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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

DAVID ALLEN YESUE; MICHAEL W. DEEGAN; PAIGE ELIGHTZA CORLEY; JESSICA MARIE WETCH; and SONOMA COUNTY ACTS OF KINDNESS,

Plaintiffs,

v.

CITY OF SEBASTOPOL,

Defendant.

Case No. 4:22-cv-06474-KAW

DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT

The Hon. Magistrate Judge Kandis A. Westmore

Date: September 5, 2024
Time: 1:30 p.m.
Crtrm.: Via Zoom Webinar

Complaint Filed: October 25, 2022
Trial Date: None Set

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I. INTRODUCTION

> "Homelessness is complex. Its causes are many. So maybe the public policy responses required to address it. … Yes, people will disagree over which policy responses are best; they may experiment with one set of approaches only to find later another set works better; they may find certain responses more appropriate for some communities than others. But in our democracy, that is their right. Nor can a handful of federal judges begin to 'match' the collective wisdom the American people possess in deciding 'how best to handle' a pressing social question like homelessness."
>
> *City of Grants Pass v. Johnson*, __ U.S. __ (2024), 2024 WL 3208072.

Defendant the City of Sebastopol ("City") has taken numerous policy approaches to addressing homelessness in the City, including hiring a homeless outreach coordinator, forming an ad hoc committee of the City Council to investigate solutions to homelessness issues, and partnering with nonprofit organizations to establish temporary and permanent shelter for the unhoused. One area of the homelessness crisis that has proven particularly complex in the City is the unhoused residing in their recreational vehicles ("RVs") on City streets. For a time, the City simply allowed these RV dwellers to remain in place. However, the RV dwellers formed an encampment on certain streets within the City and negative public health and safety issues resulted. Trash began to accumulate, including hazardous wastes and hazardous materials on the city's street and sidewalks, there were instances of human excrement and raw sewage on the sidewalks and in the gutters, calls for emergency medical services increased, one RV was set on fire by its occupants and one unhoused individual passed away in their RV. In addition, the accumulation of RVs restricted public access to adjacent public facilities and nearby businesses by permanently occupying public parking on the City's streets.

To remedy these issues, the City Council took two approaches. First, the City worked with a nonprofit to establish a safe parking "village" for RVs in the City. Second, the City adopted Ordinance No. 1136 (the "RV Ordinance" or "Ordinance"), which allowed RV dwellers to park their vehicles on certain City streets in the overnight hours, but restricted RV parking in the City during the day. Through these combined approaches, the City Council sought to balance the needs of the unhoused with the needs of the City to remedy the public health and safety issues caused by

long-term RV encampments and the needs of the public to access City streets and facilities.

Through their Complaint for Declaratory and Injunctive Relief ("Complaint") Plaintiffs David Allen Yesue ("Yesue"), Paige Elightza Corley ("Corley"), Jessica Marie Wetch ("Wetch"), and Sonoma County Acts of Kindness ("SAOK") ask this Court to substitute its wisdom for the City Council's and reverse the City Council's decision to enact the RV Ordinance. To be clear, the Complaint alleges a dispute over policy, not any actual harms that have been inflicted on Plaintiffs. None of Plaintiffs have ever received a parking ticket under the RV Ordinance or had their RV towed pursuant to the RV Ordinance. Plaintiffs Yesue, Wetch, and SAOK do not even own or operate RVs and, therefore, do not have standing to bring these claims. Nevertheless, Plaintiffs allege that the RV Ordinance violates Plaintiffs' constitutional and statutory rights.

Because Plaintiffs have not been directly harmed by the RV Ordinance, to the extent they have standing to bring this action at all, their constitutional claims must be reviewed under the exacting standards of facial challenges to the RV Ordinance. "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that *no set of circumstances exists under which the Act would be valid*." *United States v. Salerno*, 481 U.S. 739, 745 (1987), emphasis added. As set forth herein, the undisputed facts show that Plaintiffs cannot meet this high burden.

Plaintiffs also claim that the RV Ordinance violates the Americans with Disabilities Act ("ADA") and related California statutes. These claims fail as well. The RV Ordinance is a facially neutral parking ordinance regarding where and when any person may park an RV in the City. The RV Ordinance does not discriminate between disabled RV drivers and non-disabled RV drivers. To the extent Plaintiffs claim that the City must provide reasonable accommodations under the ADA, the City agrees. However, the City never received requests for reasonable accommodations from Plaintiffs and the communications the City did receive from Plaintiffs' attorneys only demanded recission of the RV Ordinance. Moreover, the accommodations demanded in the Complaint are not reasonable. Specifically, Plaintiffs assert that they have a disability-related right to reside in their RVs. But the RV Ordinance allows for parking on the City streets; it does not establish a program of allowing people to reside in their RVs on the City's

streets. Thus, Plaintiffs demands are not requests for reasonable accommodations because they ask for a fundamentally different program for the disabled then the one the City provides to the general public.

For all of these reasons, the Court should grant the City's Motion for Summary Judgment.

II. STATEMENT OF FACTS

The City of Sebastopol is a small town located in western Sonoma County, California with a total land area of approximately 2 square miles and a population of approximately 7,600 residents. Declaration of Edward Grutzmacher ("City Dec."), Ex. 1, pp. 31:25-32:1, Ex. 3, p. 28:14-15. The City's small size has not, however, insulated the City from the homelessness crisis facing jurisdictions throughout the western United States. High housing prices and housing shortages in Sonoma County were exacerbated by the October 2017 fires which destroyed over 3,000 residential units in the neighboring City of Santa Rosa alone.

In the face of these crises, the City has done what it can on its limited budget to offer support services to the unhoused. The City hired a homeless outreach coordinator in 2021 to provide outreach services to the City's unhoused. City Dec., Ex. 1, pp. 32:5-10; 101:8-12, 145:14-19; Ex. 3, pp. 29:11-21, 33:13-35:10, 60:15-22, 97:20-98:12; 136:25-139:8. The City has also partnered with West County Community Services to establish the Park Village, which offers affordable and supportive housing to the recently unhoused. *Id*. at Ex. 3, pp. 163:21-166:2, Ex. 20, p. 41.

