HSOC Engagements.**

27 There are occasions when San Francisco employees engage with individuals experiencing
 28 homelessness outside of HSOC encampment resolutions. DPW staff will encounter individuals
 experiencing homelessness during routine maintenance operations. *See* Dilworth Decl. ¶9. DPW staff,
 however, generally clean around belongings during routine maintenance; they generally do not move
 or remove people or property unless there are health or safety issues or the public right of way is
 inaccessible. Dilworth Decl. ¶9. When individuals are asked to move temporarily, DPW staff provide
 them time to move their belongings and inform them that unremoved items will be bag-and-tagged or
 discarded in accordance with DPW policy. Dilworth Decl. ¶9.

1 SFPD officers will also engage individuals experiencing homelessness outside of HSOC
 2 encampment resolutions. *See* Christ Decl. ¶4. SFPD officers are trained to adhere to SFPD Bulletin
 3 19-080, which provides, *inter alia*, that S.F. Municipal Police Code § 168 (“Sit/Lie” law) may be
 4 enforced only between 0700 hours and 2300 hours; and that “Officers must secure appropriate shelter
 5 before taking enforcement action” under Penal Code § 647(e) (illegal lodging). Christ Decl. ¶ 4; *see*
 6 *also* Della-Piana Ex. 27.⁴

7 SFHOT outreach workers also conduct outreach to individuals experiencing homelessness
 8 outside of HSOC encampment resolutions. Mazza Decl. ¶8; Nakanishi Decl. ¶9; Cohen Decl. ¶9. This
 9 outreach, however, is specifically to offer services, connections, and/or referrals, and do not involve
 10 law enforcement, DPW, or any request to move (unless the clients are going to a shelter placement).
 11 Mazza Decl. ¶8; Nakanishi Decl. ¶9.

12 ARGUMENT

13 I. Legal Standard

14 “Injunctive relief is an extraordinary remedy that may only be awarded upon a clear showing
 15 that the plaintiff is entitled to such relief.” *Winter v. Nat. Resources Def. Council, Inc.*, 555 U.S. 7, 22
 16 (2008). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the
 17 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance
 18 of equities tips in his favor, and that an injunction is in the public interest.” *Id.* Here, the Coalition has
 19 not satisfied its burden on any of the *Winter* factors.

20 II. Plaintiffs Are Unlikely To Succeed On The Merits.

21 A. San Francisco Offers Shelter Before Requiring an Unhoused Person to Vacate 22 Public Property (Eighth Amendment).

23 San Francisco’s policy of offering shelter before requiring any unhouse person to vacate public
 24 property meets the requirements of the Eighth Amendment. In *Martin v. City of Boise*, the Ninth
 25 Circuit held “the Eighth Amendment prohibits the imposition of criminal penalties for sitting,
 26 sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.”

27 ⁴ Plaintiffs’ incomplete quotation of SFPD Bulletin 19-080 and ellipses are misleading. See
 28 Plaintiffs’ MPA at 10. Plaintiffs omit the explicit requirement in the Bulletin that an individual be
 offered housing before any enforcement may proceed.

1 *Martin v. City of Boise*, 920 F.3d 584, 616 (9th Cir. 2019). In *Johnson v. City of Grants Pass*, the
2 Ninth Circuit “reache[d] beyond *Martini* slightly” – holding “that ‘sleeping’ in the context of *Martin*
3 includes sleeping with rudimentary forms of protection from the elements, and that *Martin* applies to
4 civil citations where ... the civil and criminal punishments are closely intertwined.” *Johnson v. City of*
5 *Grants Pass*, 50 F.4th 787, 813 (9th Cir. 2019).

6 The Ninth Circuit’s holdings in *Martin* and *Johnson*, however, were “narrow.” *Martin*, 920
7 F.3d at 617 (“Our holding is a narrow one.”); *Johnson*, 50 F.4th at 813 (“We are careful to note that, as
8 in *Martin*, our decision is narrow.”). Neither *Martin* nor *Johnson* “dictate to the City that it must
9 provide sufficient shelter for the homeless.” *Martin*, 920 F.3d at 617. Nor do *Martin* and *Johnson*
10 “allow anyone who wishes to sit, lie, or sleep on the street ... at any time and at any place.” *Id.*