Still, unhoused individuals remain on the City's streets. Some of these unhoused individuals reside in a variety of types of RVs. See City Dec., Ex. 5, pp. 194:8-14, 206:21-207:8, and Plaintiffs Exhibits ("P.Ex.") 57-62 thereto. Beginning in about 2018, unhoused persons living in RVs began to establish an encampment on City streets, particularly Morris and Johnson streets. *Id*. at Ex. 1, pp. 29:14-32:14 and P.Ex. 5 thereto. The semi-permanent encampment led to a number of concentrated public health and safety issues in this area including, but not limited to: sidewalks were blocked with possessions, trash, hazardous materials such as hypodermic needles, generators, and propane tanks; excrement and raw sewage was dumped on the City's sidewalks and in the City's storm drains; one RV caught fire and was damaged beyond repair; in another

instance, an unhoused individual died in their RV. *Id.* at Ex.1, pp. 22:22-23:10, 25:22-27:4, 90:1-91:4, 91:18-92:2, 96:18-97:21,99:5-11; Ex. 3, pp. 142:22-143:13, 153:22-154:16, 155:18-156:20; Ex. 5, pp. 264:15-265:10, 267:17-24, 275:18-276:21; Ex. 8, pp. 19:7-20:23, 51:11-52:3; Ex. 9, pp. 27:2-14; 29:3-15; and Ex. 20, pp. 37-38. Calls for police and fire services to this area became frequent with the Police Chief estimating that 20-30% of the entire calls in the City were to this area. *Id*. at Ex.1: 92:9-15; Ex. 8, pp. 44:4-9; 47:15-23. In addition to these health and safety concerns, the RVs remaining in place blocked public parking and impaired access to neighboring civic uses, such as the Sebastopol Cultural Center and adjacent playing fields, as well as private businesses along Morris Street. *Id*. at Ex. 3, pp. 36:19-37:4, 37:16-39:1; Ex. 5, p. 227:24. The City tried to manage the encampment by providing portable toilets, dumpsters, and by increasing visits to the encampment by public health and safety officials. *Id*. at Ex. 1, p. 59:17-25, Ex. 3, p. 158:12-21. However, these efforts were unsuccessful and the public health and safety concerns continued to deteriorate. *Id*.

To address these concerns, the City Council took a two-track approach. First, the City Council established a subcommittee to investigate potential locations for a safe parking area for RVs in the City. City Dec., Ex. 3, pp. 33:18-19, 39:16-40:6, 144:7-20, and P.Ex 47 thereto at pp. 1-9; Ex. 5, pp. 232:17-233:1, 234:2-235:1. The Councilmembers on the subcommittee spent numerous hours contacting property owners and investigating the potential for a sale or lease of vacant properties within the City. *Id*. These efforts eventually culminated in the Horizon Shine Village, a safe RV parking area for approximately 20 RVs that operated in the City between 2022 and 2024. *Id*. at Ex. 1, pp. 61:23-63:13, 145:17-148:13; Ex. 20, pp. 33-34.

Second, the City passed the RV Ordinance to limit RV parking on City streets, which went into effect on March 26, 2022. City Dec., Ex. 17. The City's intent in passing the RV Ordinance was to address the public health and safety impacts associated with a long-term RV encampment, which affected both the unhoused living in their RVs and the general public, by prohibiting RVs from remaining in place for extended periods. *Id*. at Ex. 1, p. 36:11-20, 58:15-23; Ex. 5, pp. 218:10-13, 264:15-265:10, 267:17-24, 275:18-276:21; Ex. 8, p. 19:7-25, 21:16-22:4; Ex. 9 pp. 32:22-33:4. However, the City Council also recognized the need for the unhoused to have a place

to sleep and allowed RVs to park overnight in certain areas of the City while restricting daytime parking. *Id*.

The RV Ordinance added Chapter 10.76 to the Sebastopol Municipal Code ("SMC"). City Dec., Exs. 17, 19. SMC section 10.76.040 allows RV parking in areas of the City zoned commercial, industrial, or community facility during the hours of 10:00 p.m. to 7:30 a.m., but otherwise prohibits RV parking on City streets, subject to certain exceptions. *Id*. RV parking in City-owned parking lots is also allowed during the daytime hours if the operator of the RV is utilizing City facilities, visiting shops or restaurants in the City, or otherwise doing business in the City. *Id*. (SMC § 10.76.040.D). In addition, SMC section 10.76.050 provides a maximum 48-hour exception for RVs parked because of a mechanical breakdown, a maximum 72-hour exemption in residential zones for the loading and unloading of RVs to or from a residence, and a blanket exception for RVs providing services to businesses. *Id*. Further, SMC section 10.76.070 prohibits the running of electrical cords, hoses, cables and similar items from any property to an RV parked on a public street at any time and prohibits RVs from making a sewer connection or dumping wastes from an RV unless to a designated RV dump. *Id*. Only a violation of SMC section 10.76.070 is a misdemeanor. *Id*. All other violations of the RV ordinance are considered infractions and are subject to citation, towing, or both. *Id*. (SMC § 10.76.070). The fine for a citation is currently $60. *Id*. at Ex. 20, pp. 29-30. The RV Ordinance does not regulate parking of RVs on private lots or properties.

Plaintiffs were neither ticketed nor towed under the RV Ordinance. See City Dec., Ex. 10, p. 6, Ex. 11, p. 52:12-24, Ex. 12, p. 5, Ex. 13, pp.16:1-11, 17:12-14, 17:17-19. Yesue and Corley secured spots in the Horizon Shine Village prior to the effective date of the RV Ordinance and remained there until its closure in March/April 2024. *Id*. at Ex. 11, pp. 24:25-25:7; Ex. 15, pp. 21:20-22, 30:25-31:4. Yesue sold his RV upon his departure from the Horizon Shine Village and moved into supportive housing in neighboring Santa Rosa. *Id*. at Ex. 11, pp. 25:8-26:11, 30:4-8; 38:18-39:11. It is the City's understanding that Corley currently does reside in her RV on City streets, but due to a stipulation between the parties, the City has not enforced the RV Ordinance during this litigation and, thus, has not ticketed or towed Corley's RV. *Id*. at Ex. 5, p. 312:10-17;

Ex. 8, pp. 58:20-59:3, 60:3-8, 84:16-86:4, 87:8-12; Ex. 15, p. 30:5-16. Wetch's RV burnt before the enactment of the RV Ordinance and she has not had an RV since that time. *Id*. at Ex. 13, pp. 12:19-13:5, 13:15-16. SAOK does not own or operate any RVs. *Id*. at Ex. 16, pp. 21:17-22:3.

Subsequent to its enactment of the RV Ordinance, the City also enacted Ordinance 1142, which provided a clarifying amendment to the RV Ordinance and also amended the City's pre-existing 72-hour Parking Ordinance ("72-hour Ordinance"), which is generally applicable to all motor vehicles. City Dec., Ex. 18. The 72-hour Ordinance, which is authorized by California law, is not directed specifically at RV parking, but rather at ensuring that parking spaces in the City are not used for vehicle storage. *Id*. The City's amendments to the 72-hour Ordinance intended to address a loophole in the enforcement of the ordinance through which vehicle owners could comply with the ordinance by moving their vehicle only a few feet, triggering a new 72-hour period before they would need to move their vehicle again. *Id*. Ex. 1, pp. 112:3-116:8; Ex. 5, pp. 285:18-286:14; Ex. 7, pp. 73:4-74:1. The amendments better defined the distance a vehicle would need to move in order to establish a new 72-hour period and sought to prevent vehicle owners from using parking spaces intended for use by the general public as long-term storage areas for their vehicles. *Id*.

On October 25, 2022, Plaintiffs filed the Complaint, which states fourteen Claims for Relief ("Claims") alleging that the RV Ordinance violates Plaintiffs constitutional and statutory rights. Dkt #1 ("Complaint").

III. STANDARD OF REVIEW

A motion for summary judgment or partial summary judgment under Federal Rule of Civil Procedure Rule 56(c) is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). The purpose of partial summary judgment "is to isolate and dispose of factually unsupported claims or defenses." *Celotex v. Catrett*, 477 U.S. 317, 323–24 (1986). The moving party "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions …which it believes demonstrates the absence of a

genuine issue of material fact." *Id*. at 323. The non-moving party must then identify specific facts "that might affect the outcome of the suit under the governing law," thus establishing that there is a genuine issue for trial. Fed.R.Civ.P. 56(e).

When evaluating a motion for partial or full summary judgment, the court views the evidence through the prism of the evidentiary standard of proof that would pertain at trial. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 255 (1986). The court draws all reasonable inferences in favor of the non-moving party, including questions of credibility and of the weight that particular evidence is accorded. See *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520, (1991). The court determines whether the non-moving party's "specific facts," coupled with disputed background or contextual facts, are such that a reasonable jury might return a verdict for the non-moving party. *T.W. Elec. Serv. Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 631 (9th Cir.1987). However, where a rational trier of fact could not find for the non-moving party based on the record as a whole, there is no "genuine issue for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986).

IV. ARGUMENT

A. Plaintiffs Yesue, Wetch, and SAOK Do Not Have Standing

Plaintiffs Yesue, Wetch, and SAOK have not established facts showing that they have Article III standing. Yesue and Wetch did not receive any tickets under the RV Ordinance and neither owns an RV. SAOK is an organization dedicated to providing meals to the unhoused, but has no RVs of its own, and was not otherwise harmed by the RV Ordinance. Moreover, SAOK has no members through which it might assert associational standing. As such, the Complaint as brought by Yesue, Wetch, and SAOK should be dismissed in its entirety.

To "satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and 3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561 (1992).

"An organizational plaintiff has standing if it alleges: (1) injury in fact; (2) causation; and

(3) redressability. *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010). Injury can be established where the organization suffered " 'both a diversion of its resources and a frustration of its mission' " but it "cannot manufacture the injury by incurring litigation costs or simply choosing to spend money fixing a problem that otherwise would not affect the organization at all.... It must instead show that it would have suffered some other injury if it had not diverted resources to counteracting the problem." *Id*. (citing *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 905 (9th Cir. 2002)).

In addition to the constitutional standing requirements, courts have erected "prudential barriers" and concluded that a "membership organization can sue in its representative capacity when '(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.' " *Presidio Golf Club v. Natl. Park Serv.*, 155 F.3d 1153, 1159 (9th Cir. 1998) (quoting *Hunt v. Washington State Apple Advertising Com'n*, 432 U.S. 333, 343 (1977)).

Yesue and Wetch have not demonstrated that they were either injured in fact by the RV Ordinance or that they have anything more than a highly speculative fear that they will be harmed by the Ordinance in the future. Neither Yesue nor Wetch have produced evidence that they received citations under the RV Ordinance, nor that their RVs were towed pursuant to the RV Ordinance. City Dec., Ex. 10, p. 6, Ex. 11, p. 52:12-24, Ex. 12, p. 5, Ex. 13, pp.16:1-11, 17:12-14, 17:17-19. Yesue moved his RV into the Horizon Shine Village prior to the effective date of the RV Ordinance and sold his RV as he was leaving the Horizon Shine Village. *Id*. at Ex. 11, pp. 24:25-26:11. Thus, Yesue was never actually subject to the RV Ordinance. Wetch's RV burnt before the RV Ordinance went into effect and she has not obtained a new one. *Id*. at Ex. 13, pp. 12:19-13:5, 13:15-16. Thus, Wetch too was never subject to the RV Ordinance. Yesue and Wetch cannot establish redressable harm in this case where they were never ticketed or towed under the RV Ordinance.

Moreover, because Yesue and Wetch no longer own RVs, they cannot be subject to future enforcement of the RV Ordinance. Article III standing cannot be based on the speculative

assumption that they may again own RVs at some point in the future and, at that time, be subject to the RV Ordinance should they chose to park those hypothetical RVs in the City. See *TransUnion LLC v. Ramirez*, 594 U.S. 413, 438 (2021). Yesue and Wetch have not and cannot establish that they have a likelihood of being harmed in anyway by the Ordinances.

SOAK does not have either organizational or associational standing. SOAK does not have organizational standing because SAOK was not harmed in any way by the RV Ordinance. SOAK does not own any RVs. City Dec., Ex. 16, pp. 21:17-22:3. In the Complaint, SOAK alleged that the RV Ordinance frustrated SAOK's mission and that it "had to divert resources, because many of the people it has assisted in Sebastopol have dispersed or gone into hiding." Complaint, ¶ 16. In deposition, however, SOAK testified that its volunteers had no problem locating the unhoused residing in their vehicles in the City and, indeed, that searching for the unhoused to deliver meals and other supplies is part of SAOKs standard operations. City Dec., Ex. 16, pp. 13:15-15:10, 15:18-16:11. Thus, there is no evidence that SOAK's mission was "frustrated" by the RV Ordinance or that SAOK had to expend funds to counteract the perceived negative effects of the RV Ordinance. Therefore, SOAK does not have standing to sue on its own behalf.

Furthermore, SAOK cannot establish associational standing to sue on behalf of its members because SAOK does not have any members. City Dec., Ex. 16, p. 11:12-14.

Consequently, the undisputed facts show that Yesue, Wetch, and SAOK have not established Article III standing and their Complaints should be dismissed.