11 “*Martin* does not establish a constitutional right to occupy public property indefinitely at
12 Plaintiffs’ option.” *Miralle v. City of Oakland*, No. 18-cv-068234-HSG, 2018 WL 6199929, at *2
13 (N.D. Cal. Nov. 28, 2018) (footnote omitted). “[R]emaining at a particular encampment on public
14 property is not conduct protected by *Martin*, especially where the closure is temporary in nature.”
15 *Shipp v. Schaaf*, 379 F. Supp. 3d 1033, 1037 (N.D. Cal. 2019). Rather, the Ninth Circuit has “h[e]ld
16 simply that it is ‘unconstitutional to [punish] simply sleeping *somewhere* in public if one has nowhere
17 else to do so.” *Johnson*, 50 F.4th at 813 (original emphasis) (citing *Martin*, 920 F.3d at 590 (Berzon,
18 J., concurring in denial of rehearing en banc)).

19 The Ninth Circuit was clear that its “holding does not cover individuals who *do* have access to
20 adequate temporary shelter, whether because they have the means to pay for it or because it is
21 realistically available to them for free, but who choose not to use it.” *Martin*, 920 F.3d at 617 n.8
22 (original emphasis); *see also Johnson*, 50 F.4th at 813 (directing district court to “narrow its injunction
23 to ... enjoin enforcement ... only against involuntarily homeless person for engaging in conduct
24 necessary to protect themselves from the elements when there is no shelter space available”). The
25 Ninth Circuit also limited its holding to the criminalization of “conduct that is an unavoidable
26 consequence of being homeless.” *Martin*, 920 F.3d at 617 (citation omitted). Laws and ordinances
27 “may be enforced against [homeless persons] who engage in prohibited activity unrelated to their
28 status as homeless persons.” *Johnson*, 50 F.4th at 812 n.36. And “citation or arrest for failing to vacate

1 the encampment” where “homeless plaintiffs” have a “‘place where they can lawfully be’ within the
2 City” does not “punish[] for acts inherent to their unhoused status that they cannot control.” *Shipp*, 379
3 F. Supp. 3d at 1037(citations omitted).

4 San Francisco’s policy of offering shelter to anyone before they are asked to vacate an
5 encampment complies fully with Ninth Circuit precedent. “This is not a case where ‘homeless
6 plaintiffs do not have a single place where they can lawfully be’ within the City.” *Shipp*, 379 F. Supp.
7 3d at 1037 (quoting *Martin*, 920 F.3d at 617) (finding no “serious questions as to their Eighth
8 Amendment claim” because “even assuming” the City will “enforce[] temporary closures via citations
9 or arrests, remaining at a particular encampment on public property is not conduct protected by
10 *Martin*”). Encampment occupants in San Francisco asked to vacate public property “have access to
11 adequate temporary shelter,” even if many “choose not to use it.” *Martin*, 920 F.3d at 617 n.8; *see also*
12 *Miralle*, 2018 WL 6199929, at *2 (finding no “serious questions as to the merits of their Eighth
13 Amendment claim” because “Plaintiffs are not faced with punishment for acts inherent to their
14 unhoused status that they cannot control” where the “encampment closure ... includes an offer of
15 shelter”). The Coalition’s admissible evidence confirms their Eighth Amendment claim lacks merit.
16 Three declarants acknowledge receiving and/or accepting shelter offers at HSOC resolutions in 2022.
17 Cronk Decl. ¶¶8-11; Donohoe Decl. ¶¶8-11; Sandoval Decl. ¶8.

18 Patrick Dubose states HSOC arrived one day in advance of the posted resolution date in
19 February 2022. Dubose Decl. ¶9. Dubose states HOT made no service offers, and with the helpful
20 advocacy of a volunteer from plaintiff Coalition, he was not required to move. *Id.* That is exactly what
21 is supposed to happen if in fact shelter resources are insufficient at an HSOC resolution. Dodge
22 Decl. ¶18. And Molique Frank states at a January 26, 2022 HSOC resolution, “HOT said that there
23 was no shelter available that day.” Frank Decl. ¶12. In fact, HSOC had extra shelter resources
24 available at the conclusion of the January 26, 2022 resolution that Molique Frank describes. Dodge
25 Decl. ¶11.