B. The City's Modest Fines for Parking Violations Are Not "Excessive Fines" In Violation of the Eighth Amendment or Article I, Sec. 17 of the California Constitution

The fine for a parking citation for violation of the RV Ordinance is $60. City Dec., Ex. 20, pp. 29-30. Plaintiffs argue that this modest fine violates the Excessive Fines Clause of the Eighth Amendment to the U.S. Constitution, and the corresponding provision in Article I, Sec. 17 of the California Constitution. Complaint, ¶¶ 60-64, 102-104. As established above, Plaintiffs have never received a ticket for violation of the RV Ordinance and, thus, can raise only a facial challenge to the amount of the fines. "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that *no set of*

circumstances exists under which the Act would be valid." *United States v. Salerno* 481 U.S. 739, 745 (1987) (emphasis added). Plaintiffs have not produced any evidence that $60 constitutes an excessive fine in all circumstances.

The Excessive Fines Clause "limits the government's power to extract payments, whether in cash or in kind, as punishment for some offense." *Austin v. United States*, 509 U.S. 602, 609–610 (1993). A fine is unconstitutionally excessive under the Eighth Amendment if its amount "is grossly disproportional to the gravity of the defendant's offense." *United States v. Bajakajian*, 524 U.S. 321, 336–37 (1998). "To determine whether a fine is grossly disproportional to the underlying offense, four factors are considered: (1) the nature and extent of the underlying offense; (2) whether the underlying offense related to other illegal activities; (3) whether other penalties may be imposed for the offense; and (4) the extent of the harm caused by the offense." *Pimentel v. City of Los Angeles*, 974 F.3d 917, 921 (9th Cir. 2020).

The Ninth Circuit addressed an analogous situation in *Pimentel*, there examining the City of Los Angeles' $63 fines for violations of its parking ordinances, though in the context of an as-applied challenge rather than the facial challenge Plaintiffs bring here. Examining the first *Bajakajian* factor, *Pimentel* held that "[e]ven if the underlying violation is minor, violators may still be culpable" and found that the plaintiffs culpable because they had violated the city's parking ordinance. *Id*. at 923. "We thus find that the nature and extent of appellants' violations to be minimal but not de minimis." *Id*. The second and third *Bajakian* factors were unhelpful in *Pimentel* as the record contained no evidence to support the application of either factor. *Id*. Turning to the fourth *Bajakajian* factor, *Pimentel* held that its review of the "harm" "is not limited to monetary harms alone. Courts may also consider how the violation erodes the government's purposes for proscribing the conduct." *Id*. at 924. The 9th Circuit found "no real dispute that the City is harmed because overstaying parking meters leads to increased congestion and impedes traffic flow" and concluded that "we must afford 'substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments.'" *Id*. Moreover, the city did not need to provide "quantitative evidence showing that the initial fine deters parking violations or promotes compliance" nor a " 'strict proportionality between the

amount of a punitive forfeiture and the gravity of a criminal offense.'" *Id*. "Instead, the 'amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish.'" *Id*. Based on this analysis, *Pimentel* found that "the $63 parking fine is sufficiently large enough to deter parking violations but is 'not so large as to be grossly out of proportion' to combatting traffic congestion in one of the most congested cities in the country.'" *Id*.

Here, Plaintiffs' facial challenge to the RV Ordinance likewise fails under the *Bajakajian* factors. The first factor, culpability, is self-proven in a facial challenge. Only violators of the RV Ordinance would be subject to fines for violation of the RV Ordinance and that culpability would be "minimal but not de minimus." *Pimentel*, 974 F.3d at 923. Regarding the second factor, violations of the RV Ordinance could be related to other illegal activities, or could not be. However, under a facial challenge, the Court should only consider whether the possibility exists. Parking violations under the RV Ordinance may very well be associated with other legal violations including, but not limited to violations of the 72-hour Ordinance, vehicles with expired registration, and/or vehicles in inoperative or dangerous conditions. As with *Pimentel*, the third *Bajakajian* factor is not helpful here – there are no other penalties that may be imposed for the same offense. See *Bajakajian*, 524 U.S. at 339, n. 14 (examining the third factor as part of the analysis of culpability). Finally, under the fourth factor, again as in *Pimentel*, the harm caused by the offence is not limited to monetary harm to the City. The City has an interest in preventing the human health and safety impacts of long-term RV encampments on the City street and in ensuring adequate parking and access to public facilities and local businesses.

Thus, while violation of the RV Ordinance is not a serious offense, neither is the fine "grossly out of proportion" with the offense and likely deters violations. As the 9th Circuit found for Los Angeles' $63 parking tickets, the Court here should find that the City's $60 parking tickets are not excessive fines prohibited by the Eighth Amendment and deny Plaintiffs' claim.

C. There are no facts that would support Plaintiffs' Claim for State Created Danger.

Plaintiffs' next claim, that the Ordinances cause a state created danger, relies on a series of hypothetical events, with no evidence of any risk of an actual, particularized harm to any of the

Plaintiffs. Complaint, ¶¶ 65-73. Considering that a state created danger claim requires "particularized" harm, it is unclear that a facial challenge to an ordinance under the state created danger doctrine is even a cognizable cause of action. The Court should deny this claim on that basis alone. However, even assuming a facial, state created danger challenge to an ordinance is cognizable, the undisputed facts show that Plaintiffs have failed to establish such a claim.

"[A]lthough the state's failure to protect an individual against private violence does not generally violate the guarantee of due process, it can where the state action 'affirmatively place[s] the plaintiff in a position of danger,' that is, where state action creates or exposes an individual to a danger which he or she would not have otherwise faced." *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1061 (9th Cir. 2006). "For a plaintiff to prevail on a state-created danger claim, the government must 'affirmatively create[ ] an actual, particularized danger [that the plaintiff] would not otherwise have faced.'" *Sinclair v. City of Seattle*, 61 F.4th 674, 681 (9th Cir. 2023), citing *Kennedy*, 439 F.3d at 1063.

"Thus, to make out a successful claim under the state created danger doctrine, a plaintiff must allege facts sufficient to establish that the defendant acted with deliberate indifference to a known or obvious danger." *Id*., internal citations omitted. "This is a 'stringent standard of fault.'" *Ibid*. "The defendant must recognize the unreasonable risk and actually intend to expose the plaintiff to such risks without regard to the consequences to the plaintiff." *Ibid*., internal citations omitted. "Ultimately, a state actor needs to know that something is going to happen but ignore the risk and expose the plaintiff to it." *Sinclair*, 61 F.4th at 680–81. To satisfy a state created danger claim, the danger must also be particularized. *Id*. at 682. "A danger is 'particularized' if it is directed at a specific victim" and "naturally, contrasts with a general one." *Id*.; see also *id*. at 682-683 (summarizing cases).