1 **B. San Francisco Reasonably Preserves the Possessions of Unhoused Persons (Fourth Amendment).**

2 The Fourth and Fourteenth Amendments apply to homeless persons’ “unabandoned, but
3 momentarily unattended, personal property.” *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1027 (9th
4 Cir. 2012). The Fourth Amendment protects against unreasonable seizures of property. *See id.* at 1030.
5 “A ‘seizure’ of property under the Fourth Amendment occurs when there is ‘some meaningful
6 interference with an individual’s possessory interests in that property.’” *Sullivan v. City of Berkeley*,
7 383 F.Supp.3d 976, 981 (N.D. Cal. 2019) (quoting *Lavan*, 693 F.3d at 1027). The Fourth Amendment,
8 however, is not a guarantee against all seizures, only unreasonable seizures. And a seizure is
9 unreasonable only “if the government’s legitimate interest in the seizure does not outweigh the
10 individual’s interest in the property seized.” *Id.* (citing *Lavan*, 693 F.3d at 1030). The Fourteenth
11 Amendment protects against the deprivation of property without due process of law. “Under the
12 Fourteenth Amendment, homeless individuals are entitled to meaningful notice and an opportunity to
13 be heard before their unabandoned property is seized and destroyed.” *Id.* (citing *Lavan*, 693 F.3d at
14 1032). Under the Fourth and Fourteenth Amendments, “the government may not *summarily* destroy
15 the unabandoned personal property of homeless individuals that is kept in public areas.” *Garcia v. City*
16 *of Los Angeles*, 11 F.4th 1113, 1124 (9th Cir. 2021) (emphasis added).

17 The Constitution, however, “does not prohibit the City from removing items stored on its
18 property where a homeless resident, if given an indefinite amount of time, would eventually return to
19 collect them.” *Sullivan*, 383 F. Supp. 3d at 986. “[T]he City has a legitimate interest in enforcing its
20 penal and municipal statutes and in removing unsafe or hazardous conditions from its public spaces.”
21 *Id.* And this government interest outweighs the invasion of an individual’s possessory interests in
22 items left behind at an encampment where the government provides prior notice that belongings would
23 need to be moved from public. *See id.* (finding “seizure and destruction of” items left behind “was
24 reasonable as a matter of law” where the “all had prior notice that they needed to move their
25 belongings from public roads and sidewalks” yet “[s]till, they did not timely move the items they
26 wished to keep.”)

1 Similarly, the government satisfies due process where it provides prior notice – warning
2 encampment occupants to remove their belongings and informing them which items left behind would
3 be stored versus discarded – as well as a post-seizure opportunity to retrieve any stored property. *See*
4 *Sullivan*, 383 F. Supp. 3d at 981-83 (finding Berkeley’s policy constitutional where notice was
5 “generally” provided “72 hours prior,” the notice explained “how individuals may reclaim any
6 property collected,” and unattended property collected was stored for 14 or 90 days while “refuse or
7 garbage” was disposed of); *see also Shipp*, 379 F. Supp. 3d at 1037-38 (finding Oakland’s policy “on
8 its face, provides adequate notice and opportunity for Plaintiffs to be heard before property is seized”
9 where it provided 72-hour notice, storage of property not deemed unsafe or hazardous for 90 days, and
10 post-seizure notice of how to retrieve belongings); *Miralle*, 2018 WL 6199929, at *3 (same).

11 Due process does not require “actual receipt of notice” – it “requires only that the
12 Government’s effort be ‘reasonably calculated’ to apprise a party of the pendency of the action.”
13 *Dusenbery v. United States*, 534 U.S. 161, 169-170 (2002). And no specific amount of notice is
14 required. While courts have found 72-hours’ notice is sufficient to satisfy due process, it is not
15 necessary – even less than 24-hours’ notice can satisfy due process. *See, e.g., Sullivan*, 383 F. Supp. 3d
16 at 984 (“even if less than 24-hours’ notice to leave a public space was provided on certain occasions,
17 plaintiffs have failed to raise a triable issue as to whether this would violate due process when the
18 encampment did, in fact, receive notice and a reasonable opportunity to pack up their belongings
19 before the City collected any remaining unattended property.”)

20 Further, neither the Fourth nor Fourteenth Amendment preclude the disposal of property
21 reasonably believed to be abandoned under the totality of the circumstances. *See Sullivan*, 383
22 F. Supp. 3d at 984-85; *see also Lavan v. City of Los Angeles*, No. CV 11-2874, 2014 WL 12693524, at
23 *8 (C.D. Cal. July 24, 2014) (“The abandonment inquiry focuses on whether, ‘through words, acts or
24 other objective indications, a person has relinquished a reasonable expectation of privacy in the
25 property at the time of the search or seizure.’ [Citation.] Such a determination is ‘to be made in light of
26 the totality of the circumstances, and two important factors are denial of ownership and physical
27 relinquishment of the property.’ [Citations.]”). In *Sullivan*, the Court found that homeless plaintiffs
28 “fail[ed] to raise a triable issue as to whether [Berkeley] has a practice of summarily destroying

1 unabandoned property in violation of the Fourth and Fourteenth Amendments” because Berkeley had
2 an “objectively reasonable basis to believe that the property left behind by [plaintiffs] was wholly
3 abandoned rather than temporarily unattended” where they had “prior notice” and been “informed that
4 they should take what they wanted to keep and could leave behind any trash for disposal.” *Id.* at 985.