Here, Plaintiffs' allegations, which are unsubstantiated by any evidence, rely on a series of "ifs" that do not show either a "known" or "particularized" danger, nor does the evidence show the City acted with "deliberate indifference." According to Plaintiffs' theory, if Plaintiffs park their RVs in violation of the Ordinances, if the City tows their RVs, if Plaintiffs cannot pay the necessary charges to repossess their RVs from a towing company and lose access to their RVs, if

Plaintiffs cannot find any other shelter besides congregate shelter, and if someone else in that congregate shelter happens to be infected with the COVID-19 virus, then Plaintiffs might be harmed by the risk of contracting the COVID-19 virus. Complaint, ¶¶ 66-71.

First, to be clear, there is no evidence that this series of events has ever happened to Plaintiffs or anyone else. Second, even as a hypothetical, there are multiple logical breaks in this theory that prevent the end result from being a "known" danger to which the City is deliberately indifferent. To find liability, the Court would need to hold that the City knew that Plaintiffs are going to choose to violate the RV Ordinance, that the result of that violation would be a tow instead of a citation, that Plaintiffs would be unwilling or unable to repossess their vehicle from the towing company, that the Plaintiffs would then chose to go to a congregate shelter, and that someone else at the congregate shelter would be infected with COVID-19. There is no evidence that any one of these events was known or even knowable by the City. Thus, the eventual exposure to COVID-19 following an unknowable series of hypothetical events does not show that the City subjected Plaintiffs to a known danger or that the City was deliberately indifferent to that danger.

Even if the Court were to accept Plaintiffs theory that the City was deliberately indifferent to a chain of events that starts with the passage of parking ordinances and ends in the danger of exposure to COVID-19 at a congregate housing facility, Plaintiffs claim still fails because the danger alleged by Plaintiffs is not "particularized" to Plaintiffs. Any individual who resides in an RV could be subject to the same chain of hypothetical events that Plaintiffs describe in the Complaint, making the alleged danger general, not particularized.

Thus, the undisputed facts show neither that the City was deliberately indifferent to a known danger, nor that the alleged danger was particularized to Plaintiffs. As such, Plaintiffs' claim that the RV Ordinance causes a state created danger fails.

D. The Ordinances Are Rationally Related to the City's Legitimate Interests In Mitigating the Public Health and Safety Impacts of Long-Term RV Encampments on City Streets.

Plaintiffs' Fourth Claim, that the City passed the RV Ordinance and the 72-hour Ordinance only based on "antipathy or prejudice" towards the "disfavored group of persons" living in their

RVs on City streets in violation of Plaintiffs' Equal Protection rights, misapplies the deferential standard that legislation is presumed to be valid, is not supported by the undisputed evidence, and completely ignores the public health and safety concerns that prompted the City to pass the Ordinance that serve as the City's rational basis for the Ordinances.[1] Complaint, ¶¶ 74-76.

Under rational basis review, "legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).

Plaintiffs wholly ignore this presumption. Further, the undisputed evidence shows both that the City does not have "antipathy" or "irrational bias" towards the unhoused and that the City had a rational basis to enact the Ordinances to address legitimate interests.

First, the undisputed facts show that the City does not have antipathy towards the unhoused. The City, despite its small size, has undertaken considerable effort and expense to assist the unhoused including paying for a full-time homeless outreach coordinator, partnering with West County Community Services to establish the Park Village, and partnering with SAVS to establish the Horizon Shine Village. See supra, pp. 4:13-19, 5:14-21 and facts cited therein. Rather than antipathy, the City seeks to care for and support the unhoused. City Dec., Ex. 5, pp. 232:2-11, 237:18-238:12, 241:21-242:4.

Second, unlike the irrational distinction between allowing group homes generally, but disallowing group homes for the mentally retarded in *Cleburne*, the City has a rational basis for preventing RV encampments on the City streets. The undisputed facts show a host of public health and safety impacts resulting from long-term RV encampments, both to the RV dwellers themselves, and to the general public. See, supra, pp. 4:24-5:13, and facts cited therein. In addition, the City has an additional rational basis enacting both the RV and 72-hour Ordinances in ensuring public access to public parking on City streets and ensuring that public streets are not

[1] For this Claim, Plaintiffs include the City's revisions to the 72-hour Ordinance as violating the Equal Protection Clause, but Plaintiffs seek no relief regarding the 72-hour Ordinance. Complaint, ¶¶ 74-76 and pp. 31-32. In any event, as set forth herein, the City did not violate the Equal Protection Clause through either the RV Ordinance or the 72-hour Ordinance.

used for the long-term storage of vehicles. Because the undisputed facts show that the City enacted both Ordinances to further these legitimate public interests, not, as Plaintiffs' allege, to drive the unhoused from the City, Plaintiffs' Equal Protection claim fails.

E. The RV Ordinance Does Not Authorize Unreasonable Seizure of Property by Towing in All Circumstances

Like Plaintiffs' other challenges, Plaintiffs' claims that the RV Ordinance violates the prohibitions against unreasonable seizures of property contained in the Fourth Amendment and Article I, section 13 of the California Constitution must be construed as a facial challenge. Complaint, ¶¶ 77-82, 105-107. There is no evidence that any of Plaintiffs' RVs were towed pursuant to the Ordinance. Under the exacting standards of a facial challenge, Plaintiffs' Fourth Amendment claim fails.

Again, for a facial challenge, Plaintiffs "must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno* 481 U.S. 739, 745 (1987); see also *Bell v. City of Chicago*, 835 F.3d 736, 739 (7th Cir. 2016). A removal of a vehicle by tow is considered a "seizure" under the Fourth Amendment, Article I, section 13 of the California Constitution, and California Vehicle Code section 22650, subdivision (b). However, the Supreme Court has established the "community caretaking" doctrine as an exception to the normal rule that police must obtain a warrant before seizing a vehicle. While the application of the community caretaking doctrine is fact-specific, the Supreme Court has stated that "Police will … frequently remove and impound automobiles which violate parking ordinances and which thereby jeopardize both the public safety and the efficient movement of vehicular traffic. The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge." *South Dakota v. Opperman*, 428 U.S. 364, 368–69 (1976). Seizures under the community caretaking doctrine, however, do have limits. See *Miranda v. City of Cornelius*, 429 F.3d 858 (9th Cir. 2005) [tow unreasonable where vehicle parked in the driveway of an owner who has a valid license]; *Coal. on Homelessness v. City & Cnty. of San Francisco*, 93 Cal.App.5th 928 (2023) [policy of towing safely and lawfully parked vehicles without a warrant based solely on the accrual of unpaid parking tickets unreasonable].