5 This Court has upheld other Bay Area cities’ policies regarding their responses to homeless
6 encampment, which policies are similar to San Francisco’s. *See Sullivan*, 383 F. Supp. 3d at 981-83;
7 *Shipp*, 379 F. Supp. 3d at 1037-38; *Miralle*, 2018 WL 6199929, at *3.

8 Three of plaintiffs’ declarants describe their property being confiscated and destroyed at an
9 HSOC resolution in 2022. Frank Decl. ¶¶9-12; Sandoval Decl. ¶8; Solomon Decl. ¶9. Seven of
10 plaintiffs’ declarants describe being disturbed by DPW street cleaning operations and their belongings,
11 including tents, damaged or destroyed in 2022. Cronk Decl. ¶¶3-7; Donohoe Decl. ¶¶3-7; Martinez
12 Decl. ¶¶5-7; Sandoval Decl. ¶¶5-7; Howard Decl. ¶¶4-15; Murdock Decl. ¶¶2-3; Solomon Decl. ¶¶3-
13 9. Due to overlap, a total of eight declarants have complained that DPW has damaged or destroyed
14 their property.

15 These eight witnesses, even if credited, do not establish a policy or practice to violate
16 plaintiffs’ constitutional rights in contravention of San Francisco’s official policies, which fully protect
17 plaintiffs’ constitutional rights. Plaintiffs have not demonstrated the items they assert were confiscated
18 and destroyed, should have been preserved under DPW’s bag/tag policy, or whether DPW properly
19 disposed of them as trash, garbage, debris, broken furniture, discarded appliances, or items presenting
20 an immediate health or safety risk such as hazardous sharps, chemicals, items soiled by infectious or
21 hazardous materials, and items infested by rodents or insects.

22 One of plaintiffs’ declarants describes unsuccessful efforts to recover property from the DPW
23 storage facility in 2022. Martinez Decl. ¶10. Martinez’s declaration, however, does not describe the
24 property he was unable to recover. The declaration fails to establish whether his property had been
25 bagged and tagged, or whether it should have been under DPW’s policy. *Id.*

26 Plaintiffs’ declarations “are too general” to show that San Francisco has repeatedly violated its
27 own policies. *Shipp*, 379 F. Supp. 3d at 1038. “It is not sufficient to state, as Plaintiffs and their
28 declarants do, that the City sometimes removed and destroyed encampment members’ property.

1 Sometimes the City has the right to do this.” *Id.* “Therefore, when the City confiscates and destroys
 2 property, it is not possible to conclude that there has been a policy violation without knowing more,”
 3 and “Plaintiffs’ declarations do not provide the ‘more.’” *Id.* Plaintiffs’ declarations “do not provide
 4 any specific details from which the Court can infer that the discarded items should have been stored
 5 instead.” *Id.* Moreover, to the extent any one individual – or even eight individuals – had their
 6 property improperly discarded, that “would, at most, constitute an individual incident of
 7 unconstitutional action by a non-policymaking employee that is insufficient to establish *Monell*
 8 liability.” *Sullivan*, 383 F. Supp. 3d at 987.

9 **C. Plaintiffs Rely On Stale and Inadmissible Evidence That Cannot Support A
 10 Preliminary Injunction.**

11 Much of plaintiffs’ percipient testimony is stale, describing events more than a year old.
 12 Especially in light of the shifting impact of Covid-19 on San Francisco’s delivery of homeless
 13 services, events prior to 2022 are not probative of current conditions and therefore cannot support
 14 plaintiffs’ preliminary injunction motion. Accordingly, the following declarations are inadmissible, in
 15 whole or in part: Ackerman (describes events June 2020-March 2022); Cutler (May 2020-June 2022);
 16 Evans (March 2020-Sept 2021); Wadkins (March 2021-Jan 2022); Castano (May 2020, Aug 2020);
 17 Frank (Jan 2022); Vaughn (Jan 2020); Bennett (Apr 2021-June 2021)⁵; Bryant (through Dec 2021);
 18 Brown (March 2017); Connick (winter 2020); Delamora (July 2019 and Jan 2020); Dubose (“summer
 19 of 2021” and Feb 2022); Freehoffer (April 2019 and Sept 2020); Harrison (Nov 2019 and Jan 2020);
 20 Hill (summer 2019 and Jan 2020); Howard (March-April 2022); Hurd (2018); Jones (Aug-Dec 2020);
 21 Solis (summer 2019 and Jan 2020); Orona (2017-2021); Partee (summer 2020); Sparks (Winter 2019
 22 and May 2020); Vetter (summer 2018 and spring 2019). It is no surprise much of the percipient
 23 testimony comes from years ago. According to their own declarations, eleven of plaintiffs’ percipient
 24 witnesses are now housed. Vaughn Decl. ¶2; Bryant Decl. ¶3; Dubose Decl. ¶3 (transitional housing);
 25 Freehoffer Decl. ¶2; Hill Decl. ¶3; Hurd Decl. ¶3; Jones Decl. ¶2; Orona Decl. ¶4 (lives in RV); Partee
 26 Decl. ¶2; Solis Decl. ¶2; Vetter Decl. ¶2. The following exhibits are likewise irrelevant, in whole or in

27 ⁵ The Bennett declaration, in addition to being a year and a half old, lacks credibility because
 28 Mr. Bennett is a disgruntled former employee who threatened HSH staff and behaved violently against
 them when he was terminated. See Mazza Decl. ¶9 & Exh. A.

1 part, because they relate to conditions that existed prior to 2022. Della-Piana Decl. Exh. 12 (June 22,
2 2018); Exh. 31 (Jan-June 2021); Exh. 32 (Jan 2021-Aug 2022); Exh. 36 (July 2018-Oct 2021); Exh. 40
3 (Jan-Feb 2021).

4 The Coalition Declarations are riddled with inadmissible hearsay. E.g. Ackerman Decl. ¶10
5 (“One individual ... told us”); Cutler Decl. ¶¶14, 26 (“unhoused individuals reporting”; “I have spoken
6 to”; “People reported”); James Decl. ¶¶8, 19 (“I have spoken to people”; “I learned of this in speaking
7 with”; “We learned what had happened by talking to”; “I received text updates”); Wadkins Decl. ¶¶12,
8 17, 21, 30 (“I ordinarily could not be physically present”; “I have heard countless reports”; “Often, I
9 hear people say”; “I know from my conversations”; “I arrived toward the end of this sweep. I spoke
10 with...”; “I later learned”; “Individuals reported to me”; “He told us”; “We heard that residents were
11 told”) The following exhibits also constitute inadmissible hearsay, and should therefore be excluded:
12 Exhs. 15-16, 19-25.

13 In addition to its hearsay problem, the characterizations of San Francisco’s conduct beginning
14 at paragraph 11 of the Friedenbach Declaration are improper opinion and fail to demonstrate a
15 foundation based on personal knowledge. The declarations from Coalition staff and volunteers are
16 vague and conclusory, in addition to the relevance and hearsay deficiencies specified above.

17 Dr. Herring presents five opinions in his expert declaration. His opinions lack a factual basis,
18 and he applies the wrong standard to evaluate San Francisco’s policies. The Court should therefore
19 disregard Herring’s opinions.

20 **Opinion 1:** Herring conflates aggregate shelter capacity with the offer of a bed for a specific
21 individual at an encampment resolution. Herring Decl. ¶28. Herring acknowledges an encampment
22 resolution is the “clear way to access shelter” in San Francisco. *Id.* ¶33. Herring next argues shelter
23 space is “effectively” unavailable to those who are offered it at an encampment resolution, because the
24 shelter beds San Francisco offers to campers may fall short of federal regulatory guidelines. *Id.* ¶¶34,
25 ¶¶37-38. These federal guidelines, however, do not embody constitutional standards, which require a
26 municipality to offer an alternative place to sleep. *Martin*, 920 F.3d at 616. The Constitution does not
27 require San Francisco in each case to accommodate clients’ preferences for pets, bulky item storage
28 space, particular house rules, etc., see Herring Decl. ¶34, though San Francisco does try to

1 accommodate clients' preferences. Dodge Decl. ¶17. During Covid-19, San Francisco reduced its
2 congregate shelter capacity by 70%, to allow social distancing and make the shelters safe. Cohen Decl.
3 ¶18.