Here, to be successful in their claims, Plaintiffs must show that towing of RVs that violate the RV Ordinance is never reasonable under any circumstances. Plaintiffs cannot meet this high burden. It is easy to imagine multiple situations where an RV parked in violation of the RV Ordinance could be reasonably towed under the community caretaking doctrine. An RV parked in violation of the RV Ordinance is, by definition, a vehicle violating a parking ordinance, implicating issues of public safety and convenience under *Opperman*. Such an RV may be blocking access to parking for public facilities or local businesses, or might interfere with street cleaning or road repair activities, or may be responsible for some of the public health and safety issues documented by the City at the earlier RV encampment. In short, because the potential for such reasonable tows clearly exists, Plaintiffs' facial challenge to the RV Ordinance must fail.

F. Plaintiffs Facial Procedural Due Process Claim is Without Support

Next, Plaintiffs complain that the Ordinance violates their procedural due process rights because the City has threatened to take "their vehicles without individualized notice, a hearing, or any of the procedural protections that a hearing would provide." Complaint, ¶ 88. None of Plaintiffs have had their vehicle towed pursuant to the RV Ordinance. Thus, Plaintiffs can only succeed in this claim by passing the very high bar of a facial challenge to the RV Ordinance.

"[T]here is no right to a pre-tow hearing." *Soffer v. City of Costa Mesa*, 798 F.2d 361, 363 (9th Cir. 1986). There is, however, a requirement that the City provide the opportunity for a post-tow hearing under both due process and California Vehicle Code section 22852. See *Scofield v. City of Hillsborough*, 862 F.2d 759, 764 (9th Cir. 1988). Due process also "requires that individualized notice be given before an illegally parked car is towed unless the state has a 'strong justification' for not doing so." *Grimm v. City of Portland*, 971 F.3d 1060, 1063 (9th Cir. 2020). Individualized notice must be "reasonably calculated" to provide the individual notice of a pending tow. *Id*. at 1068.

Here, the City is required to provide a post-tow hearing by California Vehicle Code section 22852. There is no evidence that the City has ever violated this law or indeed, as a facial challenge requires, that the City would violate this law in every instance of a tow. Thus, the City's post-tow hearing procedures meet due process requirements. Regarding individualized notice, the

City provides notice in multiple ways. First, the City's ordinances are published and easily accessible and keyword searchable on the internet. City Dec., ¶ 22. Second, the City posted signs at the entrances to the City and in key locations in the City where RVs were likely to park of the RV Ordinance's parking requirements and that violators may be subject to tow. *Id*. at Ex. 1, p. 64:1-17 and P.Exs. 15, 16 thereto; Ex. 3, p. 177: 2-17, and P.Ex. 50 thereto. Third, the City's Police have a pattern and practice of issuing warnings before any citations and further warnings before any tows. *Id*. at Ex. 1: pp. 69:2-19; Ex. 7, pp. 22:24-24:5, 33:13-35; 38:13-21; Ex. 8, pp. 35:5-21, 36:2-17, 37:17-38:19, 63:24-65:9, 70:13-71:3, 87:13-89:2; Ex. 15, pp. 40:17-41:1. These warnings provide additional, individualized notice to any persons who may be subject to a tow. Under Plaintiffs' facial challenge, these processes are sufficient to provide individualized notice and satisfy procedural due process requirements.

Thus, Plaintiffs cannot demonstrate that the RV Ordinance violates procedural due process requirements in all circumstances and cannot prevail on their facial Due Process challenge to the RV Ordinance.

G. The RV Ordinance is Not Unconstitutionally Vague

As with their other claims, Plaintiffs' facial challenge to the RV Ordinance on vagueness grounds is based on hypothetical harms to hypothetical people. Complaint, ¶¶ 89-93. Plaintiffs were never ticketed nor towed under the RV Ordinance. Moreover, the alleged "vagueness" in the RV Ordinance of which Plaintiffs complain does not apply to Plaintiffs' RVs. The RV Ordinance proscribes the parking of a "Recreational Vehicle" or "RV" and specifically defines the types of vehicles that would constitute an RV. Corley's "fifth wheel," and both Yesue's and Wetch's RVs, when they still had them, were specifically defined as "RVs" in the RV Ordinance. Instead, Plaintiffs argue that others might be confused because the RV Ordinances' definition of "RV" also includes, among its more particularized terms, those vehicles "designed or altered for human habitation." When read in full, however, the RV Ordinance's definition of "RV" is not unconstitutionally vague.

"An ordinance is unconstitutionally vague 'if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits,' or 'if it authorizes

or even encourages arbitrary and discriminatory enforcement.'" *Gospel Missions of Am. v. City of Los Angeles*, 419 F.3d 1042, 1047 (9th Cir. 2005), citing *Hill v. Colorado*, 530 U.S. 703, 732 (2000). "A statute is vague on its face when 'no standard of conduct is specified at all. As a result, men of common intelligence must necessarily guess at its meaning.'" *Id*., citing C*oates v. City of Cincinnati*, 402 U.S. 611, 614 (1971). However, "speculation about possible vagueness in hypothetical situations not before [us] will not support a facial attack on a statute when it is surely valid 'in the vast majority of its intended applications.' " *Hill*, 530 U.S. at 733. In a facial challenge to an ordinance on vagueness grounds, the Court "should uphold the challenge only if the enactment is impermissibly vague in all of its applications." *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 495 (1982). Moreover, a "plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others. A court should therefore examine the complainant's conduct before analyzing other hypothetical applications of the law." *Ibid*.

Section 10.76.040 of the Sebastopol Municipal Code generally prohibits RVs from parking on City streets. City Dec, Ex. 19. The RV Ordinance does allow RV parking on public streets in areas zoned commercial, industrial, or community facility between the hours of 10:00 p.m. and 7:30 a.m. *Id*. (SMC 10.76.040.B). The RV ordinance also allows RV parking in City-owned parking lots if the person operating the RV is conducting business in the City, though parking in the Police, Fire, Public Works, and City Hall buildings is limited to business conducted at those buildings. *Id*. (SMC 10.76.040.D.)