4 **Opinion 2:** Using stale data from Jan-June 2021, Herring calculates that on many days, an
5 encampment resolution proceeded without a shelter allocation that matched the total number of clients
6 at the site. Herring Decl. ¶¶48-51. But HSOC has learned that 40% of clients at an encampment
7 resolution accept offers of shelter, and has made the rational decision to proceed accordingly.
8 *Id.* ¶56n28. If HSOC's projection of shelter needs turns out to be insufficient on a particular day, the
9 encampment resolution team shifts gears, continues to offer resources, and does not require clients to
10 leave. Dodge Decl. ¶18. Further, Herring fails to recognize that HSOC and HSH continue to adjust
11 shelter availability after the formal 9:30AM allocation, responding to any mismatch that may arise
12 between the allocation and actual client needs. Dodge Decl. ¶17; Piastunovich Decl. ¶¶7-8.

13 **Opinion 3:** Herring relies on stale data, all of it more than a year old, Herring Decl. ¶¶60-78,
14 stretching back as far as 2014. *Id.* ¶¶67, 72. Herring has not attempted to correlate police activity to
15 HSOC encampment resolutions, though he acknowledges it is possible to do so. *Id.* ¶59. Herring relies
16 on the erroneous premise of his Opinions 1 and 2, above, that HSOC lacks available shelter resources
17 to offer clients at encampment resolutions. Since HSOC indeed offers shelter to campers, any police
18 engagement at an encampment resolution complies fully with *Martin* and *Johnson*.

19 **Opinion 4:** Herring again relies on stale data, all of it more than a year old, Herring Decl.
20 ¶¶83-88, stretching back as far as 2016. *Id.* ¶88. Herring acknowledges DPW policy requiring DPW to
21 collect and store a person's belongings. *Id.* ¶81. Herring suggests no criticism of DPW policy. *Id.*
22 Herring has no valid basis nor competence to resolve the disputed factual question whether DPW
23 follows its policy and preserves unabandoned personal items while discarding only trash, garbage,
24 debris, broken furniture, discarded appliances, and items presenting an immediate health or safety risk
25 such as hazardous sharps, chemicals, items soiled by infectious or hazardous materials, and items
26 infested by rodents or insects.

27 **Opinion 5:** Herring articulates his sharp policy disagreement with San Francisco. Herring's
28 criticisms, though, are untethered to any constitutional standard. The Eighth Amendment does not

1 require San Francisco to allow *any* tent on its sidewalks, regardless of shelter availability. Compare
 2 Herring Decl. ¶93 and *Johnson*, 50 F.4th at 812 n.34. Enforcing restrictions on occupying public
 3 property is constitutional, so long as the individual has somewhere to sleep. Compare Herring Decl.
 4 ¶91 and *Martin*, 920 F.3d at 616.

5 **III. Plaintiffs Have Not Shown Irreparable Harm; the Public Interest and Balance of Harms
 6 Weigh Against an Injunction.**

7 San Francisco agrees a constitutional violation establishes irreparable harm. See Plaintiffs’
 8 MPA, at p. 25. As explained above, however, plaintiffs have not shown San Francisco violates their
 9 Fourth Amendment or Eighth Amendment Rights. See Part II, *supra*. For the same reasons, this Court
 10 has denied preliminary injunction motions in similar cases challenging municipal homeless
 11 encampment policies under the Fourth, Eighth, and Fourteenth Amendments. *Shipp*, 379 F.Supp.3d at
 12 1039; *Miralle*, 2018 WL 6199929 at *4.

13 Asserting their entitlement to an injunction, plaintiffs’ ignore the public interest in promoting
 14 public health and safety. The public interest does not “weigh[] conclusively in favor of enjoining the
 15 City from exercising its considered judgment as to how to best maintain public health and safety.”
 16 *Miralle*, 2018 WL 6199929 at *4.

17 Encampment resolutions are a key element in San Francisco’s \$672 million Homeless
 18 Response System. Encampment resolutions are essential to keep public spaces clean and sanitary, and
 19 to allow safe access to the public right of way. San Francisco has made “difficult decisions it judges to
 20 be in the best interests of all its residents by implementing a policy it believes appropriately balances
 21 the important individual and community rights implicated by encampments on public land.” See
 22 *Miralle*, 2018 WL 6199929 at *4. This Court should not lightly upend San Francisco’s balanced and
 23 compassionate policy determinations.

24 **CONCLUSION**

25 For the foregoing reasons, this Court should deny plaintiffs’ motion for preliminary injunction.
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 27
 28

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