The Complaint does not take issue with any of these provisions, but rather with the definition of what constitutes an "RV." Complaint, ¶¶ 91-93. SMC section 10.76.030 defines "RV" as

> "a motorhome, travel trailer, truck camper, camping trailer, or other vehicle or trailer, with or without motive power, designed or altered for human habitation for recreational, emergency, or other human occupancy. 'Recreational vehicle' specifically includes, but is not limited to: a 'recreational vehicle' as defined by Cal. Health & Safety Code § 18010; a 'truck camper' as defined by Cal. Health & Safety Code § 18013.4; a 'camp trailer' as defined in Cal. Veh. Code § 242; a 'camper' as defined in Cal. Veh. Code § 243; a 'fifth-wheel travel trailer' as

> defined in Cal. Veh. Code § 324; a 'house car' as defined by Cal. Veh. Code § 362; a 'trailer coach' as defined in Cal. Veh. Code § 635; a van camper; or a van conversion."

Id. Plaintiffs specifically claim that the terms "altered for human habitation" are too vague for any common understanding and will lead to arbitrary and discriminatory enforcement. First, none of the Plaintiffs, even when they all owned RVs, would have had any doubt that the ordinance applied to them. Corley currently owns a "fifth wheel," which is specified as an RV in the Ordinance. City Dec., Ex. 14, p.19:24-20:11. Yesue and Wetch also both owned vehicles they understood to be "RVs." *Id*. at Ex. 10, p. 4; Ex. 12, p. 4; Ex. 13, pp. 13:17-14:8. Thus, Plaintiffs' concerns about the alleged vagueness of the RV Ordinance are completely hypothetical concerns that would only apply to unknown third parties.

Second, the term "altered for human habitation" is not vague nor does it render the RV Ordinance vague. The term "altered" modifies the words "or other vehicle or trailer" and clearly intends to describe the circumstances when a person alters a vehicle or trailer itself to make it fit for "human habitation." Further examples of such "altered" vehicles are included in the definition itself, which lists "van camper" and "van conversion" as RVs, though these terms do not have a corresponding California Vehicle Code definition. While it is possible that reasonable people may differ regarding the extent of alteration necessary to convert a vehicle into an "RV" "speculation about possible vagueness in hypothetical situations not before [us] will not support a facial attack on a statute when it is surely valid 'in the vast majority of its intended applications.' " *Hill*, 530 U.S. at 733. Here, people of ordinary intelligence will be able to determine in the vast majority of circumstance whether their vehicle constitutes an RV. Possible vagueness in hypothetical situations do not establish Plaintiffs' claim that the RV Ordinance is unconstitutional on its face.

Third, there is no danger of arbitrary or discriminatory enforcement. Plaintiff deposed both the City's parking enforcement officer and the Police Chief, posing hypotheticals regarding what kinds of vehicles would be considered sufficiently "altered" to constitute an RV. City Dec. Ex. 7, pp. 26:2-28:7; 56:7-57:8; Ex. 8, pp. 26:16-29:9. Both responded that for a vehicle to constitute an RV, it would need to include something more than the accumulation of possessions

in the vehicle, but rather the vehicle would need to display signs of physical changes to the vehicle itself that render it capable of supporting human occupancy. *Id*. Moreover, the facts do not show that the City practices arbitrary or discriminatory enforcement and nor that the City seeks to, as Plaintiffs allege, drive "undesirables" from the City.

Plaintiffs will claim that *Desertrain v. City of Los Angeles*, 754 F.3d 1147 (9th Cir. 2014) is controlling, but that case is inapposite. There, Los Angeles' ordinance prohibited using a vehicle "as living quarters either overnight, day-by-day, or otherwise." *Id*. at 1149. In both theory and practice, the 9th Circuit held that the ordinance was unconstitutionally vague as to the conduct it prohibited and actually encouraged arbitrary and discriminatory enforcement. Los Angeles police made arrests and issued citations for such disparate conduct as sleeping in a car, having personal possessions in a car, eating food in a car, sitting in a car to be out of the rain, and driving through the City in an RV. *Id*. at 1150-1152. The ordinance, "offers no guidance as to what conduct it prohibits," "[w]e know that … sleeping in a vehicle is not required to violate [the ordinance], …, nor is keeping a plethora of belongings required …[b]ut there is no way to know what is required to violate [the ordinance]. *Id*. at 1155-1156. The vagueness also led to arbitrary and discriminatory enforcement as shown by the City's enforcement against plaintiffs in that case.

There are a number of important distinctions between this case and *Desertrain*. First, there is no evidence whatsoever of any actual confusion by the City's Police or RV Dwellers about what the Ordinance means. Unlike *Desertain*, Plaintiffs were not cited under the RV Ordinance and the RVs they own, or did own, are unambiguously subject to the RV Ordinance. Second, there is no evidence showing a history of arbitrary or discriminatory enforcement of the Ordinance under questionable interpretation of its terms by the City. Third, there is no dispute that the conduct proscribed by the Ordinance is the parking of RVs in certain areas of the City at certain times of the day. The "danger" posed by the alleged vagueness is completely hypothetical. Plaintiffs' concerns that someone, at some point in the future might be subject to enforcement because it is not readily apparent that their vehicle has been sufficiently "altered" to fall under the definition of an "RV" do not show that the RV Ordinance is "impermissibly vague in all of its applications." *Vill. of Hoffman Ests.*, 455 U.S. at 495.

H. The Ordinance Does Not Violate the Right to Travel

Plaintiffs further claim that the RV Ordinance violates the right to interstate travel under the US Constitution and the right to intrastate travel under the California Constitution. Complaint ¶¶ 94-97, 98-101. The RV Ordinance, however, neither creates classifications between residents and non-residents, nor deprives non-residents of any fundamental rights, nor otherwise burdens the right to travel. Instead, Plaintiffs seek to extend the right to travel to a right to live in their RVs on City streets. Because the courts have already rejected the argument that the right to travel gives citizens the right to live or stay where one will, the Court should likewise reject Plaintiffs' Eight and Ninth Claims.

The right to travel, "is seen as an aspect of personal liberty" and "requires 'that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.' " *Tobe v. City of Santa Ana*, 9 Cal.4th 1069, 1098 (1995); citing *Shapiro v. Thompson*, 394 U.S. 618, 630 (1969). A "state may not create classifications which, by imposing burdens or restrictions on newer residents which do not apply to all residents, deter or penalize migration of persons who exercise their right to travel to the state." *Tobe*, 9 Cal.4th at 1098. "Neither the United States Supreme Court nor [the California Supreme Court] has ever held, however, that the incidental impact on travel of a law having a purpose other than restriction of the right to travel, and which does not discriminate among classes of persons by penalizing the exercise by some of the right to travel, is constitutionally impermissible." *Id*. at 1100. "The right to travel does not … endow citizens with a 'right to live or stay where one will'" nor does it "impose on a state or governmental subdivision the obligation to provide its citizens with the means to enjoy that right." *Id*. at 1103.

The RV Ordinance does not burden the right to travel; it is parking ordinance defining where and when RVs may park in the City. It does not create a classification between City residents and non-residents, nor does it concern who may enter or stay in any part of the City. The Ordinance does not even restrict people from sleeping in their RVs in the City.

Plaintiffs, however, argue for an expansion from the right to travel to a right to live wherever they want, however they want, claiming that the Ordinance "prevents Plaintiffs from

peacefully dwelling in the city of their choosing." Complaint, ¶ 97. There is no constitutional requirement that the City allow people to live in their RVs on City streets nor any constitutional duty for the City to provide parking spaces for them to do so. Plaintiffs also claim that the Ordinance favors those with fixed housing while discriminating against RV dwellers. *Id*. On its face, though, the Ordinance makes no such distinction. Finally, Plaintiffs argue that the Ordinance seeks to "expel" Plaintiffs from the City. *Id*. at ¶ 96. In this argument, Plaintiffs conflate their RVs with their persons. Plaintiffs themselves are not barred from the City at all. If Plaintiffs chose to do so, they may park their RVs in the City in designated places and sleep there. They may also park RVs in City parking lots to conduct business in the City, or in private lots. They may find legal parking outside of the City for their RVs and choose a different form of transportation to return to the City. Or they may drive their RVs on City streets as often as they want. All the RV Ordinance does is prevent Plaintiffs, and others, from utilizing public parking as a de facto RV campground. This, however, does not violate the right to travel under either the US or California Constitutions.

I. There are No Facts Establishing the City Violated the Americans with Disabilities Act, the California Disabled Persons Act, or California Government Code 11135.

Plaintiffs final Claims are that the RV Ordinance violates the Americans with Disabilities Act ("ADA") the California Disabled Persons Act ("CDPA"), and California Government Code section 11135. Complaint, ¶¶ 108-123, 124-128, 129-135. The RV Ordinance, however, is not facially discriminatory against any recognized group. The RV Ordinance applies to RVs, but makes no distinction among the persons who own or operate those RVs. Moreover, Plaintiff made no request for accommodations for their alleged disabilities. Even if they had, however, Plaintiffs' demand that they be allowed to camp on City streets is a fundamentally different "program" than the City's program of allowing parking on City streets. Therefore, the RV Ordinance does violate the ADA, the CDPA, or California Government Code section 11135.

"To state a claim under Title II of the ADA, a plaintiff generally must show: (1) she is an individual with a disability; (2) she is otherwise qualified to participate in or receive the benefit of a public entity's services, programs or activities; (3) she was either excluded from participation in

or denied the benefits of the public entity's services, programs or activities or was otherwise discriminated against by the public entity; and (4) such exclusion, denial of benefits or discrimination was by reason of her disability." *Sheehan v. City and County of San Francisco*, 743 F.3d 1211, 1232 (9th Cir. 2014), rev'd in part, cert. dismissed in part sub nom. *City and County of San Francisco, Calif. v. Sheehan*, 575 U.S. 600, 135 (2015). The CDPA incorporates the ADA and states that "a violation of the right of an individual under the [ADA] … constitutes a violation of" the CDPA. Cal. Civ. Code, § 54.1(d). Likewise, California Government Code section 11135 is "coextensive with the ADA because it incorporates the protections and prohibitions of the ADA and its implementing regulations." *Bassilios v. City of Torrance, CA*, 166 F.Supp.3d 1061, 1084 (C.D. Cal. 2015).

The ADA does not require public entities to "fundamentally alter the nature of the service provided" in order to accommodate people with disabilities. *Tennessee v. Lane*, 541 U.S. 509, 532 (2004). An alteration is fundamental if it would alter "the essential nature" of the program. *Alexander v. Choate*, 469 U.S. 287, 300 (1985). In addition, "public entities are not required to create new programs that provide heretofore unprovided services to assist disabled persons." *Townsend v. Quasim*, 328 F.3d 511, 518 (9th Cir. 2003).

Plaintiffs have provided no evidence, beyond Plaintiffs' conclusory statements that they suffer from disabilities, that Plaintiffs are actually disabled. Even assuming for the sake of argument that Plaintiffs are disabled, Plaintiffs have failed to meet the other three factors for a claim under the ADA. The City's "program" that Plaintiffs claim is subject to the ADA's requirements is the public parking within the City. Complaint, ¶ 113. Plaintiffs did not make a request for reasonable accommodations, but the Complaint, telling, shows that Plaintiffs believe they have a "disability-related" right to reside in their RVs on City streets because it is difficult for them to live in congregate shelters or outside of their vehicles on the City streets. Complaint, ¶¶ 12, 14-15. However, the City's parking program allows for parking, it does not allow for camping or residing in RVs on City streets for anyone, regardless of income or disability. A request to change the City's parking program to a program allowing people to reside on the City streets in their RVs would fundamentally alter the "essential nature" of the City's parking program. Finally,

Plaintiffs have not been denied access to the City's parking program by reason of their alleged disabilities. Plaintiffs are free to park on the City's streets the same as anyone else. Thus, Plaintiffs, even if they qualify as disabled, have not been excluded from participating in the City's parking program by reasons of their alleged disabilities.

To the extent Plaintiffs argue that the City's parking program places disproportionate burdens on the disabled by restricting daytime access to other "programs" in the City, this argument is a misdirection and inapplicable to any of the Plaintiffs. See Complaint, ¶ 119. Such burdens would only be placed on a category of persons defined as disabled and whose only means of transportation is an RV. This category, however, does not apply to any of the Plaintiffs. Plaintiffs Yesue and Wetch do not own RVs. Plaintiff Corley owns an RV, but also owns another vehicle that she can use to access other services in the City. City Dec., at Ex. 14, pp. 29:22-30:4, 47:3-15. Thus, none of Plaintiffs face any such alleged burdens.

For all of these reasons, Plaintiffs cannot demonstrate that the RV Ordinance violates the ADA, CDPA, or California Government Code section 11135.

V. CONCLUSION

Plaintiffs have not been harmed by the RV Ordinance. None of Plaintiffs have been ticketed or towed under the RV Ordinance and only Corely currently owns an RV that would even be subject to the Ordinance. Nevertheless, Plaintiffs have raised a host of facial challenges to the RV Ordinance based on hypothetical future harms. As demonstrated herein, there is no genuine issue of material fact showing that any of these claims have merit. Therefore, the City respectfully requests that the Court grant the City's motion for summary judgement. To the extent the Court finds that any of Plaintiffs claims survive summary judgment, the City asks the Court to grant partial summary judgment dismissing those claims the Court finds without merit.

DATED: July 11, 2024

MEYERS NAVE

By: _____

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